# INSURANCE REQUIREMENTS OF THE INDIAN LOGISTICS AND WAREHOUSING INDUSTRY AND THEIR CUSTOMERS

2017-18



TCI
LEADERS IN LOGISTICS

भारतीय बीमा संस्थान
INSURANCE INSTITUTE OF INDIA

**Context:** This explorative research was jointly conducted by Transport Corporation of India Ltd.[1] (TCIL) and the Insurance Institute of India[2] (III) to evaluate the insurance requirements of the Indian Logistics and Warehousing Industry and their Customers (Focusing on in-country and multi-modal operations). Like the various studies/ reports brought out by TCIL as part of its ongoing knowledge initiatives for the logistics, transportation and SCM industry, this study also essentially aims to provide an academic basis for the Logistics and Warehousing industry to educate their customers on utilizing the full potential of the insurance mechanism.

**Caveat:** Findings of the Research Study are primarily intended to provide an academic foundation on this subject for the industries concerned and their customers. Neither TCIL nor III would be in any way legally liable to any commercial/ regulatory decision directly or indirectly based on the findings of this report.

**Intellectual Property Rights:** All intellectual property rights related to the research study shall jointly vest with the Research Centre of Insurance Institute of India and the Transport Corporation of India Ltd.


### Transport Corporation of India Ltd.

**Address**

Corporate Office , TCI House, 69, Institutional Area, Sector-32,Gurgaon-122201 (Haryana) (India)

**Contacts:**

Phone: +91-124-2381603 to 07,
Fax: +91-124-2381611
E-mail: corporate@tcil.com
Website: www.tcil.com

### Insurance Institute of India

**Address**

C-46, G-Block, Near American Consulate, Bandra-Kurla Complex, Mumbai - 400 051.

**Contacts:**

Phone: +91-22-26541154 / +91 22 26541156.
Fax:+912226541170
Email: research@iii.org.in
Website: www.insuranceinstituteofindia.com


**Note:** This research report is finalized by the Transport Corporation of India Ltd (TCIL) and the Insurance Institute of India (III). It is published by TCIL for internal and/ or private circulation, with due permissions. Errors and Omissions excepted.

[1] **Transport Corporation of India Ltd. (TCI)**, with revenues of over Rs. 3100 crore, is India's leading integrated multi-modal logistics and supply chain solutions provider. TCI group with expertise developed over 6 decades has an extensive network of company owned 1400+ offices, 11.5 mn. sqft of Warehousing space and a strong team of 6000+ trained employees. With its customer-centric approach, world class resources, State-of-Art technology and professional management, the group follows strong corporate governance and is committed to value creation for its stakeholders and social responsibilities. The whole corporation is composed of various special divisions and Group Companies catering to the various needs of logistics namely: TCI Freight, TCI Supply Chain Solution, TCI Seaways, TCI Express Ltd , TCI Developers Ltd and TCI Foundation.

As part of its commitment to the Logistics industry and the Nation, TCI conducts academic studies periodically on matters of topical interest. Some of the well-known and widely referred TCI studies are 'Operational Efficiency of National Highways for Freight Transportation in India' (2009-10, 2011-12, 2014-15) conducted jointly by TCI and IIM Kolkata.

[2] **Insurance Institute of India (III)** was established in 1955 for imparting insurance education & training. Today, III conducts examinations leading to globally recognized certifications as Associated and Fellow Members of III and has 91 insurance institutes across the country. III is formally aligned with International Organizations like International Association of Insurance Supervisors (IAIS), United Nations Environment Program-Finance Initiative (UNEP-FI), Institute of Global Insurance Education (IGIE) International Insurance Society (IIS) and the Federation of State Insurance Organizations of SAARC Countries (FSIO). III is represented on the GOI - Finance Ministry's Advisory Committee/ Advisory Groups on Life Insurance and General Insurance. III works with the Government/ Insurance Regulatory and Development Authority of India (IRDA) as well.

College of Insurance (COI), the knowledge arm of III, is recognized for insurance training in India and under the Colombo Plan for SAARC countries. COI has been training insurance professionals from India, the SAARC Region, Middle East, Africa and beyond is the alma mater of many senior executives. COI/III conducts a Post Graduate Diploma in Health Insurance (PGDHI) in collaboration with the Department of Economics (Autonomous) of University of Mumbai. III's Research Centre, recognized by the University of Mumbai for Ph. D. in Business Management, conducts various research studies for the Institute and for reputed national and international entities.

**Background of the Study:** This exploratory research study[3] was initiated by Transport Corporation of India (as part of its knowledge initiatives for the logistics, transportation, warehousing and supply chain management industry) as a joint study with Insurance Institute of India with the broad objectives of evaluating the insurance requirements of the Indian Logistics and Warehousing Industry[4] (LWI) and their customers for their in-country operations including multi-modal transport; and indicating possible solutions.

The research was essentially a quest to find out the gaps between the needs of the logistics industry (and its customers) and the insurance policies available in the Indian market. By way of detail, the study attempts to achieve the following;

**Benchmarking:** Documenting the broad legal position in India relating to transportation and logistics in respect of contractual liability, third party liability, other obligations and redressal mechanisms vis-à-vis those of other countries in order to facilitate some degree of benchmarking.

- Demarcating the broad legal contours of the contractual, third party and other obligations/ liabilities of Logistics Service Providers[5] (LSPs) and the redressal mechanisms available to them.

- Assessing typical contracts used in the LWI focusing on in-country operations and finding out the gaps between the needs of the industry and the insurance policies available in the Indian market.

**Market Completeness and Efficacy:** Examining the extent of availability of insurance products for addressing the market needs in the specific contexts and risks faced by the LWI and their customers as also whether the solutions available are appropriate and adequate.

- Assessing the intrinsic worth of the insurance products in terms of risk transfer and value for money;

- Assessing the efficacy of products and processes of the insurance industry related to assessment and classification of the risk, impact of adverse selection, moral hazard, transaction costs and market-forces.

**Quality of Service/ Relationships**: Studying the service/ relationship experiences of the LWI, their customers and insurers from the ease of doing business on a sustainable basis. This includes flexibility and customization of products and services, administrative ease and smooth claims servicing systems to meet the expectations of the buyers of insurance over the long term.

**Academic Strength:** Providing an academic basis for the LWI to educate themselves and their customers on utilizing the full potential of the insurance mechanism for protecting their respective interests from transit, storage and liability related risks; and concomitantly minimizing the liability exposures of the LWI through standard procedures. The report would also serve as a position paper on the risk exposure of the industry with recommendations to the Government and policymakers. It would also help the Logistics and Warehousing industry to develop a broad objective perspective about the risks involved and the solutions available.

The findings of the TCIL & III Research Paper are expected to provide insights, practical tips and suggestions to help the various stakeholders of the Indian LWI in multiple ways.

**The Logistics Service Providers** - in protecting their business interests in a better manner

**The Customers of the Logistics and warehousing Industry** - in appreciating their insurance needs and adequately protecting their interests

**The Insurance Industry** - in providing the kind of covers that the LWI and their customers really need

**The government and policy makers** - in creating congenial regulatory environments, supporting the government's development initiatives by supporting manufacturing, trade and commerce.

---

[3] Transport Corporation of India Ltd and Insurance Institute of India Research Paper' - in short 'TCIL & III Research Paper'

[4] ibid.

[5] LSP/ LWI: For the purpose of this study, providers of a broad range of business operations and services traditionally rendered by carriers, warehouse providers, terminal operators, freight forwarders, non-vessel operating common carriers, multimodal transport operators and brokers (and beyond) are collectively referred to as 'Logistics Service Providers' (LSP) or as 'Logistics and Warehousing Industry (LWI).

# FOREWORD

Developing rates for cargo in-transit insurance coverage is as much an art as a science. Underwriters consider the products shipped; susceptibility to loss and damage; number of shipments; trade lanes travelled; and transportation methods and modes. But insurance premiums are also driven by a firm's loss history.

Our findings presented in this report would help the logistics industry in protecting their business interests in a better manner, the insurance industry in understanding the Logistics and Warehousing market and providing appropriate covers, the government for policy framing and regulatory purposes and the customers of the logistics industry who would be the ultimate beneficiaries of such studies.

We hope that the ideas and data we have set out in this study will be thought provoking and useful.

We are delighted that Insurance Institute of India has supported in creating this research report.

Our teams welcome the opportunity to discuss these market trends and possible solutions with you in more depth.

Thank you for your interest.

**DP Agarwal**
*Vice Chairman & Managing Director*
**Transport Corporation of India**

Special thanks to the editorial team of TCI who worked relentlessly to make it happen viz. Rajkiran Kanagala, Group Head- Business Development and Meena Bora, Executive- Group Business Development & Marketing.

# FOREWORD

The Insurance Institute of India (III) has been contributing to the knowledge base of the insurance industry and its customers for the last 62 years. Our activities include conducting examinations leading to Licentiate, Associate and Fellowship certifications, imparting training under the College of Insurance banner, holding seminars, conducting research and disseminating insurance knowledge. In the past few years we have been able to reach out globally and conduct examinations at twenty overseas locations as also to attract trainees from thirty six countries.

The Research Department of the Institute has been working with the industry to address its knowledge gaps and find solutions. An approved Research Centre of the Mumbai University for Ph.D. research, III's Research Department supports the industry's research requirements as well. Our noteworthy contributions to the industry in the recent past include research studies on:

1. Evaluating the impact of Regulations on Micro-insurance in India - for the GIZ.
2. Assessing the design and performance of the Industrial All Risk Policy - for the General Insurance Corporation of India
3. Diagnostic Study on Mutuals and Cooperatives in India - for the International Cooperative and Mutual Insurance Federation's (ICMIF) 5-5-5 Strategy
4. Buying behaviour and customer satisfaction vis-a-vis life insurance in India

The III is thankful to the TCIL for giving us the opportunity to conduct this joint research on an area of vital importance for the country's growth and development.

I am happy to acknowledge the contributions of many experts from the insurance industry, the logistics and transportation industry and some customers who shared valuable insights with our research team through interviews and questionnaires.

We are happy to dedicate the study for the benefit of both the industries.

**P Venugopal**
*Secretary General*
**Insurance Institute of India**

# RESEARCH TEAM

भारतीय बीमा संस्थान
INSURANCE INSTITUTE OF INDIA

III's Research Centre is recognized by the University of Mumbai for Ph. D. in Business Management. It conducts various research studies for the Institute and for reputed national and international entities. III fosters learning and research by supporting budding researchers through research based essay competitions and by extending financial support to researchers. Under its Knowledge Management Initiatives, III reaches out to around 1,00,000 practitioners of insurance and keep them abreast of the latest in the industry every week. Institute news is shared on a monthly basis and the III Journal is published every quarter.

## BRIEF PROFILE OF RESEARCH HEAD

**Dr. George E. Thomas** is Professor (Research and Non-Life) in III's College of Insurance. He has done his Ph.D. in Management from University of Pune.

His qualifications include MBA, MA (English), MA (Sociology), FIII, BGL, Diploma in Insurance Law and Diploma in PR & Advertising. He is Fellow Life Member of Indian Council of Arbitration and Life Member of Indian Institute of Public Administration.

He joined the General Insurance Industry in 1985 as direct recruit Officer in Tariff Advisory Committee (TAC). He has exposure to different areas of non-life insurance, particularly insurance regulation, product design and approval at TAC & IRDA, tariff administration and health insurance. He is the International Insurance Society's Ambassador for India.

Dr. Thomas is the International Insurance Society's (IIS) Ambassador for India, Member of the Academic Steering Committee on Financial Inclusion of the International Cooperatives and Mutuals Insurance Federation (ICMIF) and Member of the Working Group on Insurance Regulation and Resilience Policies of the Insurance Development Forum (IDF). He is also part of the Board of Studies (Insurance Management) of Pondicherry University and Ad-hoc Board of Studies of Jankidevi Bajaj Institute of Management Studies (SNDT Women's University). He was part of the Finance Ministry's Advisory Group (Non-Life Sector) and the Expert Group (Curriculum Review) of the National Institute of Disaster Management. He has authored a number of articles, a couple of books and presented papers at various national/ international forums.

A Research Guide of the University of Mumbai for Ph.D. Research in Business Management, Dr. Thomas's research interests in insurance include health, catastrophe, cargo, microinsurance and litigation. In the recent past, he concluded a consortium research on the impact of regulations on microinsurance for GIZ, a Research study on the Country Landscape on Mutual and Cooperative Insurance in India for ICMIF and on the Industrial All Risk Policy for GIC Re. He can be contacted at <thomas@iii.org.in>.

---

## BRIEF PROFILE OF CO-RESEARCHER

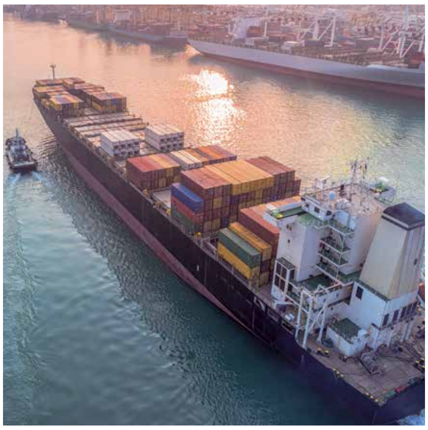
**Prof. Archana Vaze** is Assistant Professor (Non-Life) in III's College of Insurance. She has done her Engineering in Computer Technology from Nagpur University and M.B.A. in Finance & Marketing from IIT Madras.

Prof. Vaze is a Fellow Member (FIII) of the Insurance Institute of India and holds a specialized Diploma in Health Insurance. She is pursuing her Associateship with the American Institute for Chartered Property Casualty Underwriters (AICPCU).

Prof. Vaze's exposure to the insurance industry spans multiple areas including underwriting, business strategy and process management. Prior to joining III she headed the Maharashtra and Goa Region of SBI General Insurance Co. Ltd., as 'Manager Underwriting - Corporate and SME Lines'. Prof. Vaze has also worked as 'Senior Manager - Commercial Underwriting' for the Mumbai Zonal Office of Cholamandalam MS General Insurance Co. Ltd. and also at their Head Office in Chennai. Prof. Vaze's corporate exposure includes a stint with TCS as a Systems Analyst and Domain Expert in their Insurance vertical.

Her research exposure includes a research study on the Country Landscape on Mutual and Cooperative Insurance in India for ICMIF and another study on the Industrial All Risk Policy for GIC Re. She has conducted an Equity Research on the Indian Life Insurance industry in the past. Her research interests include Legal aspects of insurance and Property Insurance. She can be contacted at <vaze@iii.org.in>.

# CONTENTS





## Annexures

# EXECUTIVE SUMMARY

# Transport Corporation of India and Insurance Institute of India Research Paper

'Insurance Requirements of the Indian Logistics & Warehousing Industry and their Customers (Focus: In-country operations)'

## Executive Summary

This exploratory study[1] was initiated by Transport Corporation of India (as part of its knowledge initiatives for the logistics, transportation and supply chain management industry) as a joint study with Insurance Institute of India to evaluate the insurance requirements of the Indian Logistics and Warehousing industry and their customers, from an in-country cum multi-modal operations point of view and to indicate possible solutions.

The research was essentially a quest to find out the gaps between the needs of the logistics industry and the insurance policies available in the Indian market. Multiple aspects of the industry, such as (i) the broad legal contours of the contractual, third

[1] Transport Corporation of India Ltd and Insurance Institute of India Research Paper' - in short 'TCIL & III Research Paper'

party and other obligations/ liabilities of Logistics Service Providers[2] (LSPs) and the redress mechanisms available to them; (ii) the availability of insurance products for addressing the specific needs of the market; (iii) the intrinsic worth and efficacy of the products in terms of risk transfer and value for money; and (iv) the ease, flexibility and sustainability of doing business in terms of access to products and reliability on claims servicing systems were examined as part of the study.

The conceptual strength of the research emanates from a review of insurance policies, court verdicts and published literature relevant to the Logistics industry. The robustness of the study stems from the Estimate-Talk-Estimate (ETE) approach adopted for the research. Also known as 'Mini-Delphi', this approach involved interviews of experts of the Insurance industry, the Logistics and Warehousing industry and Corporate customers, referred to as 'Experts' in this study. The thoughts and experiences[3] shared by 62 Experts and the views of 231 customers have enhanced the practical relevance of the findings of the study.

The findings presented in this report would help (a) the logistics industry in protecting their business interests in a better manner, (b) the insurance industry in understanding the Logistics and Warehousing market and providing appropriate covers, (c) the government for policy framing and regulatory purposes and (d) the customers of the logistics industry who would be the ultimate beneficiaries of such studies.

Despite the legal position ushered in by Carriage by Road Rules, 2011, which appear benevolent towards the Logistics Industry, in reality, the Service Providers continue to be in a highly vulnerable position.

