BETWEEN A ROCK AND A HARD PLACE: A CLAIMS DISCUSSION

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I. INTRODUCTION – CARGO LIABILITY REGIMES

A. Carmack Amendment

Claims for loss of and/or damage to cargo transported in interstate commerce by motor carriers are governed by the Carmack Amendment to the Interstate Commerce Act, which is codified at 49 U.S.C. § 14706. The Carmack Amendment imposes a semi-strict liability standard on “carriers” and “freight forwarders.” In order to prevail on a claim under Carmack, a claimant need only prove: 1) that the goods were in good condition when entrusted to the carrier; 2) that the goods either did not arrive at destination or arrived in damaged condition; and, 3) the amount of money damages suffered by the loss or due to the damaged condition of the goods.

Carriers and freight forwarders have very limited defenses to claims under Carmack. In order to defend, a carrier or freight forwarder must prove that it was: 1) free from negligence leading to the loss; and, 2) that the loss was a result of: a) an act of God; b) public authority; c) the act of a public enemy; d) an inherent vice of the goods damaged; or, e) an act or omission of the shipper. The Carmack Amendment was intended by Congress to institute a comprehensive regime for determining the liability of motor carriers and freight forwarders. Thus, the Carmack Amendment preempt (or prohibits) assertion of all state laws claims relating to damage to cargo. According, claims under legal theories such as negligence, bailment, fraud, unfair trade practices, etc. cannot be pursued against a motor carrier or freight forwarder. A claimant must and is entitled to proceed under the Carmack Amendment.

Under the Carmack Amendment, a motor carrier or freight forwarder can limit their liability for loss and damage claims. This was traditionally done through tariffs; but, today can be accomplished through a number of mechanisms. In order for a motor carrier or freight forwarder to limit its liability, it must: 1) maintain a tariff or other documents (e.g. terms and conditions, publications, service guides, etc.) and provide a written or electronic copy to the shipper upon request; 2) obtain the shipper’s agreement as to his choice of liability; 3) give the shipper a reasonable opportunity to choose between two or more levels of liability; and, 4) issue a receipt or bill of lading prior to moving the shipment.

Only “carriers” and “freight forwarders” are liable for loss of or damage to cargo in interstate commerce under Carmack. “Brokers” are not covered by the Carmack Amendment and, therefore, are not liable for cargo loss or damage under the Amendment. Despite freight brokers having no liability under the Carmack Amendment, claims for loss of or damage to cargo are often asserted against brokers under a number of theories. The materials below address some of these issues and suggest some ways that brokers may be able to better protect themselves from claims being asserted against them for loss of and/or damage to cargo.

1 There are, however, other defenses applicable to the amount of damages for which one is liable such as a claimant’s failure to mitigate damages (through salvage or otherwise), provisions limiting the liability of the defending party, and others.
B. **Carriage of Goods by Sea (COGSA)**

When a contract of carriage or bill of lading relates to ocean transport of goods, they can be subject to the Carriage of Goods by Sea Act (“COGSA”). 46 U.S.C. § 30701 et seq. Under COGSA, a carrier’s liability is limited to “$500 per package” or customary freight unit. How a “package” is defined is often the subject of litigation. It is important to evaluate whether a load is subject to COGSA as it may provide greater defenses to allegedly liable parties. Often some segment of ocean carriage can subject a shipment to COGSA, even though the bulk of the transportation was overland by truck. Actions against a steamship line’s subcontractors are limited by Himalaya clauses and covenants not to sue.

C. **Air Freight**

When freight is transported via air, it may be subject to cargo liability regimes under the Warsaw Convention, Montreal Convention or Montreal Protocol. Most claims fall under the Montreal Convention. Under the Montreal Convention notice of the claim must be given within fourteen (14) days, damages are limited to 19 Special Drawing Rights per kilo, and suits must be filed within two years. Time for claims and suit are enforced under the Convention are absolute and preemptive.

D. **Rail**

The liability of rail carriers is governed by Carmack.

E. **Customs Brokers**

Most Customs Brokers limit their liability by contract to $50 per shipment or entry. State law applies to Customs business undertaken by a Customs Broker despite regulation by Customs and Border Protection 19 C.F.R. section 111.

