

Cargo Claims Procedure

1. Forward

The purpose of the attached notes is to assist you in overcoming any difficulties that you may encounter in filing claims for loss or damage under your Cargo Policy.

They are not intended to be a complete treatise on Marine Claims but merely an attempt to expand the brief instructions given in your Policy wording and to emphasize the steps essential to the presentation of valid claim(s).

In view of the many intricacies and unexpected difficulties which arise in the handling of "Marine Claims", we suggest that all employees (including Freightforwarders and Customs Brokers), who are involved in the handling of your cargo, be familiar with the instructions contained in these notes.

Your Marine & Transportation Insurance Broker is :

Company Name :
City
Zip Code
Country

Tel:
Fax:

MARINE CLAIMS

In dealing with "Marine Claims" it is important for you (the insured and/or Claimants) to remember that the Marine Cargo Insurance Policy is primarily a "transit policy" covering direct physical loss of or damage to the goods insured. The policy does not cover consequential type losses including delay and loss of use; it does not cover risks such as wear and tear, inherent vice and latent defect; and the loss must be caused or due to a fortuity.

You have a number of obligations to fulfill when a loss occurs. These include the following:

Taking steps to minimize and prevent further losses wherever possible. It is your duty to take all reasonable measures for the purpose of minimizing further damage. Any proven expenses as a result of such action (usually referred to as Sue and Labour), can be made part of a claim against your insurance company.

Notifying and holding all carriers responsible for the loss and to ensure that all subrogation rights against carriers, bailees or other third parties are properly preserved and exercised.

Providing the insurance company with full documentation to support all claims. You must provide the insurance company with independent documentary evidence and information to substantiate that the loss or damage was, (a) caused by or due to an insured peril, and (b) that such loss or damage occurred during the normal course of transit and/or during the currency of the Policy.

Providing your insurance company (through your marine insurance broker) with the report of shipment or certificate of insurance covering the consignment.

We also recommend that you and/or consignees familiarize yourselves with the regulations of the port authorities and airports at the ports and/or places of discharge.

CLAIMS PROCEDURES AND DOCUMENTATION

In the event of loss or damage, the following procedure will help in the processing of your claim quickly and efficiently:

- If you are an importer, you should promptly report all losses or damages to your Insurance Broker;
- If your shipment is an export into another country and under a Certificate of Insurance or an Insurance Advice, contact the Claims Agent shown on the front of the Certificate of Insurance or the Insurance Advice or refer to the Lloyds Agency web site for the names and addresses of claims and settling agents. For your convenience under our “ Links “ page we have listed the site for Lloyds Agency.

2. What Documents Do I Need?

You must prove that you have the title to make a claim, that the damage to the shipment happened in transit and within the policy period. The following documents are required :

1. ORIGINAL CERTIFICATE OF INSURANCE OR COPY OF MARINE DECLARATION

- proves the title to recover from Insurer
- must be properly endorsed
- used for premium calculation

2. ORIGINAL COMMERCIAL INVOICE

- calculates the value of the cargo
- identifies the insurable interest in the cargo
- identifies the terms of sale

3. ORIGINAL OCEAN BILL OF LADING OR AIR WAYBILL

- evidence of contract of carriage
- proof of the condition of the goods before shipment.

4. PACKING LIST

- will establish evidence of the number of goods shipped

5. DELIVERY RECEIPT

- identifies the last carrier
- evidence that the goods arrived in a damaged condition

6. LETTER OF INTENT TO CARRIERS & THEIR RESPONSES

- evidence of prompt notice to responsible parties
- evidence that the subrogation rights are protected

7. STATEMENT OF CLAIM

- calculates the amount of claim

8. CANADA CUSTOMS CODING FORM

- indicates amount of duty & taxes paid

9. FREIGHT INVOICE

- shows freight charges paid

The following additional documents may also be needed:

1. COPY OF CARRIER'S INSPECTION REPORT

- in case of claim for damage

2. LETTER FROM CARRIER THAT SEARCH HAS BEEN DONE

- in case of non-delivery of entire package

3. WAREHOUSE RECEIPT

- if damage occurred during destuffing of containers

4. DOCK RECEIPT

- in case goods arrived at port in damaged condition

5. LOADING & UNLOADING REPORT

- in case of shortshipment, non-delivery and damage

6. VALUED/ITEMIZED INVENTORY AND/OR PROOF OF VALUE

- in case of personal effects shipment

7. ORIGINAL REPAIR ESTIMATES

- in case of repairable personal effects

8. ORIGINAL REPLACEMENT ESTIMATE

- in case damage to personal effects is beyond repair

9. PHOTOGRAPHS

- proof of the condition of goods at arrival

3. Do's and Don'ts

1. DO examine shipment as soon as it arrives. Check whether or not there has been damage, shortage, etc.

2. DO ensure all documents are relevant and show the right seal number. Take note whether the seal is intact or broken/missing. If the seal is broken or the number not coincide, do not break the seal or open the container. Check the discrepancy with the truck driver, the container terminal or vessel's agent and immediately advise (by phone) your Insurance Broker. The container should not be opened and it should additionally be padlocked until the surveyor arrives .

3. DON'T sign clean receipts for damaged shipments. Make a comment on delivery receipt, noting the condition of the shipment at the time of arrival. Use a specific phrase, such as:

“received in damaged condition”

“cartons opened / re-taped”

“cartons rattling”

“hole in roof of container”

“planks of crate loose/broken”

“1 carton short”

4. DON'T sign clean receipts for cargo you have not inspected even if exterior packing looks undamaged Make a comment on the delivery receipt, bill or lading, air waybill or waybill using a specific phrase such as: “ subject to inspection ‘

5. DO keep a record of the way the receipt is signed.

6. DO report losses promptly to all parties concerned being :

INSURER:

If an import into Canada then contact your insurance broker. Your Insurance Broker will then advise your Insurer and if necessary, a surveyor will be appointed. If an export to another country, then contact the Claims Agent shown on the front of the Certificate of Insurance or Insurance Advice. If no Claims Agent shown, then contact the nearest Lloyds Agent.

CARRIER:

When goods are lost or damaged while in their custody carrier should be advised immediately but not later than :

Ocean

In writing, within 3 days after discharge

Air

In writing, within 7-14 days after transit

Road

Domestic - Canada in writing, within 60 days after delivery of goods. From or in U.S. claim must be filed in writing with the originating or delivering carrier or delivery carrier

Rail

In writing, within 4 months after delivery to the originating carrier or delivering carrier

Freight

In writing, within 45 days of end of transit, except for air carriage – condition of air waybill must be followed

SUPPLIER:

In writing, in case of defective goods, bad packing, short shipment.

7. DO minimize the loss. Act as if you had no insurance. Take all steps to prevent further damage and minimize your loss.

8. DO take pictures. - as soon as you notice the seal has been tampered with:
as soon as you open the container, prior to unloading
before unpacking the boxes

9. DON'T discard the packing materials or any other evidence including container seals. A surveyor may want to inspect.

4. More Detailed Claims Notes

We recommend that you read and familiarize yourself and those involved in the movement of your cargo with the following:

FUNCTION OF THE SURVEYOR :

In his inspection of pilfered or damaged consignments, the surveyor is acting as an impartial observer. It is his duty to report in detail the extent of loss on the evidence of loss as he sees it. It is not his function to decide whether the loss is, or is not, recoverable under the terms of the Policy. His actions and recommendations are aimed at minimizing the loss regardless of what insurance protection is available and do not imply that a claim for loss or damage will be paid by the insurance company nor do they prejudice the latter's position in this regard.

It is in your benefit to assist the surveyor at all times

CARRIERS LIMITATION OF SUIT-TIME :

To preserve the insurance company's rights of subrogation, claims should be presented promptly in order to permit action against the ocean carrier within the "Year for Suit" clause incorporated in the "Carriage of Goods by Sea Act" and the clauses appearing in the railroad and/or truck bill of lading and/or airway bill.

In the event of any delays whatsoever prior to settlement of your claim by the insurance company, it is the responsibility of the owner of the cargo to obtain any necessary extensions of suit time from the carriers, in writing.

The mere request for an extension is not sufficient unless confirmed, in writing, by the carrier. If such confirmation is not forthcoming prior to the anniversary date of discharge, it will be necessary for you to arrange to issue a writ.

Failure to preserve the insurers rights of subrogation will affect the settlement of your claim. Your Insurer may decline the claim or reduce the amount of the settlement.