Despite the legal position ushered in by Carriage by Road Rules, 2011, which appear benevolent towards the Logistics Industry, in reality, the Service Providers continue to be in a highly vulnerable position. In today's competitive market conditions, protecting ongoing business interests is invariably the prime concern for all LSPs. Large amounts of freight are often overdue, courts are perceived unsympathetic, the press unsupportive, sectoral regulation absent, the industry does not have a unified front to protect its turf and LSPs are left unprotected against several risks and liability exposures.

The bigger players were generally able to draft contract wordings defending their interests and limiting their liabilities. The lack[4] of standard contracts for transport services and integrated logistics services, are among the known weaknesses in the business practices of the sector. There is a need to "provide technical assistance to introduce professional standards, certification, and contracts for logistics service providers, and to promote the expansion, integration, and upgrading of scope and scale of services offered".

Today, there are international legal firms[5] specializing in assisting the transport and logistics industry in the negotiation and drafting of freight forwarding contracts for

[2] For the purpose of this study, providers of a broad range of business operations and services traditionally rendered by carriers, warehouse providers, terminal operators, freight forwarders, non-vessel operating common carriers, multimodal transport operators and brokers (and beyond) are collectively referred to as 'Logistics Service Providers' (LSP)

[3] Break-up of Experts: 19 from the Logistics industry, 3 from Customers and 40 from the Insurance industry. Customer views: 231 through questionnaires. Trade and Transport Facilitation Assessment – A Practical Toolkit for Country Implementation, Mona Haddad, Sector Manager, International Trade, and Marc Juhel, Sector Manager Transport, The World Bank, The International Bank for Reconstruction and Development/The World Bank, 2010.

[4] Trade and Transport Facilitation Assessment – A Practical Toolkit for Country Implementation, Mona Haddad, Sector Manager, International Trade, and Marc Juhel, Sector Manager Transport, The World Bank, The International Bank for Reconstruction and Development/The World Bank, 2010.

[5] 'Transport and logistics' - http://www.kennedyslaw.com/transport-logistics/

both forwarders and cargo owners. They negotiate and draft contracts for specific logistics projects. The TCIL & III Research Paper recommends that the Logistics and Warehousing Industry may do well to design standard contract wordings for broad cargo types, broad industry groups as well as general wordings for all cargo. The industry leaders may take the initiative to arrive at standardized contract wordings for common contracts and specialized wordings for special consignments. Again, though bigger LSPs have risk management practices in place, standard risk management practices are absent at a pan industry level. Among the smaller LSPs, some do not pay enough attention to the contract wordings, some are incapable of doing so and some helplessly accept one sided contract wordings. When liabilities arise, many of them are not able to defend their cause. Increasing e-commerce purchases, costlier values moving directly to customers, frequent return of goods etc. have complicated the scene. UNESCAP[6] points out that with logistic services getting integrated with the supply chain, services have become more complex; and setting up limits of liability and minimum standards for liability insurance has become more difficult.

Though LSPs are generally considered responsible for the proper handling and safe delivery of all goods entrusted to them for shipment, Common Law interpretations in advanced markets like the UK and the USA have been traditionally allowing certain exceptions viz., (i) acts of God like accidental fire; (ii) acts of public enemy, riots and strikes; (iii) acts of default of owner or shipper (i.e. carelessness of shipper/ owner which causes/ contributes to the loss); (iv) inherent vice or defect of the goods; (v) natural shrinkage (common to grain/ bulk commodities) and (vi) authority of law (carrier deprived of property by legal process, quarantine or martial law). In the Indian market, though there were some interpretations in favor of the LSP, it was observed that usually in situations of accidental fire, riots and strikes, deficiencies in packing and stuffing, the LSPs do not actually enjoy the benefit of such intricate reasoning that lead to exemptions and end up paying. To get similar practices implemented in the Indian market, the legal departments/ Advocates of the LWI have to take consistent lines of arguments and make concerted efforts over a period of time under the aegis of industry leaders. Many shippers routinely deduct the value of the damaged goods (some deduct the deductible excess amounts) from the outstanding freight, leaving LSPs with only two options - getting into prolonged litigation perceived to yield unfavorable verdicts or accepting unfair situations to preserve relationships and business interests.

**UNESCAP points out that with logistic services getting integrated with the supply chain, services have become more complex; and setting up limits of liability and minimum standards for liability insurance has become more difficult.**

The absence of a sectoral regulator or dedicated mechanism to redress the grievances of LSPs and their customers or any mandate requiring shippers to insure their cargo was pronounced by their absence. The Public Liability Insurance Act 1991 mandates that those involved in the manufacture, processing, treatment, package, storage, transportation by vehicle or the like of hazardous substances shall take out insurance policies covering death, injury and damage. The Motor Vehicle Act makes it compulsory for vehicles plying in public places to be insured for third party liability. In contrast to the mandatory provisions requiring these two segments of the market to insure their liability exposures, no such compulsion has been placed on shippers to insure cargo whilst carried in vehicles. The matter has been

[6] 'Guide to Key Issues in Development of Logistics Policy' of the United Nations Economic and Social Commission for Asia and the Pacific, (Dec. 2013) http://www.unescap.org/resources/guide-key-issues-development-logistics-policy

flagged for Governmental attention[7] by expert committees.

Players in the Logistics and Warehousing Industry are generally aware that risks associated with their profession can be transferred to insurance. However, they are mostly unaware of the nuances of using the insurance mechanism effectively. As many of the smaller LSPs who buy insurance are unaware of basic concepts of insurance like indemnity, insurable interest, proximate cause, deductibles, subrogation etc., large gaps exist between the perceived needs of the industry and the insurance solutions purchased.

Insurers are issuing Inland Transit insurances for shippers and consignees. They are providing Carriers' Legal Liability (CLL) policies to the Logistics industry as well. However, there are instances where LSPs purchase cargo policies in their favor, which do not actually protect them, as these are designed to protect only the owners' interests and not those of the carrier or other bailees. Again, CLL policies are purchased without understanding the scope of coverage under the relevant Act and Common Law. Many LSPs and Warehouse operators buying Standard Fire policies do not readily understand that these are 'named perils' or 'limited cover' policies where the required coverages has to be consciously selected. This renders them practically unprotected or partially protected when claims arise. On the other hand, discerning LSPs and Shippers buy their insurances with additional coverages and appropriate customization. The Logistics industry broadly need insurance protection of different types such as (i) Property - warehouses, office spaces, computer networks, vehicles etc., (ii) Liability exposures from Logistics operations, (iii) Delay, (iv) Negligence/ Oversight, (v) Liability arising out of contract wordings, (vi) Hazardous material, (vii) Legal costs, (viii) Defamation liability and (ix) Cyber liability. Though there are off-the-shelf insurance solutions for many common needs and customized solutions for many special scenarios, gaps exist between the perceived needs and insurance solutions offered. Further, there is no industry-wide or sector-specific clarity on the kind of insurance policies/ covers required and many stakeholders get lost in the morass of insurance policies and are still unable to protect their interests. (Details presented in Chapter 2.)

There are instances where LSPs purchase cargo policies in their favor, which do not actually protect them, as these are designed to protect only the owners' interests and not those of the carrier or other bailees.

Some of the insurance solutions available in India and/ or in other markets (details presented in Chapter 2) are listed below:

- **Carrier's Legal Liability** policies typically pay Carrier's legal liability for cargo due to loss/ damage caused by fire, explosion or accident to the vehicle; costs incurred for cargo salvage, transshipment and emergency storage; loss of freight in respect of damaged part of cargo; breakage due to improper handling; water damage, damage by other cargo, costs of average adjusters and litigation costs.
- **Transport Operator's Liability** policies available in India protect Liability exposures of all service providers in the transport and shipping industries. It covers liabilities due to professional negligence, errors and omissions, fines, duties, death and bodily injury. Loss/ damage to cargo in the LSP's care, custody or control are covered. Expenses/ additional costs due to misdirection/ abandonment of cargo and fumigation are also covered.
- **Freight Forwarders Liability** insurances abroad cover similar loss/ damage to cargo and equipment and costs incurred. However, third party liabilities are wider. (Details presented in Chapter 2.)
- **Multi Modal Transport** insurances available in India focus on providing liability covers arising out of physical loss or damage to cargo while in the care, custody and control of the party who has contracted or sub-contracted to provide transport services, contribution towards unrecoverable cargo to general average and fines and duties. These can be extended to cover errors and omissions, death, bodily injury or illness and legally recoverable consequential losses arising out of the LSP's operations.
- **Motor Truck Cargo (MTC)** policies (also known as **Freight insurance** or **Motor Truck Liability** insurance) available abroad cover financial losses resulting from damaged, lost or stolen cargo and loss of freight. MTC insurance is usually available for 'for-hire' trucking risks of dump trucks, tractors, most trailers, box trucks, cement mixers, cargo vans, dually pick-ups, flatbeds and car haulers. Some insurers cover terminals and returnable packing containers under MTC policies, though these are generally

[7] A Background Paper on Barriers to Inter-State Trade & Commerce – The Case of Road Transport, Dr. Bibek Debroy and Dr. P. D. Kaushik of Rajiv Gandhi Institute for Contemporary Studies for the National Commission to Review the Working of the Constitution, Govt. of India - http://lawmin.nic.in/ncrwc/finalreport/v2b3-5.htm and Report of the Working Group on Logistics Government of India Planning Commission Transport Division New Delhi (Feb. 2000)- http://planningcommission.gov.in/reports/genrep/ rep_logis.pdf

covered under cargo insurance. MTC insurances usually provide a wide range of covers such as substitution of vehicles, newly acquired vehicles, newly acquired terminals, reusable packing containers, debris removal expense, court-ordered expenses for pollutant cleanup and removal, earned freight charges, loading and unloading losses. Popular extensions include mechanical breakdown of refrigeration and heating units, contingent coverage, cargo recovery extra expense, coverage for shipper's control of undamaged goods, perishable and temperature sensitive goods, goods carried by subcontractors, costs of salvaging undamaged goods after motor accidents, goods that lost value due to a motor vehicle accident even if they were undamaged. In markets that are more prone to liability related litigation like the USA, UK and Australia, policies are designed to address more specific concerns of their markets.

- **Warehouse Legal Liability and Warehousemen's Legal Liability** policies available in some markets cover direct damage to the goods in the warehouse operator's care, custody, and control, irrespective of fault. Risks of fire, flood, theft and damage of materials owned by third-parties stored in their facilities are covered. Liability arising from the Warehouse owner's negligence or failure to exercise reasonable care in the handling and storage of a customer's goods, mysterious disappearance, debris removal expenses, accrued charges and newly acquired premises are covered. Add-on covers available abroad include owned property, accounts receivable, costs to restore/ replace missing records of accounts receivable, newly acquired property, fixtures and equipment in leased or rented buildings, earned storage/ freight charges that cannot be collected, debris removal/ pollution cleanup, loss/ damage due to changes in temperature/ humidity arising from mechanical breakdown of a warehouse's/ truck's heating or cooling systems, property missing for unexplained reasons, fraudulent/ dishonest/ criminal acts by employees, as well as contingent Carrier's liability for property transported by other vendors through subcontract. In some countries, Legal liability coverage is limited to named perils, while in some domains 'all loss' for which the warehouseman may be liable are covered.

- **Mandatory Public Liability Insurances** are mandatory for owners, users or transporters of hazardous substances as per the Public Liability Insurance Act 1991. This can be extended to cover

The Logistics Industry should realize that their complex business models are often not fully understood by insurers and hence they do not enjoy the fullest confidence of the insurance industry.

It would be advisable for the logistics Industry to build internal capacity to understand their insurance needs as also those of their customers. This would ensure adequate coverage of risks and buying effective insurance covers that give optimum protection.

natural calamities, pollution risks, transportation risks, third party liability arising out of accidental death, bodily injury, loss or damage to property and legal costs/ expenses incurred in defending legal cases.

- Like any other business entity dealing with third parties and employing people, LSPs need **Public Liability** insurances. They need insurance for their liabilities to Employees/ Workmen under the **Employees' Compensation Act 2010,** the Fatal Accidents Act, 1855 and Common Law. LSPs would need to purchase **Fidelity Guarantee Insurance** for employees who are in positions of trust and deal with money, records and high value goods. They need **Commercial General Liability** (CGL) insurances for their general liability exposures. **Errors and Omissions Liability** policies can protect LSPs in situations where their business activities result in a situation necessitating financial compensation.
- **Fire/ Property** policies typically cover loss to buildings and warehouses due to fire, lightning, explosion/ implosion, aircraft damage, riot, strike and malicious damage, impact damage, landslide/rockslide, bursting and overflowing of water tanks, missile testing operation, leakage from automatic sprinklers and bush fire. Extensions include natural catastrophe - earthquake, storm, typhoon, cyclone, flood etc.
- **Marine Cargo** policies are designed to protect Cargo Owners from loss/ damage to their goods during inland transit. These are available in different types. (Details presented in Chapter 2.)
- **Package Policies:** Logistics Insurance Packages (LIP) combine different policies like Freight Forwarder's Liability, Logistics Cargo Liability, Errors and Omissions, Contingent Cargo, Property, Business Interruption, Commercial General Liability, Crime Coverage, Warehouseman's Legal Liability, Custom Broking etc. These are often customized for specific logistics operations. Certain bespoke insurances combine several related covers to design a single tailor-made policy to suit the customer as well.
- Experts in both the industries concur that the ideal solution would be a **comprehensive policy for Logistics Service Providers on all-risks basis,** covering all possible risks that the industry could actually face, which can be customized to assume enhanced liabilities dovetailed to specific customer contracts.
- It would be advisable for the logistics Industry to build internal capacity to understand their insurance needs as also those of their customers. This would ensure adequate coverage of risks and buying effective insurance covers that give optimum protection.
- **Risk Improvement through Good Practices:** Measures like designing and implementing Risk Management through Loss Prevention/ Loss Minimization initiatives are needed. There are also several good practices that the Logistics

Industry should follow to minimize their risks and make insurers comfortable to provide effective and sustainable insurable solutions. The larger players can promote better hygiene in the industry by setting up best practices and creating adherence to such practices. Practices like evolving common strategies to prevent theft, standardizing procedures to be followed after a loss or when a potential loss is detected, securing LSPs rights to claim from third parties, informing the insurer of the loss as soon as possible are highly relevant. LSPs need to adhere to standard checklists for loading/ unloading packages and stacking norms. They should check suitability of packing. Some LSPs have internal procedures like getting in-house/ third party experts to inspect the loss, consulting insurers etc. so that they do not accept more than their liability unwittingly. Once a better environment is created, the smaller players would see value in the same and emulate best practices with less resistance.

- **Requirement of Information:** The Logistics Industry should realize that their complex business models are often not fully understood by insurers and hence they do not enjoy the fullest confidence of the insurance industry. Again, Insurers work on certain statistical probabilities of frequency and severity for underwriting and pricing risks and tend to stay away from risks that do not have discernible loss patterns. Data on loss patterns and information on soft spots in the industry help insurers in providing proper solutions. Information sharing between the Logistics and the Insurance industries would help the latter to understand the kind of protections the former needs and provide solutions. Once this understanding is arrived at, sustainable win-win models would evolve.