F. **Warehouse liability**

If you are acting as a warehouseman and another liability regime’s application has ended, then your liability is governed by provisions of the Uniform Commercial Code, which has been adopted (with some variances) in every state. Typically, the standard of liability is as follows: “A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances.” UCC § 7a-204(1). Thus, warehousemen are held to a negligence

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4 Nemeth v. General S.S. Corp., 694 F.2d 609 (9th Cir. 1982).
5 Travelers Indemnity Company v. The Vessel SAM HOUSTON, 26 F.3d 895 (9th Cir. 1994).
standard. Similar to motor carriers, a warehouseman may utilize warehouse receipts to limit its liability and govern the manner in which claims are presented. UCC § 7a-204.

II. THEORIES OF LIABILITY OFTEN ASSERTED AGAINST BROKERS

Theories of liability often asserted against “brokers” and other transportation intermediaries when cargo is lost or damaged typically might include one or more of the following:

A. Carmack Amendment

Even though it is fairly well-settled that “brokers” are not liable for loss of or damage to cargo under the Carmack Amendment, claims under the Carmack Amendment are often asserted against parties who believe they have acted (and who actually have acted) solely as a “broker.” Typically, a claimant will allege that the “broker” acted as a “carrier” or “freight forwarder” or that the “broker” held itself out to be “carrier” or “freight forwarder.” As discussed below, this is one reason why it is so important that the role one plays in connection with the transportation of freight is defined and made clear.

While one found to be a “broker” is not liable under the Carmack Amendment, some “courts hold that brokers may be held liable under state tort or contract law in connection with shipments.”11 Other courts may apply federal common law. As discussed in greater detail below, however, the emerging and expanding doctrine of “FAAAA preemption” or “ICCTA preemption” under 49 U.S.C. §14501(c) is providing brokers a broad defense against most claims for loss or damage of cargo.

B. Negligence

Another theory often asserted is that the broker is liable under a theory of negligence for the loss of or damage to cargo. Several courts have held that, unless the “broker” was negligent in its selection of the carrier, it is not liable under negligence because the “broker’s” role was to select an appropriate carrier and arrange for such carrier to transport the freight. Thus, some courts have held that loss of or damage to the cargo while in transit or after the carrier selected has taken possession of the cargo occurred after the broker had fulfilled its responsibilities and the broker is, thus, not liable.12 Some courts have held that if a broker is negligent in selecting a carrier, it may be liable for cargo loss or damage.13 When a claim of “negligence” is asserted, it is important to determine what duty the claimant

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11 Chubb Group of Ins. Companies v H.A. Transp. Sys., Inc., 243 F. Supp. 1064, 1070 (C.D. Cal. 2002). Note, however, that some courts have held that the Carmack Amendment was intended to preempt all remedies against anyone for loss of or damage to cargo. See, Ameriswiss Tech, LLC v. Midway Line of Illinois, Inc., 888 F. Supp.2d 197 (D.N.H. 2012).
13 Note, however, that some courts have held to the effect that the Carmack Amendment was intended to preempt all claims or remedies a shipper (or other claimant) may have against anyone for loss of or damage to cargo. For example, in the case of Commercial Union Ins. Co. v. Forward Air, Inc., 50 F. Supp. 2d 255, 259 (S.D.N.Y. 1999) the Court stated, “there is a strong argument that the Carmack Amendment preempts all state remedies by a shipper relating to the shipper’s compensation for damage to property transported in interstate commerce by a carrier, including those state law claims that are asserted against defendants whose liability is not specifically provided for in the [Carmack] Amendment. . . . Finding preemption in cases such as this one would be consistent with previous cases that emphasize the intention of the Carmack
asserts the broker owed and exactly what is alleged to have been a breach of such duty. And as noted elsewhere herein, the ever-emerging doctrine of preemption of claims against brokers under 49 U.S.C. § 14501(c) is increasingly being asserted to dismiss claims against brokers based upon negligence.

C. Bailment

Occasionally, a claimant will assert a claim against a broker for breach of bailment. Typically, to create a “bailment” that would give rise to one’s duty to care for property, the party against whom the claim is asserted must have taken physical possession of the article of tangible property. Thus, in instances where a “broker” never takes physical possession of the freight, it is difficult for a claimant to prevail on a “bailment” theory. In today’s world of 3PLs, 4PLs, etc., there may be circumstances that the elements of a claim for bailment could be proven. Typically, this is because the “broker” or other intermediary has undertaken responsibilities that extend beyond that of a “broker” as defined in 49 U.S.C. § 13102(2) and 49 C.F.R. § 371.2(a).

