

Bill of Lading – Common Misconceptions

Whether you operate as a Common Carrier, Contract Carrier, Freight Forwarder or Load Broker, you are responsible for customer cargo when it is in your care, custody or control.

This responsibility is based on common law and statute law, which dates back hundreds of years, and makes the carrier accountable to the owner or shipper of the goods for failing to deliver the goods on time, and without damage or shortage.

Sounds very onerous if you are the carrier, but you may have some defenses. These would include such things as:

- acts of God,
- riots,
- strikes,
- war,
- force majeure,
- defects or the nature of the cargo
- acts of default of the owner, consignor or consignee.

A Bill of Lading also defines the carrier's liability to the shipper under the contract of carriage, and these may be different if your operations take you and your cargo across borders. It is very important to understand the similarities and the differences in the limitations and requirements of the shipper that apply to the countries that the goods will travel to or from.

RELEASED LIABILITY AND VALUATION CLAUSES

The valuation and the released liability clauses of the bill of lading will define the liability of the carrier. It is important to understand that the shipper has the right to declare the value of the cargo, and the carrier **MUST** inform the shipper of the right to declare the value of the cargo and give them the opportunity to do so prior to the commencement of the shipment.



In Canada, if the shipper chooses not to declare a value, the bill of lading typically has a clause that limits the carrier's liability to \$2 per pound (\$4.41 per kilogram). This is in contrast to the US where if a shipper doesn't declare a value, the carrier is assumed to have accepted the full market value of the goods as their maximum liability.

Some common misconceptions about the \$2 per pound limitation are:

- it is not used to calculate or establish the value of the damaged goods,
- it is not allowable as "default language" in the US, as it is in Canada
- it is the entitlement and shippers right to declare the value!

SHIPPING CONTRACT

There is also another mechanism that may be used by the carrier and the shipper to amend the liability of the carrier, a "shipping contract". The shipping contract is typically used to supersede a bill of lading, and to satisfy the needs of the shipper.

It can however, limit common law and statutory defenses available to the carrier and may impose liabilities that exceed the terms of the carrier's insurance coverages. This may also have an impact on the carriers "total cost of risk".

Some claims for loss or damage require additional expenses to resolve the claim, which could either increase the actual value of a claim beyond what the insurance coverage will provide, or delay the settlement of a claim as the terms of the shipping contract may be ambiguous. This might result in the need to employ legal services and could ultimately damage the relationship between the carrier and the shipper.

Our dedicated Transportation Team has the expertise and resources to help you protect your transportation business, your client relationships and reduce your total cost of risk.

How do we do that?

- We help you and your staff understand how to correctly execute a bill of lading.
- We take the mystery out of what your insurance policies will and will not provide coverage for when you contract, or sub-contract, loads for trips on both sides of the border.
- We make sure that your insurer is aware of the types of cargo that you are carrying, and the terms of carriage that you are agreeing to with your customers.
- We help you report claims to your insurers and assist with subrogation and recovery costs from participating carrier insurers.



LET US HELP YOU MANAGE YOUR RISK

LOCATIONS

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