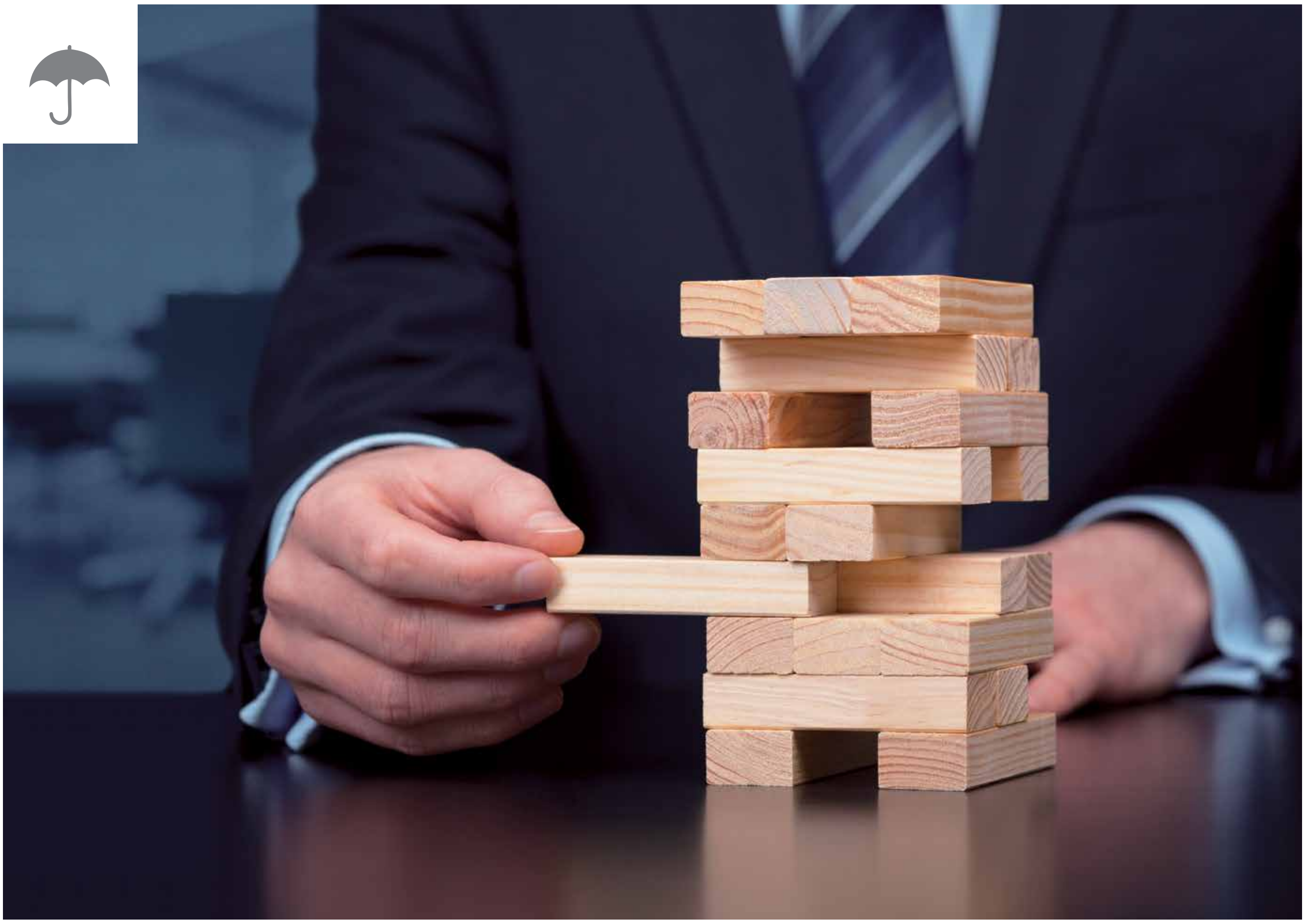
- **Complementary Mechanisms:** Even when the legal scenario is generally in their favor, because of business interests, customer relationships, gaps in wording etc., in actual practice, the LSP ends up paying for losses that they are not actually liable for in many cases. Hence, the LW industry needs to work laterally with multi-pronged strategies. In addition to insurance solutions, the Logistics Industry needs to think of complementary mechanisms to manage their risks. This would include (a) incentivizing and facilitating cargo owners to insure, (b) obtaining mandates or creating congenial environments to attract insurers to them, (c) adopting best practices from other industries/other markets, (d) creating evidence-based studies to convince cargo owners to insure and follow risk management practices; and (e) commencing advocacy through an association of Logistics Service Providers. One step towards achieving this is by members of the LW Industry coming together and forming a strong professional body to take care of common purposes and interests. The body should be as inclusive as possible and be able to secure Governmental recognition.

**LSPs should have a board approved risk transfer policy whereby the top management is clearly aware how risks are being managed.**

- **Alternative Risk Management (ARM) models/ Risk Retention Models** exist in certain markets whereby the industry players share and retain some part of the risk by contributing to a common fund from which losses are borne. Ship Owners have Protection and Indemnity Clubs where members pool their risks which are not covered by their insurers. In recent times, freight forwarders and warehouse operators have also been forming such clubs.

Regulatory/ Self-Regulatory Mechanism: The study points out that the non-existence of a mechanism to regulate the Logistics industry and promote its orderly growth stands out. Pending Governmental action to form a regulatory body the industry should come together and form a self-regulatory framework like an industry guild where like-minded players come together and look into matters of common interest and set standards for voluntary adoption. Such associations can collect, collate and provide data support for the industry and large and provide some free services and some special advisory services at a fees. Logistic Service Providers in India also need advisory mechanisms which can study data and market experience and waive red flags, where required. Setting up a Self-Regulatory Mechanism would be a step whereby there would be one single body to take ownership of the Logistics industry and represent it in matters of common concern. The absence of a dedicated mechanism to redress the grievances of LSP's and their customers is another area of concern.

**Risk Transfer Policy:** Risk transfer through the insurance mechanism is a proven and tested mechanism used across the world. The LSPs should have a clear understanding of the risks that they are dealing with. They should have a plan on getting Shippers insure their part of the risk, strategies for insuring their own risks and liability exposures with optimum benefits, assessing residual risks and having a plan for managing what remains uninsured. This could include retaining the risk with oneself and setting aside contingency funds for the same or retaining it within the industry by sharing it among members through P&I Clubs. LSPs should have a



board approved risk transfer policy whereby the top management is clearly aware how risks are being managed.

**Advocacy and Communication:** The Logistics and Warehousing industry may like to use the TCIL & III Report to communicate to the different stakeholders

(i) For sensitizing the Government to mandate that Shippers should compulsorily insure, (ii) Work with insurers to design policies that are of use (Talk to the General Insurance Council/ Insurance Industry Leaders/ Insurance Regulatory and Development authority of India),

(ii) For working with Insurers to provide the required cover for the LWI's needs as a regular policy,

(iii) For working with Insurers to create situations for insurers and LSP's to work together in a sustainable manner.

(iv) To get standard systems/ practices and procedures established in the industry and

(v) To create an association/ body that can be the LW Industry's voice.

**Empowering the Industry with Risk Education and Insightful Research:** The Logistic industry needs to look at itself as a knowledge industry than a process based industry. This includes logistics and risk management being taken to classrooms – where students learn the importance of this vital industry and the critical knowledge elements that go into 'getting the right thing at the right place' physically and conceptually. Every single entity in the industry, in addition to the skilling trainings that are given by many LSP companies, need to be trained in practicing safety matters; the importance of wording their contracts properly; assessing, managing and improving the risk; the company philosophy of retaining risk and transferring risk to insurance companies; taking care of company interests in Courts of Law; getting the full benefit from insurance policies when losses/ liabilities arise; creating internal databases and knowledge repositories; and enriching the company and the industry by sharing experiential knowledge. At an industry level, there is a need for dedicated research work synergizing the internal insights and experiences of the industry with the academic strength of organizations of repute. This will broaden the outlook of the Logistics industry by bringing in fresh perspectives from other markets and other industries as also the objectivity that academic institutions can provide.

# Key Findings and Recommendations of the Report

## Key Findings

The research was essentially a quest to find out the gaps between the needs of the logistics industry and the insurance policies available in the Indian market.

1. Despite the legal position ushered in by Carriage by Road Rules, 2011, which appear benevolent towards the Logistics Industry, in reality, the Service Providers continue to be in a highly vulnerable position.

2. UNESCAP points out that with logistic services getting integrated with the supply chain, services have become more complex; and setting up limits of liability and minimum standards for liability insurance has become more difficult.

3. There are instances where LSPs purchase cargo policies in their favor, which do not actually protect them, as these are designed to protect only the owners' interests and not those of the carrier or other bailees.

4. The Logistics Industry does not realize that its complex business models are often not fully understood by insurers and hence they do not enjoy the fullest confidence of the Insurance Industry.

5. The freight charged by the logistics provider is not sufficient to meet the risk exposure of transportation and warehousing losses even though losses are infrequent.

6. Insurers provide marine cargo policies to consignees based on the consignment notes issued by transporters. Insurers do not inspect the cargo, check the standard of packing, method of packing or insist on standard risk management practices.

7. Carrier's Legal Liability policies are not practically effective as insurers do not settle claims till legal steps are initiated against the carrier. LSPs have no option but to pay to retain business.

8. Some of the contract wordings between shippers and LSPs are highly one sided and absolve shippers even when they are at fault.

9. There is scope for exercising more care in packing, loading and lashing of cargo to prevent accidents during transport as also in choosing appropriate vehicles. Efforts to create better awareness among the customers of the Logistic & Warehousing Industry are needed.

10. There is an acute shortage of skilled drivers and Transporters do not have the capacity to identify fake driving licences. This increases their commercial costs like vehicle maintenance etc.; as also social costs like damage to goods, loss of life and damage to road infrastructure.

# Recommendations

The following recommendations for research are based on the study findings:

1. LSPs may appeal to the Ministry to make it mandatory for all goods, at least those transported through third party LSPs, be insured.

2. LSPs should be aware of the risks which are not insured by the consignor/consignee and of the liabilities of the LSPs in a worst-case scenario. They should have a board approved risk management/risk transfer policy.

3. It would be advisable for the logistic Industry to build internal capacity to understand their insurance needs as also those of their customers. This would ensure adequate coverage of risks and buying effective insurance covers that give optimum protection.

4. Carrier's Legal Liability policies need to be redesigned by Insurers after understanding the present day realities of the LW Industry.

5. Risks that are intentionally not covered by consignors/ consignees and those falling under the Excess/ High Deductible clauses need to be clearly communicated to the LSPs as part of the contract. Governmental mandates or collective decision by the LW Industry may be required in this regard.

6. The big players of the Logistic Industry can think of creating Protection and Indemnity clubs to take care of their uninsurable risks and the claims that do not fall under insurance policies.

7. Governmental systems for issuing/ renewing motor driving licenses may be made more robust by making mechanisms like 'Aadhar' linking compulsory and by providing mobile apps to check the veracity/ validity of licences and the drivers' accident record.

8. The LW Industry should make conscious efforts to position itself as a knowledge-rich industry performing a vital nation building activity. Every employee of the industry should be taught/ trained to improve the industry's culture and take it to greater glory in the years to come.

CHAPTER 1

# Insurance and the Logistics and Warehousing Industry

Insurance is basically a risk transfer mechanism whereby certain financial risks of the insured entities are transferred to the insurer. Insurance works on some fundamental principles which specify the nature of risks that can be transferred and would be 'insurable'. For instance, the insured should have an 'insurable interest' in the subject matter insured. This would mean an interest in the object insured, whereby its loss or damage would seriously prejudice the interests of the insured. Insurance does not allow anyone to insure or get an insurance claim on any risk. A prime requirement for an insurance contact to be valid is that the insured has a real interest on the subject offered. This is to ensure that the insured does not indulge in wagering or making a profit out of the loss.

## INSURABLE INTEREST

Insurable Interest, "to be interested in the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence, prejudice from its destruction" Lord Justice Lawrence in the case of Lucena v Craufurd (1806).

Insurable interest exists "when an insured person derives a financial or other kind of benefit from the continuous existence, without impairment or damage, of the insured object (or in the case of a person, their continued survival)

*Source: https://en.wikipedia.org/wiki/Insurable_interest.*

In the context of this study, this would mean that as a logistics operator does not have an insurable interest in the goods in his custody as he does not suffer a loss by the loss or damage of the goods that are in his custody. However, he has an undisputable interest on (i) the freight that he would lose and (ii) the liability that would legally or contractually attach to him in case the goods in his custody are lost or damaged (iii) Then, there are lesser worries about liabilities due to goods in his custody damaging someone else or someone's belongings which would be dealt with separately. While the loss of freight is relatively straightforward to comprehend, what is really worrisome for the logistics industry is the legal liability that arises from common law and contractual obligations if a loss or damage occurs.

There is a traditional insurance product, "Carriers' Legal Liability Insurance" that was designed decades back to take care of these needs of the Carriers. This insurance policy traditionally pays all sums for which the Carrier shall become legally liable as compensation for physical loss or destruction of or damage to goods or merchandise, while in transit, including during loading or unloading and while temporarily housed on or off vehicles in the ordinary course of transit [Details discussed in Chapter 4]. In the past, it was believed that these policy terms were wide enough to take care of practically all the insurance needs of Carriers' requirements. However, there are a few gaps that have surfaced in the last decade which need detailed examination.

There are some other issues that both the logistics and the insurance industry face. Many transporters purchase separate Fire insurance policies covering their warehousing operations. However, the Standard Fire and Special Perils Insurance policy, states that the policy will not pay for any property that is covered or would have been covered under a transit policy.

From the logistics industry's perspective, their business runs on credit and a great risk that a transport company practically faces is the deduction of the value of the damaged goods from outstanding freight, which can run into crores. Another risk is that of default or delayed payment by the client in case of loss or damage to cargo. Though what is not insured by a consignor (especially, if it is a large business house) is assumed to be self-insured, in reality, many business houses simply deduct the uninsured value of the loss/ damage from the outstanding freight. Additionally, there are the overarching liability risks which a transporter faces. They need insurers to provide solutions for all these and many more.

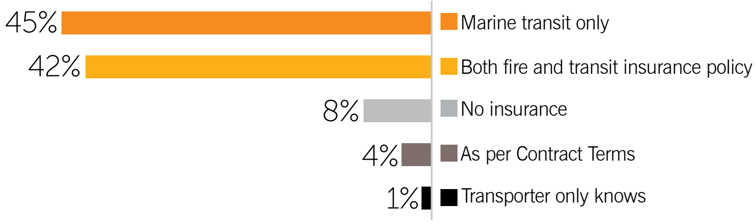
> **Many transporters purchase separate Fire insurance policies covering their warehousing operations. However, the Standard Fire and Special Perils Insurance policy, states that the policy will not pay for any property that is covered or would have been covered under a transit policy.**

### 1.1. Historical Perspectives of the Logistics and Warehousing Industry on the Availability of Insurance

Old-timers of the Logistics and Warehousing Industry who have been interacting with insurers recall that in olden times, before the nationalization of private insurance companies in 1972, dealing with insurers was a happier experience. They stated that in those times, the Insurers used to design coverages to match with the requirements, terms and conditions set by their regular clientele and charge market driven prices. They state that private insurance companies used to provide Open Marine Transit Policy to transporters with customized wordings to suit their contracts and that the practice was continued by the four Public Sector Insurance Companies for some time after nationalization as well. They continued to use the Open Marine Transit Policy wordings, known as 'Regional Tariffs' which were generally accepted by the Tariff Advisory Committee[6] (TAC). Some experts of the Logistics industry of yester years recall that from 1983 onwards, with the introduction of the All India Marine Cargo Tariff with the policy condition, 'this insurance shall not inure to the benefit of the carrier or other bailee' Insurers suddenly stopped covering the cargos carried by transporters under Open Marine Transit Policy. From another angle, many industrial houses started insuring their cargo movements under the turnover

[6] Tariff Advisory Committee was the Insurance Regulatory body (for General Insurance matters) under the Insurance Act, 1938 until it was wound up and functions transferred to the IRDAI by the Insurance Laws (Amendment) Act 2015.

Insurances Purchased by Customers of the Logistic Industry




based Special Declaration Policy (offering substantial benefits and ease of doing business) which was introduced in the market at that point of time - a factor that arguably reduced the pressure on the Logistic Service Providers to insure.

They feel that insurers were unfair and unjust in not providing Open Marine Transit Policies to transporters.

Some do appreciate that the insurance sector has their own set of problems as well. For instance, while they considered it safe for insurers to cover cargo booked with the transporters by a transit policy in cases where the consignor and consignee are the same, in cases where the consignee is a separate entity located elsewhere, they feel that the insurance company should not provide transit insurance without physically inspecting the cargo. They felt that in such cases, providing Marine Transit insurance after the loaded truck moved from the booking point was against the spirit of insurance.

| Response | Percentage |
|---|---|
| When unavoidable | 4 |
| Never | 8 |
| Mostly | 12 |
| Selectively | 17 |
| Always | 59 |

**The Bank Angle:** Generally, many governmental concerns and big corporate houses used to follow Contracts of Carriage or the terms and conditions of the tenders awarded and demanded bank approved consignment notes. The Indian Banks' Association (IBA) was also indirectly facilitating recognition of transport and logistics service providers by issuing bank approved consignment notes. However, while the IBA had been allowing transporters to issue consignment notes on both Owner's Risk as well as Carrier's Risk basis, after 1995, IBA are allowing the consignments to be issued only by the transporters on Carrier's Risk basis only.

## 1.2. Needs of the Logistics and Warehousing Industry and Gaps in Availability of Insurance

When a cross section of the customers of the Logistics industry were asked whether they would insure their own cargo during transportation, 59% answered in the affirmative, while 17% said that they would do it selectively and 12% answered 'mostly'. Another 8% said that they would never opt for insurance and 4% said that they would buy insurance only if was compulsory.

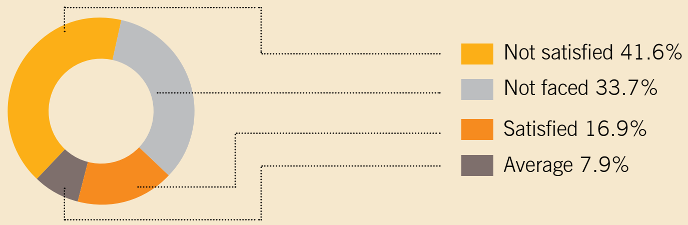
When the same customers were asked about the insurances that they had, 8% said that they had no insurance and 4% had it as per contract terms. 45% of the respondents had only Marine Transit insurance while 42% had both Marine Transit and Fire insurances.

When it came to the satisfaction levels in respect of insurance claims, 34% had not faced any claims. However, 17% reported that they had faced claims and were satisfied with the settlement. 7% had experience average levels of satisfaction while 42% were not satisfied with the claims settlement.