D. Master/Servant and Joint Venture

If a claimant can prove that the carrier was the “servant” of the broker, rather than a truly independent contractor, it may be able to show that the “broker” is vicariously liable for the negligent actions of that carrier.” The core question is typically whether the “broker” had a right to control or if the “broker” did, in fact, control the means by which the carrier performed its duties. If the “broker” had a right to exercise control of “how” the carrier was to perform its duties or did, in fact, control “how” the carrier performed its duties, a “master/servant” relationship might be established such that the “broker” could be found to be vicariously liable for the negligent acts of the carrier. The same analysis applies in cases where the claimant might assert that a “joint venture” existed between the “broker” and the “carrier” such that each would be jointly and severally liable for damages that arise in the course of the “joint venture.”

E. Breach of Contract

Claimants also often assert that a “broker” is liable to the claimant based upon a breach of contract. If a “broker” has, in fact, agreed to be liable for loss of or damage to cargo for which it arranges transport, the broker can be liable for such claims. As a matter of contract law, this is true whether the agreement was made orally, in writing or if the terms of a contract are implied through a course of dealing or through other implications. The claim may take on the form of breach of an express agreement (written or oral), an implied agreement, or as a matter of an assertion under an indemnification clause contained within a contract. Thus, as discussed below, it is important to clearly define the terms of the agreement/contract where possible.

Amendment to create uniform national rules to govern liability for damage to goods resulting from their interstate transportation by common carriers.”

III. WAYS THAT ONE MIGHT BETTER PROTECT AGAINST LIABILITY FOR CARGO CLAIM

A. Define Role with Respect to the Shipment of Cargo

One of the best ways to reduce potential liability for cargo claims is to define one’s role with respect to a shipment of freight. To be defined as a “broker” and, thus, avoid liability under Carmack Amendment claims, you need to fit into the definition of a “broker,” rather than being found to be a “carrier” or “freight forwarder.”

“The term ‘broker’ means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agents sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.” 49 U.S.C. § 13102(2) (emphasis added). By contrast, “[t]he term ‘carrier’ means a motor carrier, a water carrier, and a freight forwarder.” 49 U.S.C. § 13102(3). “The term ‘motor carrier’ means a person providing commercial motor vehicle (as defined in section 31132) transportation for compensation.” 49 U.S.C. § 13102(14) (emphasis added). A “freight forwarder” “means a person holding itself out to the general public . . . to provide transportation of property for compensation and in the ordinary course of its business—(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments; (B) assumes responsibility for the transportation from the place of receipt to the place of destination; and (C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.” 49 U.S.C. § 13102(8) (emphasis added).

In today’s world of logistics, the lines between what role one plays with regard to a particular shipment can become blurred. Also note that there is no statutory or regulatory definition of a “3PL”, “4PL” or other ways a company might describe itself. In this respect, the statutory and regulatory definitions have not kept pace with such a fast developing and ever-changing industry. Perhaps the most critical element in determining whether a party is a “broker” and, thus, not liable for cargo loss or damage under the Carmack Amendment or whether such party is a “carrier” or a “freight forwarder” and, thus, liable under the Carmack Amendment is whether such party actually “provides” the transportation services by taking possession of the subject cargo or exercises control over the cargo; or, whether the party simply “arranges” for transportation of the goods by a “carrier.”

