

To: Transport Industry Operators

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LSP's liability

Logistics is a very hot topic. Everyone is talking about it. The Government has just set up the Hong Kong Logistics Development Council. Many companies want to enter into the logistics industry. A lot of people want to study this subject and work for this industry. It appears this is one of the industries that will help our economy a lot.

Apart from only noticing the good things the logistics industry will bring to us, it is also important to look at the risks and liability faced by the logistics service provider (LSP) e.g. cargo loss & damage liability, error & omission liability, third party liability, fine & penalty liability and cost liability... and also the ways to avoid, minimise, transfer and manage such risks and liability. This would facilitate the logistics industry moving into a healthy direction in the long run. Our Richard Chan was invited by the Chartered Institute of Logistics & Transport to give a seminar on 22/1/2002. The topic was "Examine the liability of logistics service provider". We would also like to share our experience with you. Please see below the key issues discussed during the seminar.

The major liability of LSP is of course related to physical loss of or damage to cargo e.g. theft & inventory loss and fire, water & impact damage. The next major LSP's liability is error & omission (E&O) e.g. delay, misdirection & misdelivery. Although these may not occur as frequent as the physical loss or damage cases, the claim amount of E&O cases are usually much more substantial. LSP has also to face the liability of loss of or damage to third party property and personal injury & death of third party. These are usually non-contractual liability. LSP is therefore unable to reasonably limit or exempt its liability by way of contract. These claim cases do not happen frequently but the ultimate liability could be very substantial especially the personal injury cases talking about millions of dollars compensation. Fines & penalties e.g. resulted from breach of Customs or working condition safety laws & regulations are another potential threat to LSP. These cases take place only occasionally and the amount of fine & penalty is usually relatively small. The last type of liability usually faced by LSP is costs e.g. instruct expert or surveyor to investigate or lawyers to defend claim cases. It could be very expensive especially if it is about legal costs.

LSP could act actively and passively to prevent, minimise and manage the above liability. Active Risk management (ARM) would include good operational system, sufficient training, learning lessons from own & others' mistakes, using reliable subcontractors and having contract terms which reasonably limit & exempt LSP's liability. Even after all these ARM measures have been taken, accidents still cannot be totally eliminated. Losses, damage, claims and liability still will follow. Passive Risk Management (PRM) could transfer such residual liability to insurers. The cargo owner should buy cargo insurance to protect its interests fully. The cargo insurer would pursue recovery from LSP after payment of cargo claim. LSP should have its liability insurer to cover its liability. The insurance premium for LSP liability insurance should be treated as part of LSP's operational costs. Ignoring it and failure to take out liability insurance would adversely affect and also add uncertainty to LSP's ability of doing business in the long run. e.g. a big cargo loss claim talking about millions of dollars may significantly affect LSP's short term cash flow situation.

Even after ARM & PRM have been adopted, claim cases still happen and have to be handled in professional manner. After an accident occurs, LSP should notify its liability insurer at once, which should instruct its surveyor to attend investigation. The cargo owner should submit its claim to cargo insurer for fuller and quicker compensation (the cargo insured value is usually 110%). Whether LSP has to be liable to pay a claim depends on whether there has been any fault, omission or negligence on the part of LSP or its subcontractors. If yes, LSP has to be responsible to the claim subject to its contract terms e.g. suit time limit like 9 months or liability limitation like US\$2/kg or US\$500/package. After the claim settlement with cargo interests, LSP would have reimbursement from its liability insurer subject to policy deductible and limit. If there is any liable subcontractor, recovery action should be pursued against it to improve the claim record of LSP in its liability insurance policy.

All the above ARM, PRM and proper claim handling should help LSP prevent, minimise and manage its liability effectively and efficiently, which should in turn facilitate LSP to continue running its business in a healthy condition in the long term.

Please feel free to contact us if you have any questions.

Simon Chan and Richard Chan

Freight forwarders, NVOCCs, CTO, MTOs trading to the USA are often referred to as **Ocean Transportation Intermediary (OTI)** under Section 19, Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 and the Coast Guard Authorization Act of 1998. They are required to file with the Federal Maritime Commission an OTI Bond, often called **FMC bond**, for an amount of USD150,000.

As transport risk manager, we could assist you in obtaining the FMC Bond. Feel free to call Simon and Richard for details.

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