The Logistics and Warehousing Industry slowly realized that insurance could be a solution for transferring the risks associated with their profession. A closer look followed and both sides realized that conceptually and practically, there were large gaps between the needs of the industry and the insurance solutions purchased by them. Prominent among them are listed below:

**1.2.1 Insurable Interest:** The contract of insurance would require an insurable interest[7] to support it to make it valid. Only the Shipper who is the original owner or the Consignee to whom the ownership of the goods gets transferred during transit have insurable interest in the goods depending on the terms of the contract; and can insure the goods. The

Experience on claim settlement




[7] 'Insurable interest': Having the legal right to insure. In case there is no insurable interest, the contract of insurance becomes void.

following issues emanate from this legal position:

- The logistics and warehousing service provider is practically precluded from insuring the goods in his custody as he does not have a legal right to insure someone else's property.
- Though the logical solution would be the owner insuring the goods, practically this does not happen in many cases. Many owners believe that safe delivery of the consignment is the service providers' responsibility and consider insurance as additional expense or a waste of money, especially when the liability can be pinned on the logistics provider.
- Large business houses insure their goods as part of corporate policy. Others are highly selective in insuring and insure only certain goods. Some others insure only when insurance has to be bought out of contractual obligations to banks/ financiers/ consignees.
- As an internal policy, some Corporates do not buy insurance protection for the goods sent by logistics providers (while they buy insurance policies for goods transported by their own vehicles). In such cases, the entire liability falls squarely on the logistic companies.
- In some cases, logistics providers agree to bear losses up to a certain extent and specify per shipment limits ranging from Rs. 5,000/- to Rs.25,000/- for the losses they would bear. These usually cover losses due to improper handling of goods or due to the road conditions in particular road corridor. However, it is practically not possible for the logistic providers to make good bigger losses.
- Some corporates look at the Logistics and Warehousing service providers as a sort of Alternate Risk Transfer mechanism. That is, instead of buying an insurance policy to cover the transit risk, they try to transfer the entire gamut of risks related to transit and storage of the goods to the transporters by contract provisions.

**1.2.2 Deductibles[8] in Insurance Policies:** Insurers normally do not want to allocate their resources in terms of time and effort on small claims. As goods in transit are exposed to minor losses like pilferage, leakage, spillage or minor loss in weight by dehydration, which are usually low in value and high in number, insurers may often incur disproportionately high amounts in assessing claims

**In some cases, logistics providers agree to bear losses up to a certain extent and specify per shipment limits ranging from Rs. 5,000/- to Rs.25,000/- for the losses they would bear.**

and administering them. Hence, they have a system of deductibles which could be either compulsory or voluntarily opted by the Shipper for a discount on the premium. In most cases, the Shippers/ Consignees may not really be aware that deductibles are applicable. Practically, the following situations occur due to the use of deductibles.

- In cases where insurance is bought by the Shippers/ Consignees, insured expect their insurance companies to pay the entire amount of loss, without appreciating that deductibles apply.
- There are many losses that fall within the 'minimum deductible' and hence not payable by insurers. It is alleged that some Shippers/ Consignees pursue such losses that are not covered by insurance, with the Logistics and Warehousing service providers, to unreasonable and unethical levels.

**1.2.3 Issues due to Subrogation[9] Rights of Insurers:** Once a claim is paid, Insurers are entitled to all the rights and privileges of the Insured Shippers. Though Shippers may not always sue their transporters in recognition of good services rendered in the past and to preserve long standing relationships. Insurers may not take cognizance of such factors and would be rather quick to sue the transporters and make good the losses paid.

- In event of a loss or damage, the logistics provider is expected to furnish all relevant documentary support to facilitate claim settlement under the Shipper's insurance policy. After rendering all the support expected, many a time, the logistics provider finds the tables turned against him and gets sued for deficiencies in service by the insurance company under the rights of subrogation that accrues to insurers once the claim is settled.
- However, as seen in the following wording some large Logistics Service Providers use carefully worded contracts to avoid subrogation rights, albeit only in some cases. "Comprehensive Transit Insurance has to be arranged by you [the Shipper] / Consignee with a waiver of right of subrogation against us [LSP 'y'] and complete insurance details should be provided to us, at the time of loading. In case of any Mishap to the Consignment in En-route, you will provide us the Certificate of Fact (COF) only. No bills of

---

[8] A 'Deductible' is a fixed amount or percentage of an insurance claim that is the responsibility of the insured, which the insurance company will deduct from the claim payment. Sometimes deductibles are voluntary (to qualify for a lower premium rate) but usually these are imposed by the insurer to avoid paying a large number of small claims. It is also called 'Excess.' Deductibles specify how much of an insurance-covered loss/ expense is borne by the policyholder. Deductibles could be expressed as specific amounts or as percentages of the Sum Insured or of the Claim Amount.

[9] Subrogation refers to "the substitution of one person or group by another in respect of a debt or insurance claim, accompanied by the transfer of any associated rights and duties" https://en.oxforddictionaries.com/definition/subrogation

Subrogation is the right for an insurer to legally pursue a third party that caused an insurance loss to the insured. This is done as a means of recovering the amount of the claim paid by the insurance carrier to the insured for the loss. http://www.investopedia.com/terms/s/ subrogation.asp#ixzz4bIUeW5eK

ours should be withheld by you because of any Mishap." Again, it is doubtful whether the smaller LSPs can manage to negotiate such conditions on the Shippers and word their contracts so clearly; and that too with large Shippers.

- An interesting insight from the edible oil and FMCG industry was that some Shippers do not want to part with subrogation rights as they feel that they would lose control over the Transporters in the process. They also added that by retaining the rights and taking due action, they were able to maintain basic hygiene in their industry by exposing/ punishing the wrong-doers and preventing unacceptable conduct. They stated that by retaining subrogation rights, they could force transporters to be more responsible and if required take up the matter in a Court of Law, where they were sure to argue out their cause successfully. That is, they were not confident that insurance companies would be able to exercise such subrogation rights properly in Courts of Law; and such instances of failures would only embolden local transporter groups to deal with the Shippers more casually. In essence, the freight charged by the logistics provider is not sufficient to meet the risk exposure of transportation and warehousing losses even though losses are infrequent. Even if logistics companies are ready to pay the premium, they would not be able to buy insurance for the third party goods transported by them as they do not have insurable interest. Also, the Carriers Legal Liability insurance policies cannot cover the high exposure logistics providers are exposed to.

**1.2.4 Concerns arising from Contract Wordings:** Large corporate customers tend to make their contracts with LSPs more watertight and comprehensive, necessitating them to protect themselves from a host of liabilities.

The freight charged by the logistics provider is not sufficient to meet the risk exposure of transportation and warehousing losses even though losses are infrequent.

- **In the context of a Private Siding Agreement with Railways:** "[LSP 'x'] hereby agrees to indemnify, and keep indemnified [Shipper 'y'] and its officers, directors, agents, employees or affiliates against any and all liability, loss, fines, penalties, fees, damages, costs, amounts and expense (including without limitation attorney's fees) claimed by [Third Party 'z'] from [Shipper 'y'] under the [agreement between 'y' and 'z'] or otherwise, due to any act, negligence, fraud, misconduct, misrepresentation by [LSP 'x'] and/ or their respective personnel." (Names left out for obvious reasons.) One cannot blame the Corporate Shipper for protecting their legitimate interests, but the consequences of such wordings can turn out to be devastating to the LSP.

**In the context of Loading and Transporting Liquid Chemicals:** "[Shipper 'x'] will pay as per loaded cargo carried in the tankers. Transporter ensures that its Representatives and drivers will be present at loading points and ensure that tankers are loaded as per the capacity of the tank."

"In case the Cargo is less available than tanker capacity or Delivery Order of customer is less than Tanker capacity then transporter will have to take written approval in each case from Head Logistics/ Sr. Manager - Logistics via e-mail and the copy of the e-mail should be attached with the freight bill (before the movement).

These clauses aim to fix all liabilities due to overloading on the transporter and its drivers and free the Corporate Shipper from the same. The concerns of short delivery and loss of freight due to sub-optimal utilization of capacity are also taken care of. Issues related to hiring trained drivers, negligence, maintenance, training of personnel and Personal Protection Equipment (PPE) are also effectively tied up through the contract wordings.

- Further, one finds clauses like, "In case it is found by [Shipper 'x'] that the leakages have happened due to poor quality of tankers due to lack of maintenance by transporter, no insurance claim will be lodged by [Shipper 'x'] and Transporter will have to compensate for the loss of Cargo and all other related expenses and third party liabilities. Deployment of suitably trained drivers/ cleaners with proper PPE/ fire hydrants etc. and maintenance of tanks are the sole responsibility of the Transporter.
- There are certain clauses that state upfront that "[Shipper 'x']'s insurance policy does not cover rain damage. During monsoons the Multimodal Logistics Service Provider should provide additional plastic sheets to ensure that the material does not get wet." In another case, “in the event of rejection of any material by the Consignee on account of damages because of rain [Shipper 'x'] shall be entitled to deduct the entire cost of the goods based on [Shipper 'x']'s invoice, from the amounts payable for bills raised by the Multimodal Logistics Service Provider."

Such wordings contractually close any hope that the LSP might have about the extra safety net that the Corporate Shipper's cargo policy might provide in case of an eventuality.

Many a time, Shippers tend to transfer their responsibilities and liabilities to the LSPs. Some corporates find it easy to take care of small claims by making deductions from the freight account payable. For some, this would save on the efforts of entering into cargo insurances as well.

Some clauses in the contracts appear heavily one-sided and are highlighted herein.

- Clauses like the following used in the transportation of food and beverages may unwittingly attract liability. “The Transporter undertakes that the Goods are not adulterated or mixed with any spurious or duplicate goods or any other goods. The Transporter shall hold the Company harmless and keep fully indemnified against any claims, actions, expenses or losses arising out of or relating to the breach of this provision and in such an event, the Company shall further have the right to terminate the Agreement forthwith without any liability.” In cases where the consignment is produced by an outsourced/ sub-contracted (conditions of which the LSP is not privy to) entity, with no quality checks at the point of acceptance, the LSP would be exposing itself to the entire range of Product liability scenarios that can emerge if the consignment is found contaminated, unfit for consumption or even hazardous to the consumer.

Many a time, Shippers tend to transfer their responsibilities and liabilities to the LSPs. Some corporates find it easy to take care of small claims by making deductions from the freight account payable.

- One comes across friendly looking clauses that absolve the liability of the transporter when the consignee refuses to accept the consignment. However, contracts are mostly silent on the incremental liability that falls on the LSP in such cases due to physical loss or damage due to fire or flood at the destination warehouse. Liability, that may attach to the LSP consequent to such refusal are also not usually spelt out.
- One also comes across certain blanket clauses that absolve the shipper from multiple liabilities even when he is at fault; and leave the transporter to rend for himself. An example for the same reads as, "However, [Shipper 'x']'s liability in this agreement will not exceed the outstanding amount to be paid to the Transporter for the services rendered under this agreement."

Such conditions are one sided and leave no room for the LSP even when liability situations happen due to 'force majeure' situations or even due to inherent vice.

- The logic of conditions like the following can be baffling. "Multimodal Logistics Service Provider shall be liable for any loss or damages to its employees, [Shipper 'x'] employees, consignor/ consignee's employees or third parties from fire, leakage, negligence, explosion, accident, or any other cause in operating the vehicles at the time of loading, unloading or while in transit and the Multimodal Logistics service Provider shall indemnify and keep indemnified [Shipper 'x'] against any such loss or damage and shall pay to [Shipper 'x'] such amounts as [Shipper 'x'] may be called upon to pay." These are considered heavily one-sided and can be interpreted to pass on a lot of liabilities to the LSP than they would have bargained for.

The set of clauses reproduced below are worth attention, “Rain damage is not covered under the [Shipper 'x']'s insurance policy. In the event of rejection of any material by the consignee on account of damages because of rain [Shipper 'x'] shall be entitled to deduct the entire costs of the goods based on [Shipper 'x']'s invoice from the amounts payable for bills raised by the [LSP 'y']." "In case of stock receipt in wet condition (rain damages) at the destinations [Shipper 'x'] will deduct entire loss amount of stock damaged due to wet from the [LSP 'y'] payment without any discussion." "In case of any damage, shortage, pilferage or theft in transit of goods, [Shipper 'x'] shall be entitled to deduct from the accounts payable for bills raised by [LSP 'y'] the value of the loss, provided the loss upto 1% of the invoice value of the consignment or Rs.10,000 (Ten thousand only) whichever is lower.”

Such clauses usually correspond with the ‘excess’ (deductibles) level mentioned in the Cargo policy of the Shipper, whereby insurance company keeps itself free of low value claims as also ensures care and responsibility from the Shipper. By including the above set of clauses, the Shipper is transferring such care and responsibility part to the LSP, saving on premium and enjoying full insurance cover.

- Some contracts specifically demand a Carrier's Legal Liability as part of the contract conditions. "Each vehicle that may be offered by [Shipper 'x'] (whether owned by itself or through its agents or vendors) for Services shall be covered by the Carrier's Legal Liability Insurance Policy obtained by the [LSP 'y']. ([Shipper 'x'] shall not have any liability of damage to public property, environmental pollution etc. arising out of any vehicles provided by [LSP 'y'], whether such vehicle is spot hired from or taken on dedicated basis from [LSP 'y'].

It would help the LSP to select the Carrier's Legal Liability Policy that covers its interests fully.

The bigger players are generally able to draft contract wordings defending their interests and limiting their liabilities. Research by the World Bank[10] highlights the lack of standard contracts for transport services and integrated logistics services among the weaknesses in the business practices of the sector. Stressing on better regulation of transport and logistics services, it points out that policies and regulations that affect the organization of the sector need to be modified to improve the quality and reliability of logistics services. The World Bank Study emphasizes the need to "provide technical assistance to introduce professional standards, certification, and contracts for logistics service providers, and to promote the expansion, integration, and upgrading of scope and scale of services offered".

There are international legal firms[11] that specialize in assisting the transport and logistics industry in the negotiation and drafting of freight forwarding contracts for both forwarders and cargo owners. They negotiate and draft contracts for specific logistics projects including gas and oil plants, high-end electronics and pharmaceutical products. In an attempt to minimize fraud they provide advice on security in the supply chain network, which involves pilferage from warehouses, internet haulier fraud and other forms of criminal activity.

The TCIL & III Research Study finds that it would be good for the Logistics and Warehousing Industry to design standardized contract wordings for different cargo types such as over-dimensional cargo, hazardous cargo, highly fragile goods, high value cargo, consignments, etc. as well as for different industries like electronics, crackers and fireworks, textiles, processed foods, perishables etc. as well as general wordings for all cargo. However, the industry is yet to arrive at common standardized contract wordings and specialized wordings for special consignments. Again, though bigger LSPs have risk management practices in place, standard risk management practices are absent at a pan industry level. Among the smaller LSPs, some do not pay enough attention to the contract wordings, some are incapable of doing so and some helplessly accept one sided contract wordings. When liabilities arise, many of them are not able to defend their cause.

The industry is gradually moving toward the increased adoption of technology. Machine-enabled decision making is more in vogue with analytics and Big Data working as catalysts.

### 1.2.5 Systems for Efficient Driving:

It has been observed[12] that though Drivers are the backbone of this industry, their skills are very rudimentary. This situation is exacerbated by the lackadaisical licensing systems of some State Road Transport Departments. The fallout of this situation are high in terms of the commercial costs of the LW Industry (high third party insurance charges, high price of carriage due to short supply of drivers, and high vehicle maintenance cost). Entailing social costs[13] include high rates of road accidents, damage to goods, loss of life, pollution by vehicles and overloaded and under-powered vehicles continuously damaging the road infrastructure and causing the Government to spend heavy road maintenance costs.

Another point that has been observed from the experts interviewed is that of fake driving licenses. These get noticed by the Transporters and the authorities only after an accident and vitiates the position when insurance claims are lodged. LSPs who do not have any mechanism to find the veracity of driving licenses are often at the receiving end of this situation. This concern can be addressed only by making the Governmental systems for issuing/ renewing motor driving licenses more robust. Possibly, making mechanisms like "Aadhaar' linking compulsory and providing mobile apps to check the veracity/ validity of licenses can help. Another important measure would be creating a centralized database of drivers' accident records. Though this cannot generate any instant solution, such information systems can make matters better over a period of time.