15See, Schramm v. Foster, 341 F. Supp. 2d 536 (D. Md. 2004)(where company had authority to act as a carrier and as a broker; but, did not solicit the subject load for its own account, did not take possession of the subject load, or provide the actual transportation services; but, conversely “arranged” for transportation of freight by an authorized carrier, it was a “broker”); Independent Mach. v. Kuehne & Nagle, Inc., 867 F. Supp. 752 (N.D. Ill. 1994)(where company arranged for importation of machine, but such company did not provide for assembly or consolidation of the cargo and was not in the business of assuming responsibility, it was not a "freight forwarder" and not liable under the Carmack Amendment); Tokio Marine & Fire Insurance Co., Ltd. v. Megatrans, Inc., 2006 Cal. App. Unpub. LEXIS 6964 (2006)(where the company did not provide motor vehicle transportation”; but, rather arranged for a motor carrier, even though the company took temporary possession of the cargo at the request of the shipper, the company was still a “broker” and not subject to liability under the Carmack Amendment).
The provisions of MAP-21, which took effect October 1, 2012,\textsuperscript{16} may help define the role that one plays with respect to a particular shipment. Under MAP-21, entities having more than one type of authority (carrier, broker, freight forwarder) will be issued a distinctive registration number for each type of authority and each distinctive registration number will include an “indicator” designating the type of transportation or service for which the registration number is issued. Additionally, “For each agreement to provide transportation or service . . . the registrant shall specify, in writing, the authority under which the person is providing such transportation or service.”\textsuperscript{17} Thus, parties to the agreement or transaction should know under what authority an entity purports to be acting and this will likely have a tremendous impact on defining the role of each party with respect to each load of freight. How one designates itself to be acting under a contract or in a transaction, while being an important factor, will likely not be determinative as to what role in which a court construes the party to have been acting. Courts will likely look at all of the facts and do a “totality of circumstances” type approach to determining the role that a party may have played.

Thus, it is important to accurately define one’s role in contracts, agreements, rate/load confirmations, correspondence, promotional materials, web-sites, etc. If it is made clear that one is acting as a “broker” and solely as a “broker,” this will increase chances of a “broker” avoiding liability under the Carmack Amendment.

B. Contract Provisions with Shippers

An important and core preliminary question is whether a broker or other intermediary should have a written contract with its shipper/customer or not. Having a written contract may more clearly define the rights and obligations of the parties; however, depending upon the negotiating strength of the parties, those terms could end up less favorable to a broker or intermediary than having no written contract at all. Negotiation of the contract might also delay doing business and could increase the transaction costs and costs of doing business. Not having a written contract, however, leads to uncertainty in the relationship and can lead to litigation in trying to define those rights and obligations. One of the critical (and often sticking) points are whether the broker/intermediary will voluntarily undertake liability for cargo loss and damage claims.

If there is a written agreement between the “broker” and the shipper/customer, those terms may define whether the “broker” will be liable for loss of or damage to cargo for which transportation is arranged pursuant to such contract. Some provisions to which particular attention should be paid include the following: \textsuperscript{18}

1. Define Roles of Parties

As pointed out above, it is important to define in such contracts the role in which you are acting with respect to the shipments subject to the contract. Under MAP-21, this will be required. As a corollary, if you are acting as a “broker” (to include the various industry labels of 3PL, 4PL, etc.), it is important that you are referred to as such in the contract. Do not permit yourself to be referred to in a

\textsuperscript{16} The provisions of MAP-21 applicable to broker registration, bond requirements and bond claims processing are found at 49 U.S.C. §§ 13901 through 13909.
\textsuperscript{17} 49 U.S.C. § 13901(c).
\textsuperscript{18} The provisions discussed herein are certainly not intended to be an exhaustive list of critical contract provisions.
contract as a “carrier,” unless you intend to serve in such role or unless it is clearly defined in the contract that use of the term “carrier” may only be used as convenience and that you are actually acting as a broker as defined in 49 U.S.C. § 13102(2) and 49 C.F.R. ¶ 371.2(a). Allowing yourself to be referred to as a “carrier” in a contract, rate or load confirmation, or other materials may subject you to claims that you acted as or held yourself out as a “carrier.” Even if you ultimately prevail in being found to be a “broker,” the costs of litigation to get to that point can be substantial.

2. Acceptance or Refusal of Cargo Liability

If you, in fact, intend to accept liability for cargo loss or damage, then you can agree to it. There may be certain business circumstances and relationships where it may make sense for your company to undertake that risk. If you do, it is advisable to seek out appropriate insurance to cover such risks and to determine whether the premium or other costs of such insurance make it cost-effective to procure such insurance. If you do not, however, intend to accept liability for cargo loss and damage claims, then it is important that the contract makes clear that you do not accept such liability. In making such a decision, you should keep in mind that you are essentially undertaking to indemnify the shipper/customer for the liability of another—the carrier—over which you have no control. So, in essence, you are undertaking liability over which you have no control. Thus, unless there are business and economic reasons that outweigh those risks, it is normally advisable for a “broker” to not voluntarily undertake liability cargo loss and damage claims through contractual provisions.

