

THE PERILS AND PITFALLS OF MOTOR TRUCK CARGO, WAREHOUSE LEGAL LIABILITY AND CRIME INSURANCE

What You Need To Know

By Michael W. Gurval, ARM - Insurance Consulting Associates

The transportation industry is unique in many ways. So too are the insurance policies available to cover the types of risks that are common throughout the transportation industry. Due to the uniqueness of transportation risks, insurance companies do not have off-the-shelf, standard forms to cover these exposures. Instead, insurance carriers issue non-standard insurance forms and endorsements that may contain pitfalls for the unsuspecting transportation-insurance consumer. Specifically, these non-standard forms are not always broad enough to cover all the transportation risks that

The transportation industry is unique in many ways. So too are the insurance policies available to cover the types of risks that are common throughout the transportation industry

face your company. So, with a good understanding of these coverages, you can request that these forms be modified to more adequately cover the unique risks facing your company. In this article we will review some of the coverage limitations in motor truck cargo, warehouse legal liability and crime insurance policies and the gaps that can emerge under certain circumstances (such as when an insured contractually assumes liability for the property of others or utilizes the services of independent contractors, owner operators and professional employment organizations or PEOs) so that you can assess whether any of these forms needs modification in order to best protect your company.

The rule is simple: Insurance companies are not willing to cover an insured's lackadaisical procedures related to the handling of their customers' property. Consequently, insurance carriers use two coverage exclusions in their policies to drive this point home. These exclusions relate to "voluntary parting of property" and "mysterious disappearance."

Each of the insurance policies mentioned above exclude coverage related to an insured voluntarily parting with property. Insurance carriers want to make sure that their

Insurance carriers use two coverage exclusions in their policies to drive this point home. These exclusions relate to "voluntary parting of property" and "mysterious disappearance."

insured's are being as responsible as possible with the property of others. Clearly, insurance carriers do not want to cover careless sloppiness. Accordingly, motor truck cargo and warehouse legal liability policies typically use policy wording such as "[w]e do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of fraudulent scheme, trick, or false pretense." Here is an example: ABC Trucking Company receives a call from a man who identifies himself as an employee of a customer, EZ Furniture Company. The caller provides the dispatcher with specific information to change the delivery address of furniture being stored in ABC's warehouse. Without any investigation or confirmation whatsoever, ABC delivers the furniture to the new address and receives a signed delivery receipt acknowledging the delivery of the merchandise. EZ Furniture then files a claim with ABC Trucking because they did not receive the merchandise. Upon investigation, ABC finds that the new shipping address is not affiliated with EZ Furniture and the person that accepted the merchandise can no longer be found. As a general rule, neither the motor truck cargo nor warehouse legal liability policy would cover this

motor truck cargo and warehouse legal liability policies typically use policy wording such as "[w]e do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of fraudulent scheme, trick, or false pretense

claim due to the voluntary parting of property exclusion.

While there may be a minimal amount of coverage under the motor truck cargo policy, which will typically have a limit of \$1,000 to cover "fraud and deceit" that occurs through a false representation, fictitious bill or shipping receipts or the use of computer hardware, this "throw in" coverage is not meant to be your first line of defense and cannot usually be significantly increased. Further, it is very difficult if not impossible to get the voluntary parting exclusion deleted from your insurance policies. Therefore, it is critical that transportation companies maintain tight controls related to the warehousing and delivery of a customer's merchandise.

Crime insurance companies also do not want to pay for careless or sloppy transportation-industry procedures. Consequently, crime insurance policies similarly contain such exclusions. The crime exclusion typically states that the insurance carrier will not pay for "[l]oss resulting from your, or

anyone acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property." The word "your" in the crime policy refers to the named insured. While it is a gray area and other crime exclusions may apply depending on the

it is very difficult if not impossible to get the voluntary parting exclusion deleted from your insurance policies

circumstances, there might be coverage in our example under the employee dishonesty section of the policy if the call to the dispatcher came from an ABC Trucking employee. "Employee" as defined in the crime policy includes among other things, a person that is compensated directly by wages or commissions and temporary employees used to meet seasonal or short term workload conditions. "Employee" does not include any agent, broker, person leased to the insured by a labor leasing firm, factor or commission contractor. It also does not include any manager, director or trustee except while performing acts coming within the scope of normal duties of an employee.

In the same vein, there is another standard exclusion in the

there is another standard exclusion in the warehouse legal liability policy that relates to mysterious disappearance

warehouse legal liability policy that relates to mysterious disappearance and loss or shortage of property. For example, if, on taking an inventory, it is discovered that property is missing or in any other instance where there is no physical evidence to show what happened to the covered property, there would be no coverage under the warehouse legal liability policy. Similarly, the crime policy does not cover any part of a loss where the proof of its existence or amount is dependent upon an inventory calculation or profit and loss calculation.

As a result of advancements in technology, many logistics companies no longer issue warehouse receipts. Unfortunately, however, it is important to know that the warehouse legal liability policy has not kept up with technology. The policy typically contains the following or similar wording: "We cover your legal liability for loss to covered property while under

As a result of advancements in technology, many logistics companies no longer issue warehouse receipts. Unfortunately, however, it is important to know that the warehouse legal liability policy has not kept up with technology

your care, custody, and control. Loss which you become legally obligated to pay as a warehouse operator under a warehouse receipt issued by you." The typical definition of a warehouse receipt is: "Warehouse receipt means the receipt issued by you to your customer acknowledging that property

is being stored at your warehouse and includes: (a) a description of the property; (b) the weight or number of units being stored; and (c) the limited liability assumed by you." The definition of warehouse receipt is important because it is crucial to the coverage agreement in the policy. If the insured does not use a warehouse receipt or the receipt is lost or destroyed, then the insurance carrier will have a basis to deny a claim.