[10] Trade and Transport Facilitation Assessment - A Practical Toolkit for Country Implementation, Mona Haddad and Marc Juhel of the World Bank, 2010, The International Bank for Reconstruction and Development/ The World Bank - http://www.tfafacility.org/sites/default/files/case-studies/trade-transport_facilitation_assessment_practical_toolkit.pdf

[11] 'Transport and logistics' - http://www.kennedyslaw.com/transport-logistics/

[12] Report of the Working Group on Logistics Government of India Planning Commission Transport Division New Delhi (Feb. 2000)http://planning-commission.gov.in/reports/genrep/ rep_ logis.pdf

[13] ibid

### 1.2.6 Changes in the way the Business is Done:

The industry is gradually moving toward the increased adoption of technology. Machine-enabled decision making is more in vogue with analytics and Big Data working as catalysts. The need for faster turnaround time is pushing the logistics industry to mechanize. LSPs are moving to Radio Frequency Identification (RFID) devices, Tracking/Transportation Management Systems (TMS), Supply Chain Information Management Systems, Inventory Management Systems, Warehouse Management Systems (WMS), EDI Electronic Data Interchange[13] (EDI), Distributed Order Management (DOM) systems, while Cloud Computing is eliminating the need for internal IT infrastructure. Developments in Battery technology allow warehouses to draw energy from either nearby power grids or from renewable energy sources (like solar power). This portends (a) greater automation using local/ affordable energy sources and (b) access to remote locations away from traditional sources of energy. Longer-lasting Lithium-ion batteries which can last up to 10 years before needing replacing are expected to power trucks and warehouse equipment at lower costs without impacting on productivity.

Warehouse operations also are fast becoming technology enabled, seeking lower costs and higher efficiencies. Technologies like Automated Warehouses[14] have come up with RFID tags for tracking and retrieving specific packages. Combining[15] Drone technology with RFID is expected to save floor space and allow higher stacking in warehouses. Robots are already playing a big part in improving automation in warehousing and several robot manufacturers[16] worldwide offer robotic solutions that make inventory, stock taking and picking faster. Picking Robots, which can distinguish items of different shapes and sizes, are also expected to slowly grow to out-perform humans. All these changes will soon make completely automate warehouses commonplace. EDI is slated to automate warehouse procedures like placing Purchase orders, Warehouse shipping orders, Warehouse stock transfer receipts, Warehouse shipping advices and Warehouse inventory advice and improve efficiency. This has to be achieved by seamless and highly visible flow of information between different computer systems.

Delivery Drones show promise in reforming distribution and delivery activities. Autonomous Vehicles can follow programmed low-traffic routes, run on holidays and operate through the night. Supply chains would operate more quickly and become more predictable. Large-scale implementation of these technologies is yet awaited.

Even the construction of warehouses is expected to change. The 'single-envelope' technology[17] utilising composite panels in the construction is expected to improve energy efficiency, air-tightness and durability especially for cold storage facilities. A detailed write-up on Warehousing, Storage, Stowage Standards and Loss Reduction is presented in Annexure 'D'.

While changes have increased the efficiency of the Logistics industry multifold, the new business environment has made the infrastructure of LSPs much complicated, costlier and arguably more vulnerable to disaster on the one hand and increased their liability related vulnerabilities sky-high on the other.

**1.2.7 New Issues and Challenges in the e-Commerce Context:** With the popularity of e-commerce newer challenges are emerging for the logistics provider.

- As the transit system follows electronic placing of orders and intricate messaging from portals to portal, taking care of goods in transit pose new challenges for e-commerce companies. In certain geographies the main logistic provider has to work with small players (sometimes on vague contract terms), who are not ready to take any responsibility in case of loss.
- This is quite pronounced in case of electronic goods where the ticket size is


[13] http://www.transport-exhibitions.com/Market-Insights/Cold-Chain/Archive/Warehousing-Innovations-New-Technology

[14] http://cerasis.com/2016/08/31/new-technologies/

[15] The Fraunhofer Institute for Material Flow and Logistics, of Dortmund, Germany is working on this technology.

[16] Like Amazon Robotics (erstwhile Kiva), Swisslog and Grenzebach

[17] Demonstrated in the construction of frozen food warehouse of ISD Solutions, the UK's leading specialists in cold storage design and construction, where construction time and costs were reduced by 20%.

high and transit loss exposures are significantly higher.

- These challenges coupled with the unfamiliarity of the e-Commerce terrain make insurers shy away from e-Commerce companies.

- As it is tougher to get insurance protection, e-Commerce companies insist on passing on the liability of the damage to the logistic providers.

- **Return of Goods.** With many e-Commerce companies offering free home trial of goods like garments and accessories, many consignments are returned. Even though in reality these goods are new, insurers treat them as second hand and offer only basic marine cover and do not grant 'all risk covers'[18] for such goods. Further, in respect of return goods in e-Commerce transactions, it is often difficult to identify and prove when, where and in which leg of the journey the loss/ damage happened.

- In respect of reverse logistics necessitated by non-delivery[19] of goods due to various reasons (including non-acceptance of goods by the Consignee), this trend is generally found and insurers are not keen to provide insurance.

- Though insurance companies have generally been unsupportive of the e-Commerce segment due to adverse claims ratios, the trends are changing with e-Commerce companies introducing systems like 'first mile leg' (in transit from supplier/ vendor location to e-Commerce company warehouse) and 'last mile leg' (transit from e-Commerce hub/ warehouse to End User), where transit of goods is done strictly by the e-Commerce company employees or their in-house logistics departments, whereby, they have been able to reduce losses significantly.

- In case of intermediate storage[20] the third party may need to hire the third party storage facility which may not have property insurance and in cases where the shipper has not taken the marine insurance and the entire liability falls on the logistics provider in case of any loss during such intermediate storage.

- **Fixing the Quantum of Loss:** Fixing the value of the claim has always been a challenge in situations of loss. The time honored position is that if the goods were bought at wholesale prices, the claim against the carrier must be limited to that price[21]. However, if the owner no longer has access to the wholesale[22] market, and to replace goods must buy at retail, he may recover against carrier on the basis of retail price. In the new scenario of Business to Consumer (B2C), manufacturers/ large dealers using the logistics industry to deliver directly to customers at their doorsteps, the lines between wholesale price and retail price are becoming thinner.

LSPs may have to check their contract wordings to ensure that in the B2C scenario, they do not inadvertently end up compensating the price including the freight.

LSPs may have to check their contract wordings to ensure that they do not inadvertently miss out on the age old practice of compensating on the basis of wholesale pricing.

- Another aspect is that conceptually, the invoice price contemplates[23] and includes the cost of freight to destination. Traditionally, this has been understood to imply that if freight charges have been prepaid, they will not be specifically refunded. Payment of market value at destination includes the freight charges. But if shipper files claim on the basis of invoice cost or replacement, it may include prepaid freight, as the freight is not earned by the carrier until safe delivery has been effected. [Where the loss is partial, a pro-rata part of the prepaid freight, may be claimed in such situations.] In the B2C scenario, where the logistics industry has to deliver directly to customers' doorsteps; with handling charges stated specifically (or otherwise), the liability of LSPs from the freight inclusion angle can be ambiguous.

- In the context of in-country transit, however, one does not find an insurance cover for the credit related risks of the LWI. Credit insurance is generally expected to enable companies that use traditional operating lines of credit for financing to borrow[24] more money on the same asset base. Though there are institutions that guarantee Credit to Exporters, similar coverages are very rarely available to LSPs. There are a few insurers who take into account[25] "the intricate complexities of risks and exposures faced by the logistics industry, as well as the need for protection against bad debt

---

[18] In contrast to 'named peril' policies where all the risks covered are listed out, in 'All risk' policies, all risks other than those specifically excluded, generally stand covered.

[19] Mostly in 'Cash on Delivery' cases

[20] 'Intermediate Storage' refers to storages at intermediate locations incidental to transit. Such storage is normally done for purposes like unbundling/ repacking for distribution, waiting for the vehicle for the next leg of transshipment, clearances at port warehouses etc. Storage can be in transit sheds, bonded warehouses, carriers' godowns, clearing and forwarding agent's godowns, railway platforms, railway yards or at warehouses owned/ hired by the cargo owner.

[21] Handbook on Transportation Insurance Claims, Harold S.Daynard, Insurance Advocate, Roberts Publishing Group, New York, 1961

[22] In the United States Supreme Court decision of Illinois Central RR. Co. v. G. I. Crail, it was held that the whole-sale market price should be used in measuring the loss of a bulk product like coal in transit to a wholesaler.

[23] Handbook on Transportation Insurance Claims, Harold S.Daynard, Insurance Advocate, Roberts Publishing Group, New York, 1961

[24] TransCred Insurance, Millennium Credit and Political Risk Insurance - https://www.theguarantee.com/site/uploads/documents/ TransCred_Sales-Sheet_ENG.pdf

[25] Sterling Risk Advisers, Georgia, USA - http://sterlingriskadvisers.com/transportation-logistics-insurance.php

losses across all industries" and provide insurance solutions including transportation/ logistics, cargo and trade credit insurance to reduce their risk and provide protection.

LSPs may have to check their contract wordings to ensure that in the B2C scenario, they do not inadvertently end up compensating the price including the freight.

### 1.3. A Grey Area for Insurers

Marine Insurance is bought by owners or prospective owners of cargo for covering their transportation risks. As per law, at the time of loss, the buyer or seller is required to establish their title to the cargo to claim the insurance money. Marine insurance policies are traditionally not given to Logistic Service Providers or Carriers who are engaged in the transportation of cargo by road/ rail/ courier as they are bailees engaged for the purpose of delivery of cargo under the Contract of Affreightment; and do not own the title of the cargo. Though these non-traditional insurances covering cargo damage under Marine Policies instead of, or in addition to traditional Carrier's Legal Liability coverages are of interest to logistic service providers, and some insurers are willing to provide them, many experts in the insurance industry are strongly against giving such covers. Those providing such coverage anchor themselves on the points that possession can be construed as ownership and that the traditional definition of insurable interest, "to be interested in the preservation of a thing is to be so circumstanced with respect to it as to have benefit from its existence, prejudice from its destruction"[26] is not violated in the context.

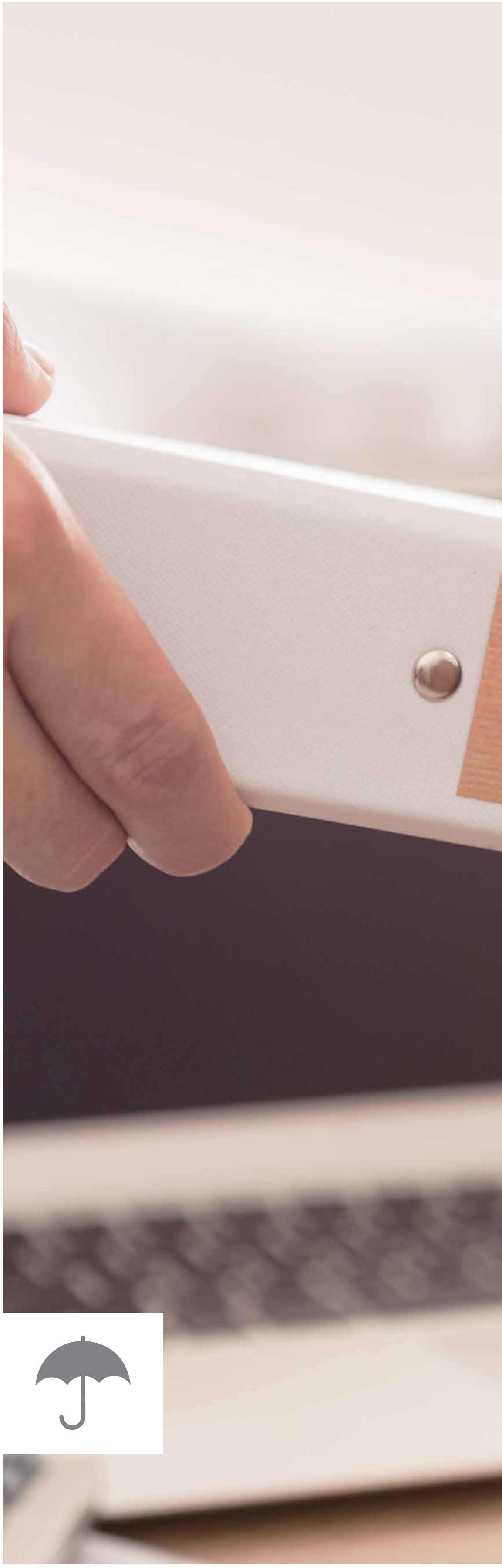
Insurers are interested in providing transit risk covers for the Consignors and Consignees.

Those who have an in-principle objection on providing such insurances to Carriers and Bailees hold that:

- The insurance interest contemplated by the Marine Insurance Act cannot be construed to be extended to these logistic providers for their liability interest
- The right of the insurer over the carrier may not operate vis-à-vis the owner of the cargo under various provisions of the Marine Insurance Act
- In the light of various provisions of the Marine Insurance Act, it would not be in order for an insurer to provide a Marine cover to the carrier as there would be conflict of interest

Some questions that cropped up during discussions are given below:

- What if Logistic Providers are authorized by the Cargo owner to insure their cargo?
- If LSPs are authorized, how insurers can safeguard themselves from liabilities due to moral hazard?
- If LSPs are authorized, how to define the 'insured' legally when they accumulate cargo of multiple owners at the same time?
- Even when LSPs are not authorized, can they be the sole insured for the Marine Policy?
- If so, what are insurers' challenges in protecting LSPs from liability to multiple cargo owners in cases of conflagration or floods?
- How to set limits to such accumulated risk liabilities?



[26] Insurable Interest, Lord Justice Lawrence in the case of Lucena v Craufurd (1806)


- Who will have the right to salvage after paying the loss – shipper, carrier or insurer?
- If both the owner of the cargo and the carrier has insurances how will the policies contribute?

Some experts felt that though there are no ready replies to such questions and challenges, as more and more policies of this nature are issued the market would find its own solutions. In other words, as the insurance industry strives to meet such new practical challenges of the market place, more claims and disputes, new solutions and practices would evolve over a period of time, sometimes through legal debates and Court verdicts.

Both the owner/ prospective owner and the carrier have insurable interest but the nature and value of such interest varies. Naturally, different insurance solutions are to be carefully designed and different policies need to be provided to those who require them.

## 1.4. Need for Closer Attention

The dichotomy of the situation is that though the entire business of insurance is that of taking over the risks of others and earning premium for the same, insurance companies are not keen to give insurance protection for Logistics and Warehousing service providers for the goods in transit in their custody and care. Insurers are interested in provide transit risk covers for the Consignors and Consignees. They are generally willing to provide Carriers' Legal Liability policies to the Logistics industry as well.

The overall situation calls for a very close look at the needs of the Logistics and Warehousing industry on the one hand and the concerns of the Insurance companies in providing risk cover on the other. It would be a challenge for insurers to design and provide the cover appropriate to the respective insurable interest- a damage policy would be appropriate for one, while a liability policy would be needed for the other. Once the pain areas of both industries are correctly identified sustainable win-win models would evolve.

Even when the legal scenario is in their favor, in many contexts including business interests, customer relationship, gaps in wording etc., in actual practice, LSPs end up paying for losses that they are not actually liable for in many cases. Hence, it needs to work laterally with multi-pronged strategies like facilitating and incentivizing goods owners to insure, getting regulators to cause congenial environments for insurance, designing simple and need based insurance solutions for different stakeholders and different situations, learning from or adopting best practices from other industries and other markets, creating evidence based case studies for convincing the Logistics customers and collective action and advocacy by the Logistics industry could be some of the solutions. One of the steps towards achieving this is by members of the LW Industry coming together and forming a strong professional body to take care of common purposes and interests. The body should be as inclusive as possible and be able to secure Governmental recognition.

Even when the legal scenario is in LSP's favor, in many contexts including business interests, customer relationship, gaps in wording etc., in actual practice, LSPs end up paying for losses that they are not actually liable for in many cases.