In today’s business climate, shippers are regularly attempting to force “brokers” and other intermediaries to agree to pay for and indemnify the shipper from cargo loss and damage claims. Often this is done because a shipper tries to make its “shipper – carrier agreement” applicable to or to fit a “shipper – broker” relationship. Negotiations can often become strained when an intermediary tries to explain to someone in the shipper’s transportation department that the relationship is different. One suggestion is to propose using TIA’s model Broker/Shipper Transportation Agreement. This model agreement provides that the broker is not liable for cargo loss or damage claims; but, that the broker will assist the shipper in presenting the claims to the carrier. If a broker does agree to contractually undertake liability for cargo loss and damage claims, it can include in the agreement terms and conditions limiting the amount and extent of its liability. More on this issue is discussed below in connection with the discussion of incorporating a broker’s Terms and Conditions into any agreement with the shipper/customer.

C. A Possible Solution to the Dilemma – Broker Terms and Conditions

One possible solution to the question (or dilemma) of whether to have a written contract with your shipper/customer or not could be the broker’s use of “Terms and Conditions.” For decades (or perhaps more than a century), carriers have used tariffs or other documents to define the terms of transportation without having to enter into a contract with each customer. Prior to the Interstate Commerce Commission Termination Act of 1995 (“ICCTA”), “common carriers” were required to have a tariff on file with the Interstate Commerce Commission (“ICC”). With termination of the ICC, the requirement to have a filed tariff was discontinued. Nonetheless, carriers still have the opportunity to maintain a tariff (or other “terms and conditions,” “service guides” or other publications or documents) that define
the terms of the transportation. Now, carriers that maintain a “tariff,” simply have to provide a copy of it upon request.19

The Carmack Amendment that allows carriers to limit their liability does not apply to “brokers.” If a broker has liability for cargo loss or damage, it might be imposed under state law or federal common law applicable to contracts or torts. So, a broker or other intermediary should be able to limit its liability under the terms of the “agreement.”20

“It is standard contract doctrine that when a benefit is offered subject to stated conditions, and the offeree makes a decision to take the benefit with knowledge of the terms of the offer, the taking constitutes an acceptance of the terms, which accordingly become binding on the offeree.”21 What this means is that a party (i.e. a broker) agrees to perform a service (i.e. arrangement for the transportation of freight) subject to certain terms and conditions and the party requesting the services (i.e. the shipper) accepts those services with reasonable notice of the subject terms, those terms and conditions are binding on the party accepting such services.

Therefore, although it may be a new suggestion, a broker should be able to disclaim liability for cargo loss or damage claims or, alternatively, limit its liability for cargo loss or damage claims through the use of terms and conditions made available for review to its shipping customers.

It is important to find a way to give notice and to incorporate by reference the broker/intermediary’s terms and conditions to make them applicable to loads arranged by the broker/intermediary. Some ways to do this might include the following:

1. If you have your shippers/customers sign a credit application, the credit application can include a provision incorporating your “Terms and Conditions.”
2. If you send an e-mail or other correspondence to your customers confirming your agreement to arrange transportation of freight, such confirming correspondence can contain language notifying the customer that your agreement to do so is subject to your “Terms and Conditions.”
3. Your correspondence, confirming e-mails, credit applications, promotional materials, websites, etc. should provide notice to your customers that your Terms and Conditions are available for review upon request and that they are available for review on your website.
4. Your website should make it easy to navigate in order for customers to find and review your Terms and Conditions.
5. You should mail, e-mail or otherwise provide copies of your Terms and Conditions to your customers and, perhaps, prospective customers.

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19 49 U.S.C. § 14706(c)(1)(B)
20 Even if the “broker” or other intermediary was determined to have been acting as a “carrier” or “freight forwarder” and was, thus, liable under the Carmack Amendment, it could presumably limit the amount of its liability through the use of terms and conditions—if they comply with the requirements of limiting liability under the Carmack Amendment and case law construing those requirements.
There are undoubtedly many other ways to give notice to your customers that your services are subject to your Terms and Conditions and, where possible, get your customers to sign something in writing (such as a credit application) that incorporates by reference your Terms and Conditions or otherwise assent to the Terms and Conditions.