CUSTOMS, DUTIES, SALES & EXCISE TAXES

If you are insured for customs duties and taxes under your Policy, you are indemnified for expenses in the event of loss or damage. However, in the case of non-delivery, this segment of the insured value only becomes a claim when you can produce documentary evidence (i.e. copies of letters exchanged between yourself or your customs brokers and the collector of customs & excise) to show that you had applied for

a duty and tax refund or rebate and it was rejected by the Customs authorities.
CONCEALED DAMAGES

In instances where loss or damage is of a concealed nature, you should ask your Insurance Brokers Marine Claims Department or with respect to exports, the Insurance Companies agent at destination to arrange for the services of a marine surveyor. The packing should be preserved so that the surveyor may see it when he visits your premises. It may also be possible to have the carrier provide an inspector to view the goods. If this is done, a copy of the inspector's report should be obtained and will form part of the claims documentation.

RECEIVING OF CONTAINER SHIPMENTS

1. If possible, all deliveries of containers should be made to you on the same day that they are picked up from the steamship terminal. It is advisable that truckers and other intermediary carriers not be allowed to hold containers over weekends or holidays.
2. Upon arrival of the container, examine the seal and compare its number to the number shown on the shipping documents and the dock delivery receipt. If the container is externally damaged, the truck driver's delivery receipt should be marked to indicate the type and degree of damage.
3. Should the seal be broken or the number not coincide, do not break the seal or open the container. Check the discrepancy with the truck driver and the container terminal or vessel's agent and immediately advise (by phone) your Insurance Broker's Marine Claims Department. The container should not be opened and should remain additionally padlocked until the surveyor arrives.
4. If the container cannot be immediately off-loaded, an extra padlock should be locked on adjacent to the seal. If it has to remain overnight, it should be left within a fenced enclosure or yard, and the door end should be pushed up against a solid wall.
5. When the container is ready for off-loading, the seal should be broken and then reattached to the container door handle for ready reference. Upon completion of off-loading, and if the contents are found satisfactory in count and condition, the trucker's delivery receipt should be signed as follows:

For example :

"Seal #SL-329-76432
350 cartons received in apparent sound condition."

6. If the contents of the container are found to be damaged, immediately phone your Insurance Broker's Marine Claims Department. They will arrange for a surveyor to examine the damaged goods and the container. It is very important that the container is not returned to the dock terminal until it has been examined by the surveyor.

Retain the container seal and attach it to the relevant documents. Exceptions should be noted on the trucker's delivery receipt against the seal number, showing the number of damaged packages.

For example: "3 cases damaged
2 cases top broken, 1 case wet."

7. If a shortage is discovered upon completion of off-loading, immediately phone your Insurance Broker's Marine Claims Department. Retain, and attach the seal to the relevant documents. Note exceptions for shortage against the seal number on the trucker's delivery receipt.
8. If damage or shortage is found as in (3), (6), or (7) above, immediately phone the ocean carrier and inland carrier advising them of the loss and invite their inspection. Write to the carrier(s) holding them responsible and at the same time confirm your telephone conversation with them.

9. Do not dispose of the seal until you have satisfied yourself that :
All contents reported to have been laden into the container have been received;
Any discrepancies have been resolved;
All contents are in good condition.

GATHERING EVIDENCE OF LOSS OR DAMAGE

When goods are received in obviously damaged condition, or when goods have been removed from cartons, or where an entire shipping package is missing, you must make accurate notations on the carrier's receipts of the type of damage visible. These notations must be made at the time the goods are accepted from the carrier.

Examples of this type of notation would be :

1. Carton No. 34 - Pilfered - contains thirty-four items instead of fifty.
2. Case No. 27 - Missing.

You should make these notations on both the copy that the carrier keeps and the one you retain for your own records. Your copy should be forwarded to your insurance Broker's Marine Claims Department, together with the other documents required.

In instances where goods are missing (that is pilfered or not delivered) you must take all reasonable means to recover the lost items. This would include contacting the responsible carrier and asking him to search for them. In instances where you signed "clean receipts" (that is receipts containing no notations) for goods which appear to be in good order and condition but are afterwards discovered to be defective, a letter holding the carrier responsible for the loss or damage should be dispatched immediately to that carrier and inviting them to survey the affected package(s). Remember, it is advisable not to sign "clean receipts" unless you are absolutely sure that there is no damages to your cargo.