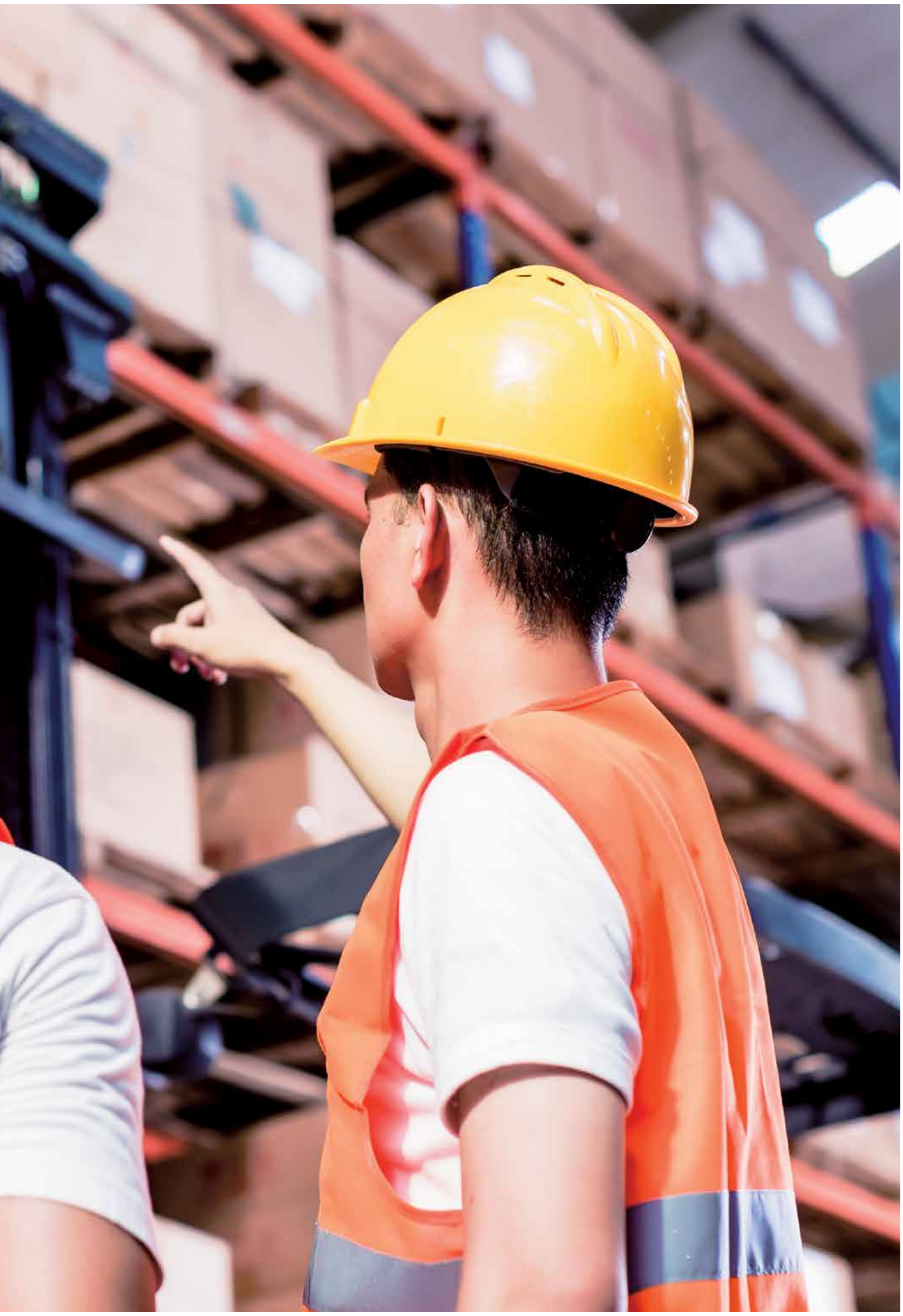
## 1.5. Experiences Shared by Insurers

Case Study[27] 'ABC Logistics' was contracted to deliver a container of electronic parts from a factory in Shenzhen to Yantian cargo terminal for an outward sea transit to Italy. The land transit from the factory to the cargo terminal was subcontracted to another transportation contractor. Upon arrival at the consignee's warehouse, it was discovered that 205 cartons of electronic parts were missing. This amounted to US$13,000 in losses. Eventually, an investigation revealed that the missing cargo may have been stolen during transit from Shenzhen customs to Yantian cargo terminal. The driver of the subcontractor had also fled. Irrespective of whether or not 'ABC Logistics' was the directly responsible party for the liability resembled in this case, they were primarily liable for the loss caused by their subcontractors at all levels. The Insurers' Freight Forwarders Liability (FFL) policy helped to cover some or all of ABC Logistics' US$13,000 liability in accordance with the policy's terms and conditions.

Case Study[28] A shipment of toys was dispatched from Hong Kong. In order to catch the peak season, the consignee requested for the logistics operator to release the cargo before the original bill of lading arrived. In view of the long-term

[27] Freight Forwarder Liability Insurance, AIG Asia Pacific Insurance Pte. Ltd. http://www.aig.com.sg/content/dam/aig/apac/ singapore/documents/other/sg-marine-freight-forwarder-insurance-fact-sheet-2016.pdf

[28] ibid



business relationship with the consignee, the logistics operator did so as requested in the absence of the required document. After receiving the cargo delivery, the consignee disappeared without paying. This resulted in the shipper filing a claim of US$90,000 against the logistics operator. Due to proof of negligence of releasing the cargo without the bill of lading, the logistics operator was held liable for the alleged claim. The Insurers' Freight Forwarders Liability (FFL) policy helped to cover some or all of the logistics operator's US$90,000 liability in accordance with the policy's terms and conditions.

The study pursues this thought process.


20

CHAPTER 2

# Insurance Solutions

Logistics Service Providers[28] (LSP) are exposed to a large number of risks including liability risks emanating from their business operations like arranging shipments, providing advice on transportation and transportation-related services for shippers, freight carriers and other related entities. For the purpose of this study, a broad range of business operations and services traditionally provided by LSPs (including and beyond the services rendered by carriers, warehouse providers, terminal operators, freight forwarders, non-vessel operating common carriers, multimodal transport operators and brokers) are considered. These can be broadly grouped[29] as follows: (Definitions and details are presented in Annexure 'F')

[28] Logistics Service Providers: This terms is based on the definitions in the 'Guidelines for Minimum Standards and Codes of Professional Conduct for Freight Forwarders, Non-Vessel Operating Common Carriers and Multimodal Transport Operators' (2011) and the 'Guide to Key Issues in Development of Logistics Policy' of the United Nations Economic and Social Commission for Asia and the Pacific, (Dec. 2013) http://www.unescap.org/resources/guide-key-issues-development-logistics-policy

[29] ibid

- **Assembly:** There is a wide range of assembly activities that can be carried out in the context of logistics services, covering both low-end assembly (such as kitting) and high-end assembly (e.g. assembly of final product based on store requirements). These activities can take place at client premises or the warehouses of LSPs. Kitting services could also be included in the role of freight forwarder as they may involve basic labeling and repackaging services.

- **Supply chain:** LSPs increasingly offer services from the perspective of supply chain rather than transport. This can include logistics consulting and supply chain design, management of supply chain, operation of supply chain, operating as lead logistics provider, procurement responsibilities or inventory management.

- **Quality control:** LSPs may provide technical testing, localization and quality inspection services, either as in-plant services or at the warehouse.

- **Financial services:** Some providers may choose to provide collateral management services and act as insurance brokers for their customers optimizing situations, as required.

- **Customer services:** LSPs may assume responsibility of such back-end customer service activities as returns and repairs, operate the call centre (particularly relating to warranty and technical support), and provide reverse logistics services.

Some of these risks and concerns[30] would be shared by entities like rail transporters, air cargo agents and brokers and others who are not specifically mentioned herein.

One should be careful to separate the activities not related to logistics from purely logistics and transportation in order to keep the protection simple. Every extension of activity should carry its own appropriate insurance for the risks involved.

## 2.1. Concerns

As many of the practices of the developed markets get propagated and absorbed in growing economies at a fast pace; and given the speed at which the Indian Logistics industry is growing and maturing, a few concerns of the Logistics industry in other countries are also incorporated. It is also pertinent to point out that the Indian Courts are also progressively awarding higher and higher compensations in diverse types of liability related cases, ranging from road accident victims to cyber breaches.

**2.1.1 Property and Physical Infrastructure:** Major players in the Logistics industry own or control large infrastructure including warehouses, office spaces, computer networks, vehicles etc.

**2.1.2 Liability Exposure from Logistics Operations:** There are diverse operational risks and ensuing liability exposures emanating from instances of negligence as also from breaches of contracts, which could lead to huge unexpected legal consequences, if not managed effectively. Competition can create circumstances that make players over-commit or even over-sell their service capabilities, which can turn out to be devastating for LSPs.

> Certain contracts make Logistic Service providers responsible for processing, following up and resolving cargo losses on behalf of the Owners of Cargo.

**Transportation Management:** In preparing a shipment for transport, there can be instances of incorrect packaging or mislabeling arising out of negligence Also, the LSP may fail to identify all rules and classifications related to the freight.

**Load Management:** In situations where LSPs are responsible for load management, managing the load of shipments correctly and properly is an area where negligence can attract liabilities. Gaps in communicating shipment details such as the nature (perishables), size (projecting edges or obscure centers of gravity) and value of the shipment can cause errors in routing, loading, dispatching and situations of non-adherence to the prescribed conditions of transportation. One important aspect of this is the choice of the appropriate vehicle for transportation and proper loading, covering and lashing of the cargo to prevent accidents or damage during transportation.

**Claims Management:** Certain contracts make Logistic Service providers responsible for processing, following up and resolving cargo losses on behalf of the Owners of Cargo. Here again, slackness in presenting supporting documents to the respective authorities in time, or in effectively following up matters can give rise to liabilities.

**Supply Chain Management:** Erroneous information, data or assumptions that go into analytical reports, security information or cost-benefit analyses that are prepared to help customers in making informed decision making or merely for customer value add, can also attract liabilities.

**Value Added Services:** LSPs provide value added services before commencement of the transit, during intermediate storage and at final destination. Such services range from product pre-assembly, sequencing of materials flowing into the manufacturing process on a just-in-time or just-in-sequence basis, packaging design, procurement of packaging materials, kitting, bulk breaking, labeling and bar-coding, bundling, grouping, finishing, co-packing, customized packaging like poly-bagging, shrink rapping, managing returned/ rejected goods as also disposal of goods. These services help the shipper in saving time and cost, reducing waste and labor costs, while increasing speed-to-market. Some LSPs support product launches, promotions and customization for local markets. LSPs sometime offer economical returnable containers. Some

[30] Third Party Logistics Providers Liability Risks, Marsh & McLennan Companies - Insurance Brokers and Risk Managers, USA. https://www.marsh.com/us/insights/research/third-party-logistics.html

provide packaging compliance services, helping shippers to meet local packaging legislation requirements thereby increasing the flexibility of operations. From an LSP perspective, such value-add functions actually increase the value at risk, expose the consignments to multiple parties (often outside the LSP's span of control) and essentially make the entire operations more risk and liability prone. The case of an Indian watch manufacturer collecting watch parts from its own factories and various OEM partners at multiple locations to one location (intermediate storage) where these would be assembled as watches and then sent for dial-fixing/ labeling and box-packing at another place (intermediate storage) was narrated by way of illustration. These would then be sent to multiple locations where the boxes would be unbundled, repacked and delivered to different dealers/ showrooms. The above process was done by the shippers using their own transport and warehouses in the 1990s and insurers made special provisions/ wordings to cover the variations of value at different transit points. In today's world, LSPs are taking up many such services and actually exposing themselves to multiple risks of loss/ liability. In the new scenario, however, insurers may not be keen to cover such risks as understanding and assessing the risk and liability exposures may be quite challenging.

**Records Management:** In some markets, LSPs are expected to maintain data on payments, inventory and shipment related information (lost cheques, lost receipts, lost credit notes, lost bills of lading, temperature control logs), which need to be retrieved from time to time. Negligent record management can hamper retrieval of data or result in loss of data, causing liability exposures.

**Administrative Services Management:** When administrative services like making certain payments are part of customary/ contractual responsibilities of the Service Provider, situations like non-payment, delayed payments or imperfect assessments can attract fines/ penalties/ loss of incentives/ legal fees/ delays and other monetary exposures.

**Warehousing Risks and Management of Facilities:** LSPs are exposed to warehouse risks as well. In situations where LSPs are responsible for managing their customer's facilities and warehouses, situations of negligent management like employing incompetent laborers can cause higher liability exposures.

In this regard, a Legal Dispute[31] on 77 packages of mulberry/ natural silk garments sent from Uttar Pradesh to Mumbai was found relevant. The consignment (to be exported to the United Kingdom) was not delivered to the Clearing Agents of the Shipper at Mumbai, as it was completely destroyed by fire while in storage at a warehouse in Bhiwandi, on the outskirts of Mumbai. The Shipper filed a claim petition for recovery of a sum of Rs.3.6 million along with interest at the rate of 18% per annum plus costs before the National Consumer Disputes Redressal Commission (NCDRC) due to non-delivery of the consignment. The case was contested by the Carrier pleading that the goods entrusted to them were carried by them with due care and stored in a warehouse near the port of onward shipment on the instructions of the Consignee. The Carrier pleaded that there was no negligence or deficiency in service on their part as the fire had suddenly broken out in the adjacent warehouse and spread to the warehouse where the consignment was kept, causing its destruction. In response to an allegation that the Carrier had not asked the Shipper to get the consignment insured, the Carrier pleaded that as per the terms and conditions of the contract of the carriage the goods were carried at the owners risk, unless a special Insurance of Rs.0.80 for every hundred rupees of value declared by the vender, had been charged, paid and endorsed on the goods consignment note. The contract had also provided that the Carrier[32] "shall not be responsible for any loss or damage due to theft, fire explosion or accident, unless the special insurance charges, as stated" was charged and paid.

In situations where LSPs are responsible for managing their customer's facilities and warehouses, situations of negligent management like employing incompetent laborers can cause higher liability exposures.

The NCDRC disposed of the matter observing inter alia, that "It is not the case of the Petitioner that the carrier did not take adequate precautions or steps to save the goods from the loss by the fire. On the other hand, it has been successfully proved by the carrier that the consignment of the Petitioner was diverted... on the specific instructions of the consignee and further that the loss was caused by fire which was beyond their control. It has been mentioned by them that they took due care, within their capacity and new (read 'now') they have lodged a claim on the owner of the adjoining godown from where the fire started." It was also observed that as per Common Law, the Carrier[33] "is liable for all loss of, or injury to those goods while they are in the course of transit unless such loss or injury is caused by the act of God or by the State enemies or is the consequence of inherent vice in the thing carried or is attributable to consignor`s own fault," and hence they were not held liable for the loss caused by the fire. It was also observed that the goods were carried at 'owner's risk' (no insurance premium was paid). The Supreme Court of India took note of the above logic and did not question the stand taken. However, since the Commission had not considered the contention that the letter authorizing the diversion was forged or

---

[31] Nath Bros. Exim International Ltd. Vs. Best Roadways Ltd., The Supreme Court of India, C.A. No.1 of 1997, 27.03.2000.

[32] ibid

was procured collusively, it could not uphold the judgment of the NCDRC. The judgment by the NCDRC was consequently set aside and the case remanded to them for disposal afresh.

**Risk Assessment/ Contractual/ Outsourced Services:** Apart from negligence, many consider breaches of contract as the major reason for liability disputes. These often arise from gaps between the understanding of contractual obligations between LSPs and their customers. The position can get complex due to inadequate performance of their sub-contractors, often due to negligent drafting of sub-contracts and contracts outsourcing certain activities. Though large LSPs have legal departments that limit their contractual liability through cleverly worded contracts, experts hold that a majority of the liability risks of the small LSPs who do not have such expertise, are likely to remain and that these risks would need to be managed through loss control procedures or through the risk transfer mechanism of insurance.

**2.1.3 Copyright, Trademark and Confidentiality:** Logistics Service Providers are usually in the possession of significant quantities of confidential or protected information concerning many consignors, consignees and carriers. Instances of the use of information on the internet giving rise to significant copyright, trademark and other unauthorized use and infringement are on the increase. Service Providers can be held liable for disclosure of such confidential and protected information due to negligence or any other reason.

**2.1.4 Cyber Liability:** The modern day LSP has to maintain data and provide access to multiple entities including employees and outside entities on the intranet, extranet and internet with various levels of user rights and access controls. In additional to transactional data, it would need to preserve historical data also for accounting, marketing and other operational purposes.

**Data Breach:** Some Logistics providers have interactive websites that allow customers to interface with them on matters like choosing freight carriers, inquiring about shipments or inventory, and conveying shipping instructions. A breach of this huge chunk of data can create significant liability exposure for any individual player and proper security measures are warranted. Breaches can include theft of personal information by fraudsters or loss of the data itself.

**Denial of Access:** Further, failure of the Provider to properly manage or support such website activities, connectivity or access, or the security of the website, can expose itself to customer claims in case of loss or exposure due to confidentiality breaches. That is, despite keeping and having all the data in place, Logistics Operators can still be held liable if due access is not provided.

Instances of the use of information on the internet giving rise to significant copyright, trademark and other unauthorized use and infringement are on the increase.

**Corresponding Contracts:** As most customers contractually bind the Logistics Operator to provide access to online information through secure, trouble-free internet/ extranet access and management, when there are problems, the customer has the right to prefer a direct party claim. In such situations, unless the Logistics Operators have corresponding contracts binding the internet/ extranet provider, they may not have any practical recourse other than paying up.