You should keep meticulous records as to when any of your Terms and Conditions were changed or modified and the effective date of your Terms and Conditions and any amendments thereto. It is recommended that a full history of any changes and effective dates be provided as part of the Terms and Conditions.

In addition to disclaimers and limitations of liability in your Terms and Conditions, you can include other favorable provisions to you in your relationship with your customers, such as: 1) identifying your role; 2) payment terms; 3) governing law, jurisdiction and venue, and attorney fee provisions (if desired); 4) confirmation of independent contractor relationship with the customer and with carriers; 5) disclaimers of the ability to control how a carrier performs its services; 6) rates for accessorial or other services; 6) notifications of high value loads; 7) indemnity rights; 8) confidentially and non-competition/non-solicitation provisions; etc.

D. Provisions in Broker-Carrier Agreements

The provisions of a broker/intermediary’s agreement with its carriers can be used to protect the shipper and/or the broker/intermediary. For example, a broker-carrier agreement might give a shipper greater protection for cargo loss by confirming that the carrier’s liability for cargo loss or damage is not limited to insurance coverage for such claims. It might also provide that the carrier’s liability for loss or damage will not be limited by terms of the bill of lading, tariffs, carrier’s terms and conditions, etc. and/or that the carrier will be liable for full invoice value. It might provide that the shipper can control if the damaged goods are sold for salvage or not. Such provisions may give greater protection to a shipping customer;\(^\text{22}\) but, they might also subject the broker/intermediary to greater liability in some circumstances. Use by a broker/intermediary of Terms and Conditions may reduce this risk. It may be better for a broker/intermediary to provide in its broker-carrier agreements that the carrier will simply be liable under the Carmack Amendment. In any event, a business decision must be made as to whether to include such terms.

IV. WHEN A BROKER MUST HANDLE A CLAIM

As a broker/intermediary a claim will inevitably land on your desk. With the background of the above-described liability regimes, a broker/intermediary needs to ask itself certain practical questions, such as:

1) Immediate Steps:
   a. Proper Notice of Claim
      i. Under Carmack, you have at least nine (9) months
      ii. Contents of Claim – See 49 C.F.R. § 370.3(b)
   b. Mitigation Steps

\(^{22}\) There are some arguments that such provisions might be void due to preemption by the Carmack Amendment.
c. Preservation of Evidence
   i. Opportunity to Inspect
   ii. Burden of Proof
   iii. Spoliation Claims

2) Whether the claim small enough that the broker/intermediary should pay it to preserve the relationship with the customer;

3) Customer Relations
   a. Is there a liability regime that would impose liability?
   b. Has intermediary agreed to be liability for cargo loss and damage?
   c. How beneficial is the relationship with the customer?
   d. Does the customer owe intermediary and will it simply offset the claim regardless of any right to do so?

4) What are the chances that the broker/intermediary could recover the amount from the carrier or its insurer through subrogation or assignment;
   a. How much does intermediary owe the carrier at the time?
   b. How essential to intermediary’s business is this carrier?
   c. Does the carrier have limitations of liability in place?
   d. Is there insurance coverage through the carrier?
      i. Scheduled Vehicle Policy
      ii. Common Policy Exclusions
         1. Temperature Damage, except due to reefer break-down;
         2. Theft, Unattended Vehicle, Mysterious Disappearance
         3. Commodity type (electronics, wine, liquor, etc.)
         4. Types of damage (rust, moisture)
      iii. Has carrier complied with terms of policy such that coverage is not avoided?
   e. Is the carrier solvent enough to pay the claim if there is no insurance coverage?
   f. What other parties might be liable?
      i. Double-Brokering
         1. Broker Authority
            a. MAP-21 remedies against carrier and principals. 49 U.S.C. § 14916 (if no broker authority, the company and its officers, directors and principals are liable)
   g. Costs of litigation
      i. Jurisdiction
      ii. Attorney Fees Available

CONCLUSION

Cargo loss and damage claims will eventually land on your desk and you will need to deal with them. Some factors you cannot control and no steps will absolutely insulate you from liability, claims or the costs of defending claims in every circumstance. Above, however, are some suggestions of steps that might help reduce a broker/intermediary’s liability exposure and costs of administration and litigation when the claim does eventually land on your desk.