IMPORTANT: While delivery receipts with proper notations usually constitute independent evidence of loss for damage or pilferage claims, such is not the case with non-delivery or shortlanding claims. If the carriers are unable to deliver the goods, they should be requested to confirm in writing that they have made all efforts to locate the missing package(s) and that they are unable to deliver the missing items.
CLAIMS FOR GENERAL AVERAGE CONTRIBUTIONS

A book definition of this is :

"A General Average act may be either a sacrifice or an expenditure EXTRAORDINARY in nature, VOLUNTARILY and REASONABLY incurred, in the time of GENERAL PERIL, for the COMMON SAFETY of the maritime adventure."

When this occurs, the loss MUST be "MADE GOOD" by the contribution of all parties concerned if the adventure is saved. Therefore, the three principal parties that must pay for the expense incurred and the loss of the cargo are the SHIP, FREIGHT, AND CARGO (their owners).

The best way to explain General Average is to give an example:

A vessel owned by the XYZ Shipping Corp, is earning freight by transporting goods belonging to ten different cargo owners. While en route the vessel collides with a rock and is grounded. As a result it is necessary to have it pulled off by tugs. To lighten the vessel, the master directs that the cargo belonging to one of the shippers (his cargo was on deck) is jettisoned (thrown overboard). If the cargo was not jettisoned and the vessel not pulled off the rocks, the vessel and all of the cargo on board, would have been lost. This is General Average.

You will note from the above example that,

- a. expenses were incurred to get the ship off the rocks,

b. an extraordinary sacrifice was made of some of the cargo,

c. the goods were voluntarily thrown overboard (jettisoned) at the directive of the ship's master, which was quite reasonable considering what was at risk.

The vessel and all the other cargo were in peril, therefore this was done for the common good of all parties. Therefore, all parties must contribute. Hence the term "general average contribution".

When a general average loss occurs, the shipowners appoint average adjustors who attend to obtaining the necessary security to enable release of the cargo to the parties entitled to receive it.

The security takes the form of signature to an average bond and, either a cash deposit in the case of uninsured cargo, or if the cargo is insured, then an underwriter'- guarantee may be accepted.

In the event of a General Average loss :

Immediately contact your Insurance Broker for further instructions and guidelines. Do not sign any Average Bond or Agreement until you have communicated with your Insurance Broker or the Insurer or the Claims Agent shown on the Certificate of Insurance or the Insurance Advice., Do not make any cash deposit, but call upon the Insurer to furnish the usual guarantee. However, if the Insurer has no representative at point of delivery it may save time to pay cash deposit and apply promptly to the Insurer for refund;
Supply original or certified copies of:

commercial invoice in duplicate;
the Bill of Lading;
all correspondence from the carriers or their agents which give details of the General Average incident

5. Specimen Fax

FROM: INSURED/CLAIMANT

TO: CARRIER OR AGENT

RE: SHIPMENT
B/L # OR AWB #
CONTAINER @ CARRIER
VOYAGE

PLEASE BE ADVISED THAT ABOVE SHIPMENT ARRIVED ON _____ (DATE) _____ IN DAMAGED CONDITION AND WE HEREBY HOLD YOU RESPONSIBLE FOR THIS LOSS.

DETAILED CLAIM WILL BE SUBMITTED AS SOON AS EXTENT OF DAMAGES AND AMOUNT OF LOSS IS DETERMINED.

PLEASE ACKNOWLEDGE RECEIPT BY RETURN TELEX.

REGARDS,

C.C.

6. Specimen Letter

FROM: Claimant

DATE:

NOTICE OF INTENT TO FILE CLAIM

RE: SHIPMENT :

B/L # OR AWB # :

CONTAINER # : SEAL #

CARRIER :

VOYAGE :

This is to advise you that the above consignment of goods delivered to me/us on _____ (date) _____ has been lost and/or damaged and that I/we are holding you responsible for this loss.

As soon as the extent of the damage and/or amount of loss is ascertained, detailed claim will be submitted.

Please acknowledge receipt of this letter and advise as soon as possible whether you wish to examine the damages.

Yours truly,