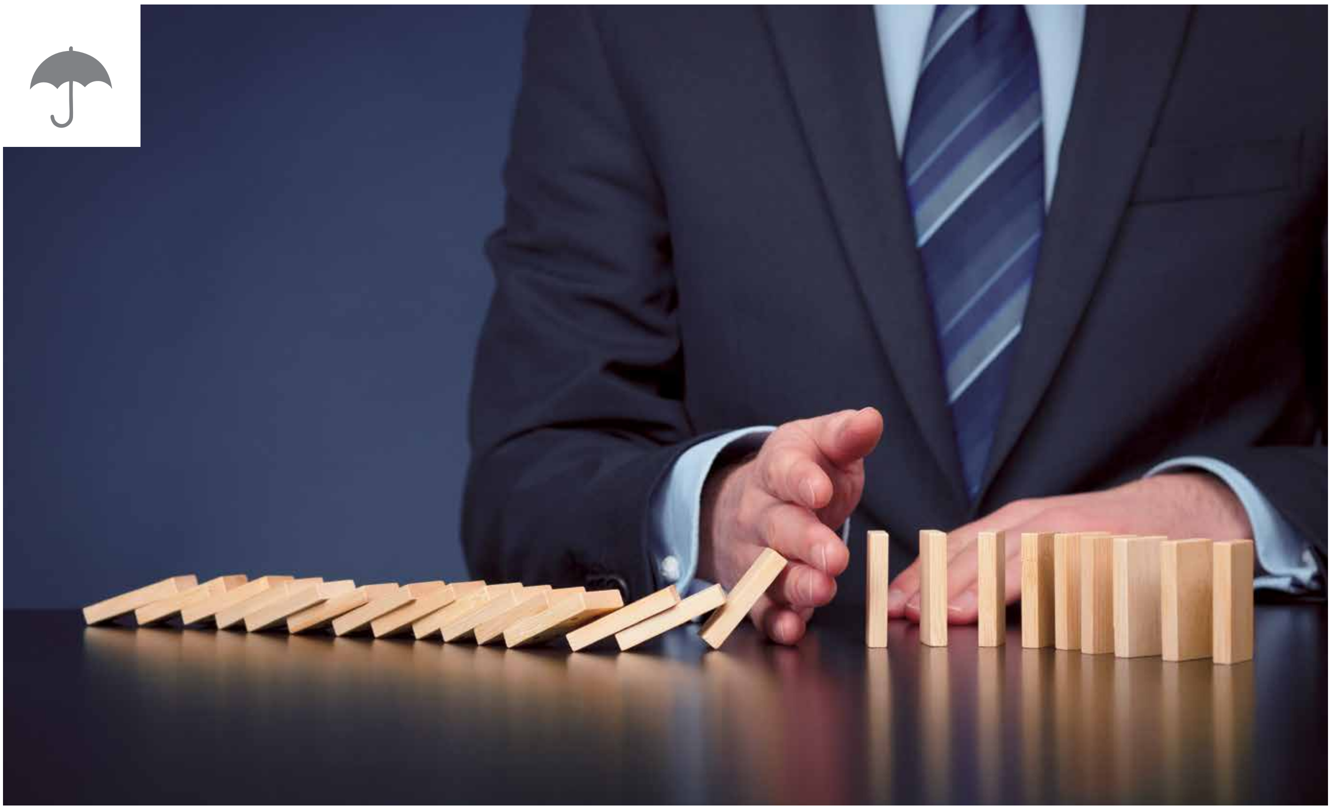
**Internet Exposure:** Logistics Operators are increasingly using static and interactive websites, emails, e-commerce and other internet means. Experts agree that the internet is a principal cause that is changing the transportation industry at a pace never before experienced. Electronic service delivery has forced Logistics Service Providers to change their business models to suit the internet era. Erstwhile competitors have been attempting to maximize the strength of collective networks at the regional and national carriers' level and all are trying to synergize. Shippers, who previously owned, contracted and operated logistics networks are found moving to Third Party Logistic Operators. "Internet shopping/ service portals are also being launched that allow transportation carriers of all sizes to shop on-line for every facet of their business needs, from purchasing tires and gasoline to route mapping and insurance."[36] As they shift from traditional methods of doing business to logistics and supply chain management services provided on the internet, they get significantly exposed to additional liabilities. Experts predict that conducting business over the web "will[37] increase the likelihood that companies will misuse, misdirect or otherwise destroy important and sometimes, confidential client information. Contracts designed to insulate businesses from unexpected mistakes will be challenged and will not be all encompassing, thereby leaving businesses exposed to liabilities for their alleged service failures." Some situations that can increase their liability due to internet exposure and electronic commerce are discussed below:

a. Shipping, Billing and Claims Documents. Electronic forms of documents like bills of lading, manifests, delivery receipts and air waybills, as well as billing, invoicing and claims handling are increasingly becoming online on the internet. In this scenario, the

---

[36] Third Party Logistics Providers Liability Risks, Marsh & McLennan Companies - Insurance Brokers and Risk Managers, USA. https://www.marsh.com/us/insights/research/third-party-logistics.html

[37] ibid



greatest advantages of the electronic environment, speed and simplicity, can accelerate and magnify the fall out of any error or omission made in the documents as these could get transmitted faster and to more entities than in the traditional pre-internet scenario. Again, when mouse clicks have replaced traditional making – checking - validating mechanisms, a couple of careless clicks can create immediate liability.

b. Contract Documents. Contracts addressing legal and operational issues like limits of liability, classifications, rates, routing, carrier practices, cargo and shipping information between service providers and their customers available on the internet are other sensitive documents that could pose liability risks.

c. Inventory, Tracking and related Information. As part of providing timely and pertinent information to their customers, LSPs post substantial information like carrier details, inventory, metrics and tracking information on the net. Lacuna of tracking mechanisms can make customers leave while negligence in tracking systems can increase the liability exposure of LSP's.

Lacuna of tracking mechanisms can make customers leave while negligence in tracking systems can increase the liability exposure of LSP's.

**2.1.5 Defamation Liability:** In many developed countries, there have been instances where the information posted on the Logistics Service Providers website, social media sites or blogs, can be perceived as defamatory or disparaging and entities like suppliers, carriers or customers make defamation claims against them. Such liability claims cannot be covered under any contract other that insurance.

**2.1.6 Negligent Hiring/ Oversight Claims:** Instances have been reported where the LSPs inadvertently hire/ engage carriers who (i) have no legal authority to act as carriers, (ii) have a history of poor business practices, (iii) have no appropriate security or safety measures for the transportation of high value products (such as electronics and computers) or (iv) do not have adequate motor insurance coverage without checking their antecedents and capacity. In cases where the customers or any third parties suffer loss/ damage as a consequence of such acts of negligence there can be liability claims.

The case where the United Kingdom[38] shipped a transportable degaussing

[38] The Government of the United Kingdom of Great Britain and Northern Ireland v. Northstar Services, Ltd., Albert E. Cantwell, and Panalpina, Inc. 1 F.Supp.2d 521 (Md. 1998) alleging negligence and breach of contract in the transport of a portion of a degaussing range, a containerized data gathering system, valued at over $1.5 million.

range[39] in a ten-foot container is significant from the point of view of liability due to negligence. The degaussing range which was transported for a joint defense exercise at sea being conducted by the governments of the United States and the United Kingdom was severely damaged when it was knocked off the truck on which it was being carried after the truck driver attempted to pass under a bridge with inadequate clearance. Consequently, the UK Government had to undertake extreme measures to assess the damage to the degaussing range and make alternative plans to fulfill requirements for the sea trials incurring extensive losses. The allegations by the UK Government were that (i) Cantwell, an owner/operator truck driver, negligently drove the truck carrying the equipment and failed to clear a bridge resulting in damage to the cargo; (ii) Northstar, a trucking company, negligently hired, trained, and supervised Cantwell in the transportation of the United Kingdom's equipment and (iii) Panalpina, an international freight forwarder and customs broker, breached its contractual duty to inquire into Northstar's financial condition and insurance coverage, to use reasonable care selecting a trucking company, as well as to inform Northstar of the nature, size, and value of the United Kingdom's shipment in arranging inland transportation.

As regards allegation (i) the Court observed that the ten-foot container was sitting on a one foot high flat-rack[40] which secured the entire load onto the truck. Cantwell was aware that the container, while placed on the flat-rack, was slightly higher than the height of the sides of the flat-rack, but he did not measure the total height of the load before embarking on the trip. He had received directions over the phone from Northstar to take the truck along highways and roads without any low overpasses. Not being familiar with the area, he missed a right-hand turn and turned onto another road where he encountered a bridge that was lower than the top of the container, due to which the container hit the bridge and got knocked off the truck. The negligence claim against Cantwell was dismissed. Allegation (ii) was dealt with as follows. Northstar had its own trucks in some areas, but in the particular area it engaged owner/ operators to transport its customers' cargo. Cantwell was an owner/operator who was working through another trucker, Bennie Davidson, who had a contract with Northstar to provide truck drivers, at the time of the accident. [Incidentally, Northstar had impleaded several insurance companies into the case all of which were dismissed and Northstar consented to liability prior to trial.]

The Courts observations on Allegation (iii) against Panalpina are of significance to this study.

(a) Contractual duties must derive from the contract itself. The Court found that

> **Contractual duties must derive from the contract itself.**

Panalpina had relied on the recommendations of the steamship companies who entrust their own cargo to these trucking companies and had satisfied its obligation to take reasonable measures to select a reputable trucking company. Moreover, Panalpina had used Northstar numerous (102 transactions during 5 months) times in the past and others in the office had been satisfied with Northstar's service.

(b) Panalpina had given Northstar sufficient information for it to transport the shipment safely, given the trucking company's expertise in hauling a variety of sizes of containers. Cantwell had seen the container firsthand at the dock, while Panalpina personnel had never seen it at all. Again, even if Panalpina had explicitly notified Northstar of a potential height problem, this would not have affected the cause of the accident. Cantwell had testified that he made a wrong turn, deviating from the directions he was given by Northstar. Northstar's directions did not involve any need to negotiate low overpasses. Only when Cantwell missed his turn did he encounter the overpass that caused the damage to the container.

(c) Panalpina did not breach any duty of reasonable care in failing to inquire directly into Northstar's insurance coverage prior to entrusting them with the cargo.

- Panalpina had checked up on the trucking companies through the equipment managers of the steamship and railroad lines.
- It had good reason to expect that Northstar had sufficient insurance coverage. Generally, steamship companies were known to have rigorous requirements for trucking companies which they used, including adequate insurance and a good reputation. The Court found these steps sufficient to meet a reasonable care standard and that the allegation of breach of duty of reasonable care was unfounded.
- Further, as per the terms and conditions there was a limit of $50 on Panalpina's liability for any loss or damage to the shipper's goods as a result of its own negligence, including loss or damage to the goods as a result of a third party's negligence.
- **Services by Third Parties.** There was a clause in the contract which stated that unless the Company carries, stores or otherwise physically handles the shipment and loss, damage, expense or delay occurs during such activity, it would assume no liability as a carrier and would not be held responsible for any loss, damage, expense or delay to the goods to be forwarded or imported subject to

[39] The degaussing range is a transportable data gathering system (used in the early 1990s) with a series of sensors and cables placed in custom built containers deployed at a specified water depth to monitor and minimize the magnetic signature (which can set off underwater enemy mines) of surface and sub-surface vessels. The range was an important tool to minimize the signatures allowing UK and US vessels to travel more safely in enemy waters. The 'brains' of the degaussing system (the subject of this litigation) was housed in a ten-foot container which functioned as the control center.

[40] The flat-rack is a two-sided frame with a bottom and when sitting upright looks "U"-shaped.

certain limitations, but "undertakes only to use reasonable care in the selection of carriers, truck-men... and others" to whom it may entrust the goods for transportation.

- **Liability Limitations of Third Parties.** Again, the contract authorized the Company to select and engage carriers, truck-men and others, as required, to transport, store, deal with and deliver the goods and provided that the Company "shall under no circumstances be liable for any loss, damage, expense or delay to the goods for any reason whatsoever when said goods are in custody, possession or control of third parties selected by the Company" to forward, enter and clear, transport or render other services with respect to such goods.

The Court observed that Panalpina had used reasonable care in selecting Northstar to transport the cargo and had not breached the implied duty to use reasonable care. It was also observed that Panalpina had not breach any contractual obligation it owed to plaintiff.

**2.1.7 Delay Claims:** There are many situations where delays can cause claims situations. It is possible that the Shipper has informed the Logistic Service Provider about the time-sensitive nature of a shipment, which may not have been heeded to out of negligence. Situations do arise where Logistic Service Providers fail to inform the third party transporters about the time-sensitive nature of a shipment. Both situations would result in payment of delay damages. In the Starmakers Publishing Corp. v. Acme Fast Freight, Inc. dispute[41], the shipper had failed to inform the freight forwarder that if the consignment of posters depicting characters from the movie "The Gremlins" could not be delivered before the day of release of the movie, it would result in a total loss of value (the full case is presented in Annexure 'E'). The freight forwarder did not have to pay the delay claim only because the shipper was negligent in stating that the consignment was time-sensitive. Logistic Service Providers in India can be in the same position in situations if the negligence is on their part.

**2.1.8 Hazardous Materials Claims:** Logistic Service Providers are often involved in arranging the transportation of hazardous materials. When they fail to procure the requisite insurance coverage and maintain the paperwork mandated by law or require the carrier to do so, they could be liable for any directly attributable loss/ damage. Maintenance, pick-up and disposal issues can also come up as part of the inherent dangers in transporting and storage of hazardous materials.

Large Logistic Service Providers involved in different aspects of the distribution chain would be invariably exposed to multiple types of disputes and require appropriate insurance protection.

Large Logistic Service Providers involved in different aspects of the distribution chain[42] would be invariably exposed to multiple types of disputes and require appropriate insurance protection.

**2.1.9 Gaps between Insurance Policies:** There are situations when the Logistic Service Provider gets into a liability situation which is not covered by the cargo owner's insurance policy and the warehousemen's insurance policy. In such cases, unless the entire set of documents can provide robust support, the Logistic Service Provider would have direct liability to its customer for negligence. One can also be held liable for failing to ensure that the correct insurance coverage was maintained on the stored or transported product. For example, failing to identify exclusions for rust on steel products being stored can cause liability exposures.[43]

Also, Logistic Service Providers may not be able to visualize, contractually limit or eliminate liability situations which can arise when appropriate insurances are not in place or when the required terms of insurance are not fulfilled. For instance, in cases where inventory values fluctuate significantly, negligence in failing to assess the inventory value accurately or failing to report such change in inventory value to the insurer, can cause a gap in insurance coverage.

**2.1.10 Legal Costs:** When Logistic Service Providers fail to provide services due to negligence and face breach of contract liabilities, they are drawn into situations of paying significant fees to attorneys. In some situations, they may be liable for the claimant's attorney's fees as well. Large Logistic Service Providers may be able to contractually avoid attorney fee claims in some situations. However, their smaller counterparts may not be able to do, especially with customers having high bargaining power. Again, in cases of claims arising out of negligence, it may not be practically possible to avoid attorney's fees liability contractually.

## 2.2. A Cluster of Insurance Solutions

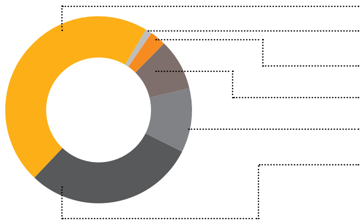
Like any other industry, the Logistics industry too needs to work towards maintaining a strong balance sheet and necessarily protect itself from various risks ex-ante before a loss occurs. Some may try to reduce risk by resorting to the best risk management practices in the industry. Some may reduce their risk by avoiding service offerings that can stretch their normal capabilities and comfort zones. Others, who have the capacity to do so, may try to eliminate or control risk by cleverly worded contracts and persuade customers and other

[41] Starmakers Publishing Corp, v Acme Fast Freight, Inc. 646 F.Supp.780 (S.D. N.Y. 1986)

[42] Third Party Logistics Providers Liability Risks, Marsh & McLennan Companies - Insurance Brokers and Risk Managers, USA. https://www.marsh.com/us/insights/research/third-party-logistics.html

[43] ibid

Insurance policies that customers of the logistics industry were satisfied with based on their past experience




## LOGISTICS OPERATOR LIABILITY INSURANCE

*Zurich Financial Services*

This policy is 'specifically designed as a comprehensive legal liability insurance solution for the transport and logistics' industries. It recognizes that the level and extent of services now offered by the logistics industry is significantly more sophisticated than in years gone by and appreciates that the contractual basis upon which logistics providers offer their services has become more demanding.

- Liability for loss or damage to cargo and customers equipment including consequential loss
- Liability to third parties including property damage and personal injury
- Fines and penalties
- Liabilities and expenses arising from a pollution incident
- Liabilities arising from errors and omissions including delay and consequential loss Legal, defence and other costs
- Tenant's legal liability (Optional)
- Infringement of personal rights liability (Optional)
- Consultancy services liability (Optional)
- Products liability (Optional).
- Liability for loss or damage to cargo and customers equipment including consequential loss
- Liability to third parties including property damage and personal injury

*http://www.zurich.com.au/content/zurich_au/business/corporate-business/marine-insurance/marine-liability/logistics-operator-liability.html*

stakeholders to protect their interests by appropriate insurance plans and be self-insured for their residual risks. Some others who may not find it worthwhile to shoulder all these risks and responsibilities in a highly litigious business environment would attempt transferring it to the insurance market.