It is best to try to have a loss-to-covered-property-type claim covered under the warehouse legal liability policy

It is best to try to have a loss-to-covered-property-type claim covered under the warehouse legal liability policy for many reasons. Important among those reasons is the insurance carrier's duty to defend. This means that where a suit is brought against the insured because of a loss to covered property, the insurance company has the right and duty to provide the insured with a defense. Since defense can be more costly than the loss itself, it is of paramount importance to make sure that the warehouse policy will apply by, at a minimum, safeguarding your warehouse receipts.

Where a warehouse receipt is not issued or is lost or destroyed, bailee coverage might be the best way to get a claim covered. The bailee form, which provides all-risk

Where a warehouse receipt is not issued bailee coverage might be the best way to get a claim covered.

coverage, is a first party coverage. Consequently, the defense provision in this form will normally state that the insurance company reserves the right at its option to conduct and control the defense on behalf of and in name of the insured. So, while the warehouse form includes a duty to defend, the bailee form does not. There are other pitfalls associated with the bailee form, though. Specifically, when using the bailee form one must be careful to make sure that there is no coinsurance penalty or protective safeguard endorsements,

Another pitfall is the lack of "malpractice" coverage or Transportation Operators Errors and Omissions coverage. While this coverage is important, it is not included in the standard motor truck cargo policy.

which both serve to curtail the available coverage. Coinsurance and protective safeguard endorsements are not usually found in the warehouse legal liability form.

Another pitfall is the lack of "malpractice" coverage or Transportation Operators Errors and Omissions coverage. While this coverage is important, it is not included in the standard motor truck cargo policy. However, if requested,

many insurance carriers will add this coverage by endorsement to the motor truck cargo policy to cover delay,

there are two areas of contractual risk transfer that often result in claim problems with customers: Valuation clauses and the actual limit for which the transportation carrier has contractually agreed to be responsible

wrongful delivery, other financial loss and incorrect completion of bills of lading. "Delay" covers the insured's liability for financial loss to its customer resulting from delay in performing contractual obligations. "Wrongful delivery" covers the insured for liability for financial loss by its customer resulting from delivery of cargo contrary to instructions to withhold delivery or without taking payment or document title. "Other financial loss" covers the insured for its liability for any other financial loss incurred by its customer resulting from the insured's failing, partly or totally, to perform its contractual obligations. "Incorrect completion of bill of lading" covers the insured for its liability for physical loss of or damage to cargo to the event that it is incurred or increased by an incorrect statement in or omission from its bill of lading or other contract of carriage or handling documents. But, it is important to remember that the insurance carrier rarely volunteers to offer this coverage. You must actively request it to be endorsed onto your Motor Truck Cargo coverage.

Adding to our list of pitfalls, there are two areas of contractual risk transfer that often result in claim problems with customers: Valuation clauses and the actual limit for which the transportation carrier has contractually agreed to be responsible. The standard crime policy loss valuation is the cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose. Motor truck cargo and warehouse legal liability policies normally value property based upon the actual cash value (ACV) of the goods. ACV is defined as the cost to repair or replace the goods, less depreciation. When shipping new goods, very little depreciation has occurred and ACV may be sufficient. However, it is common that contracts require a different valuation or include provisions for loss of sales or market share. Therefore the valuation wording in the contract

many transportation companies utilize the services of owner operators and other independent contractors and/or labor leasing firms

must be carefully evaluated to determine if the insurance policy loss valuation will meet the contractual requirement. While most contracts will have an insurance requirement section that outlines the limits of insurance required, that does not mean that it limits the liability of the warehousing or shipping company. It is only a requirement to maintain a certain level of insurance. There could be other sections of the

contract that make the warehousing or shipping company responsible for the entire amount of the loss to the customer. The entire contract must be carefully reviewed to determine if the insurance policy limits are adequate to meet the true exposure to loss.

For a multitude of reasons, many transportation companies utilize the services of owner operators and other independent contractors and/or labor leasing firms which are commonly referred to as professional employer agencies (PEOs). This can lead to other insurance pitfalls. Motor truck cargo and warehouse legal liability policies exclude coverage for theft by

The only policy that could cover theft of property by independent contractors, owner operators or PEO employees is the crime policy. However, the crime policy must be properly endorsed to cover this exposure

criminal, fraudulent or dishonest acts by anyone to whom the insured entrusts property. The only policy that could cover theft of property by independent contractors, owner operators or PEO employees is the crime policy. However, the crime policy must be properly endorsed to cover this exposure. The standard crime policy is designed to cover theft of property owned by an insured and stolen by insured's employee. The crime policy form that is designed for companies that handle property of others is modified to cover property in the insured's care custody and control, but the definition of employee does not include the above groups. It is very important for companies to identify all classes of non-employees that will have care, custody and control of a customer's goods while the goods are entrusted to the company and have those classes endorsed to the crime policy to be defined as employees.

While these risk management issues are technical, they are very important to understand, as they can impact the financial well being of your company. I highly recommend sitting down with an independent risk management consultant to review your company's risks and exposures

This article has outlined many insurance pitfalls and coverage gaps that may arise under normal transportation industry operations. While these risk management issues are technical, they are very important to understand, as they can impact the financial well being of your company. I highly recommend sitting down with an independent risk management consultant to review your company's risks and exposures, as well as your current insurance policies and applicable contracts. The task may be daunting, but the result is peace of mind.