There are multiple insurance solutions available to the various segments and stakeholders of the logistics and warehousing industry and many of the players are having their own practices as regards purchasing or not purchasing insurance. However, there is no industry-wide or sector-wide clarity on the kind of policies to be purchased for specific purposes and many of the stakeholders get lost in the morass[44] of insurance policies to protect their interests.

When the customers of the Logistics Industry were asked to rank insurance policies based on their individual experiences and satisfaction levels, 47% ranked Marine Open Transit Policies highest. 30% of the customers voted for Carriers Legal Liability policies, 9% for Workmen's Compensation Policies, 3% for Fire Policies, while 12% felt that health and other types of insurances were most recommendable based on their experience.

When a cross section of the customers of the Logistics Industry was asked to state the covers required by the Logistics Industry, 61% felt that Liability cover was most necessary. 16% of the customers felt that all insurances were required, 7% favored Theft coverage, 5% Fire coverage, while another 5% felt that Workmen's Compensation covers were needed. Owners risks were a priority for 2% while another 6% felt that they did not need insurance or that the Transporter would buy insurance if required,.

Typically, a small logistics provider would need to purchase a policy to cover him for the specific services that he provides. However, big logistics houses would need a patchwork of policies to protect them from all the services they provide to their customers. To cover the various risks that they face as part of their business, Logistics Service Providers would need to select from the following insurances:

### 2.2.1 Carrier's Legal Liability Policy:

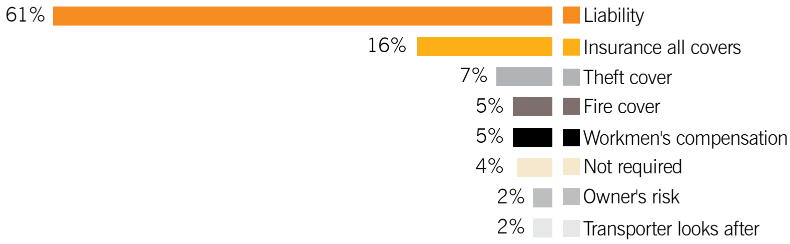
There are situations[45] where Courts hold the Cargo insurer and the Carrier jointly and severally liable to pay the Shipper compensation for damages sustained

[44] Making Sense Out of Transportation Insurance Policies By C. Daniel Negron, http://www.inboundlogistics.com/cms/article/ making-sense-out-of-transportation-insurance-policies/

[45] United India Insurance Company Ltd. Vs. Respondent: Kantika Colour Lab. and Ors. (Civil Appeal Nos. 6337 and 6975 of 2001, decided on: 06.05.2010) The Supreme Court of India. "Machines suffered damage on account of mishandling in the course of transportation from Mumbai to Hardwar. A damage certificate... acknowledged that the damage to the machines had occurred during transportation." The Hon'ble Court decided that the Insurance Company and the Carrier "shall be liable jointly and severally to pay" for the damage, the "customs duty paid by the insured on the import of the damaged machine" and the interest @ 10% p.a.

[46] Economic Transport Organization Vs. Charan Spinning Mills (P) Ltd. and Anr. Civil Appeal No. 5611 of 1999 Decided on: 17.02.2010, The Supreme Court of India.

Insurances Purchased by Customers of the Logistic Industry




in transit, customs duty paid along with interest. The Court[46] is known to take the stand that "Having regard to the presumption regarding negligence under Section 9 of Carriers Act, it was not necessary for the complainants to prove further that the loss/ damage was due to the negligence of the appellant [Transporter] or its driver." The Carrier's Legal Liability (CLL) Policy protects the Logistics Service Provider in many such situations. CLL policies typically pay all sums for which the insured shall become legally liable as compensation for physical loss or destruction of or damage to goods or merchandise while in transit including during loading or unloading and while temporarily housed on or off vehicles in the ordinary course of transit. The cover[47] commences with the loading of cargo on the vehicle and will be in force until unloading of the cargo at the discharging point or expiry of 7 days after the first arrival of the vehicle at the destination town whichever may first occur.

Though minor variations exist between Insurer to Insurer, the CLL policy usually covers[48] liabilities of the LSP due to (a) damage to cargo directly caused by fire, explosion or accident to the carrying vehicle, (b) Carrier's liability for cargo, (c) cargo salvage, transshipment and emergency storage costs, (d) financial loss due to the freight lost in respect of the damaged part of the cargo, (e) legal and other costs, incurred in the litigation against the claimants, (f) costs of average adjusters, (g) breakage due to improper handling and (h) flood or water damage or damage by other cargo.

CLL policies traditionally exclude[49] the following, viz. (i) Liability under any other contract not under Carriers Act 1865, (ii) Liability in respect of damage to property belonging to insured or his employees or in his control, (iii) Inherent defect or vice, wear and tear, deterioration, spontaneous combustion or decay of perishable goods, (iv) consequential loss arising from loss or damage to goods, (v) Any consequence of riots, strikes, war, ionizing radiations, (vi) refusal by any Government, Government Agency or any other competent authority to grant necessary permit, license or sanction or deciding to revoke or qualify any such permit, (vii) loss/ destruction of/ damage to any property or any consequential loss directly or indirectly caused by/ contributed to/ arising from ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, (viii) Goods which may be illicit or illegal or smuggled. Details are presented in Annexure 'G'.

There are a few policies available in India aimed at protecting the Logistic Service Providers' interests.

**2.2.2 Transport Operator's Liability Policy (Indian):** There are a few policies available in India aimed at protecting the Logistic Service Providers' interests. While some products designed specifically to cover Liability exposures of service providers in the transport and shipping industries, are presented in Annexures 'H', a fairly representative product is presented here. The policy is designed for multimodal transport operators, freight forwarders, logistic and warehouse operators, ship agents, ship brokers and other service providers in the transport and shipping industries who face a wide range of liability exposures while acting for their principals in arranging shipping and transport services; contract with the cargo owner to transport goods; provide expert advice, assistance and opinions.

The Transport Operator's Liability[50] Policy (TOLP) provides indemnity[51] where the Insured is liable to (i) a customer or third party for loss or damage to cargo in the Insured's care, custody or control; (ii)

[47] Carriers Legal Liability, The New India Assurance Co. Ltd. http://www.newindia.co.in/Content.aspx?pageid=42

[48] ibid

[49] Carriers Legal Liability, Universal Sompo General Insurance Company Limited - https://www.irda.gov.in/ADMINCMS/cms/ Uploadedfiles/ 82_CLL%20Wordings%20_Revised_Jan%202012%20_2_.pdf

[50] Transport Operator's Liability Policy, Raheja Qbe General Insurance Co. Ltd. http://www.rahejaqbe.com/Corporate/Marine/ Marine Specialty/ TransportOperatorsLiability/Insurance.html

[51] In the insurance context, Indemnity is defined as "a duty to make good any loss, damage, or liability incurred by another" (Black's Law Dictionary). 'Indemnity' denotes "an undertaking by the insurance company to compensate for damage or loss sustained, expense incurred, etc." http://www.dictionary.com/browse/indemnify

a third party for death, bodily injury or damage to property; (iii) a customer or third party for an errors and omissions or professional negligence; or (iv) an Authority for fines and duty. Indemnity is also provided for (v) claims expenses and additional costs incurred as a result of misdirected cargo, abandonment of cargo and fumigation of cargo.

**Exclusions:** Liability arising from war, radioactivity, without fault, movement of gold, cash and certain very high value cargoes and claims covered by specific policies such as employers' liability and a motor policy including third party liability.'

**2.2.3 Freight Forwarders Liability - Insurance cover for freight and logistics liabilities (Available Abroad):** Freight Forwarders Liability (FFL) insurance[52] is designed for (i) Freight Forwarders, (ii) Non-Vessel Operating Common Carriers (NVOCC),[53] (iii) Warehousemen/ (De) Consolidators, (iv) Customs Brokers,[54] (v) Multimodal Transport Operators, (vi) Logistic Operators, (vii) Trucking Companies and (viii) Haulage Companies to cover cargo liability, errors and omissions, third party liability as well as legal and loss mitigation costs arising from freight forwarding operations.

FFL Covers (a) legal or contractual liability claims made against the business, which include (b) liability for damage to cargo, (c) General Average where all parties in a sea venture proportionally share any losses incurred in the event of an emergency, (d) salvage contribution for third parties that volunteer in the successful salvage of life or property at sea without doing so under the terms of a contract and entitled to remuneration, (e) liability for Errors and Omissions, (f) customs fines and duties, (g) liability towards third parties related to legal expenses, mitigation costs, and debris removal and (h) uncollected cargo costs.

**2.2.4 Multi Modal Transport Insurance (Indian):** An insurance policy of an Indian insurer[55] focuses on providing Transport and Related Liability Covers with Multi-modal Transporters (MTO), Freight Forwarders, Haulers, In transit Warehousing, Ship Agents, Clearing and Forwarding Agents, Custom House Agents as well as Packing and Consolidating Agents. It covers all operations such as air movements, sea movements, road movements and rail movements as also while acting as agent for third party NVOCC[56] principals.

**MTC insurance is usually available for 'for-hire' trucking risks of dump trucks, tractors, most trailers, box trucks, cement mixers, cargo vans, dually pick-ups, flatbeds and car haulers.**

The policy covers legal liabilities arising out of (i) Physical loss or damage to cargo while in the care, custody and control of the insured, or a party who has contracted or sub-contracted to provide transport services, (ii) Physical Loss or damage to vessel or equipment owned or operated by a subcontractor or customer, (iii) Consequential loss and/ or business interruption resulting from 1 above, (iv) Contribution of unrecoverable cargo to general average and (v) Fines and Duty. The available extensions cover (i) Errors and Omissions for legal liability arising out of the operations of the insured following a negligent act, error or omission by the insured, his agent or sub contractor; and (ii) Third Party Liability for physical loss or damage to property, death or bodily injury or illness and legally recoverable consequential loss arising out of the operations of the insured. A tabulation of policies on Multi Modal Transport Insurance available in India is presented in Annexure 'H'.

**2.2.5 Motor Truck Cargo policy (Available Abroad):** These policies cover losses to goods on vehicles during transit. Motor Truck Cargo (MTC) insurance,[57] also known as Freight Insurance or Motor Truck Liability insurance, helps provide coverage for financial losses resulting from damaged, lost or stolen cargo and loss of freight.

MTC insurance is usually available for 'for-hire' trucking risks of dump trucks, tractors, most trailers, box trucks, cement mixers, cargo vans, dually pick-ups, flatbeds and car haulers. Terminals and returnable packing containers are also covered under a cargo insurance policy from some companies. MTC insurance covers the 'freight' or 'commodity hauled' by a 'for-hire' trucker. MTC insurances basically cover the following:

- **Substitution of vehicles:** When the insured vehicle is disabled and unable to transport goods, coverage is extended to cargo transported in a substituted temporary replacement vehicle.
- **Newly acquired vehicles:** Cargo transported in newly acquired vehicles is 'automatically granted cover for up to 30 days'

[52] Freight Forwarder's Liability Insurance, AIG Asia Pacific Insurance Pte. Ltd. http://www.aig.com.sg/content/dam/aig/apac/ singapore/documents/other/sg-marine-freight-forwarder-insurance-fact-sheet-2016.pdf

[53] Shipment consolidators, who do not own any vessels, but function as carriers by issuing their own bills of lading or air waybills and assuming responsibility for the shipments.

[54] Brokers are involved in clearing of goods through custom barriers for importers and exporters. This involves the preparation of documents and/ or electronic submissions, the calculation and payment of taxes, duties, and excises, and facilitating communication between government authorities and importers and exporters

[55] Multi-modal Transport Insurance, Iffco Tokio General Insurance Co. Ltd. https://www.iffcotokio.co.in/specialty-insurance/multi-modal-transport-mto-insurance

[56] Non-Vessel Operating Common Carriers

[57] https://www.progressivecommercial.com/coverages/motor-truck-cargo/

- **Newly acquired terminals:** Property at newly (after the effective date of the policy) acquired terminals is 'covered for the first 30 days after acquisition or until the policy expires, if earlier'.
- **Reusable packing containers:** Loss to or damage of reusable packing containers that a LSP is responsible for in addition to the cargo in his care are covered up to specified limit for any one occurrence.
- **Debris removal expense:** Removing and disposing of property after an accident can be costly, especially when that property is blocking a highway or road. When the insured property is damaged due to an insured cause of loss Debris removal is covered on an any one occurrence (up to specified limits) basis.
- **Pollutant cleanup and removal:** Court-ordered expenses for pollutant cleanup from land or water, up to specified limit are covered on any one occurrence, up to specified limit per policy period.
- **Earned freight charges:** Earned Freight charges that the LSP is unable to collect consequent to the occurrence of a covered loss to the covered property, is covered up to specified limit.
- **Loading and unloading:** Losses resulting from loading or unloading within 500 feet from any transporting conveyance are covered by some insurers abroad.

Losses resulting from loading or unloading within 500 feet from any transporting conveyance are covered by some insurers abroad

- **Popular extensions** of cover[58] include (i) mechanical breakdown of refrigeration and heating units, (ii) contingent coverage, (iii) cargo recovery extra expense, (iii) coverage for shipper's control of undamaged goods, (iv) perishable and temperature sensitive goods, (v) goods carried by a subcontractor, (vi) costs to salvage undamaged goods after a motor vehicle accident, and (vii) goods that lost value due to a motor vehicle accident even if they were undamaged.

**Excluded Truck Types:** Motor Truck Cargo insurances are not usually provided for garbage trucks, limousines, hearses, buses, passenger vans and ice cream trucks.

**Excluded Cargo Types:** Cargo like (a) art, jewellery, money, or paper, (b) contraband, pharmaceuticals, tobacco, alcohol, (c) live animals, (d) property while in custody of any other carrier, (e) property or goods owned by the insured, (f) property not under Bill of Lading, (g) storage more than 72 hours, (h) shipping containers and (i) explosive or radioactive material are usually not covered.

**2.2.6 Transportation - (An Overseas Product):** In markets that are more prone to liability related litigation like the USA, UK and Australia, policies are designed to address more specific concerns of their markets. This can be observed from the highlights of a comprehensive legal liability insurance solution for the transport and logistics' industries presented in the box alongside. Better communication between the two industries is imperative for the growth of both and insurers may have to strive harder to understand

[58] https://houstontruckinginsurance.com/cargo-insurance-4125.htm

the growing needs and expand the coverage of their policies. As pointed out by UNESCAP[59], logistic services have become more complex and complicated with increasing e-commerce purchases, costlier values moving directly to customers, frequent return of goods etc. Matters like setting up limits of liability and prescribing minimum standards for liability insurance has also become more difficult.

**2.2.7 Warehouse Legal Liability policy (Available Abroad):** 'Legal Liability' policies usually do not indemnify cargo losses unless the insured is actually responsible for the loss. Policies providing 'Care, Custody and Control' covers (CCC cover) are available in some markets as part of Property insurances. These cover direct damage to the goods in one's care, custody, and control, irrespective of fault. Warehouse owners are exposed to risks of fire, flood, theft and damage of materials owned by third-parties stored in their facilities.

Warehouse Legal Liability (WLL) policies provide protection when the Warehouse owner's negligence results in damage to someone else's property. WLL policies cover the specific risks/ operations in the warehouse that usually do not form part of CGL policies. 'Warehouse Legal Liability' insurances cover the warehouse operator's failure to exercise reasonable care in the handling and storage of a customer's goods which results in loss of, or damage to, those goods. This would mean that if the warehouse operator is negligent in the care of the customer's goods, the insurance company would directly pay the customer for the loss incurred. This would include the Warehouse Owner's legal liability due to a failure to exercise due care to prevent a loss. [E.g. A Warehouse Owner forgets to set the warehouse's burglary alarm and thieves steal goods stored by a third party.]

Warehousing Insurance products are typically understood as specialized coverage which can be tailored to cover additional exposures of target customers[60] like (i) domestic logistics companies, (ii) multinational logistics companies, (iii) supply chain management companies, (iv) public warehouse operations, (v) third party logistics (3PL) and fourth party logistics (4PL) providers, (vi) distribution warehouses and (vi) logistics companies engaged in storing and handling property of others for hire.

Also, though the cargo owners would have purchased insurance policies to cover the stored goods, such policies would not take into account the Warehouse Owner's Legal liability. As Warehouse legal liability policies pay customers only if the warehouse operator has been negligent in caring for a customer's goods, the customer is still responsible for insuring its goods against other types of losses like fire, flood etc.

**Though the cargo owners would have purchased insurance policies to cover the stored goods, such policies would not take into account the Warehouse Owner's Legal liability.**

Warehousing Insurance products are usually available[61] as mono-line warehouse legal liability solutions or as warehouse packages (that cover general liability, property and inland marine) for location-specific warehouse operations, based on the exposures from individual contracts and warehouse receipts. Generally there are sub-limits for (a) mysterious disappearance, (b) debris removal expenses, (c) accrued charges and (d) newly acquired premises. This protection which is more encompassing for the Warehouse Owner comes at a higher price tag. Warehouse liability insurances in more developed countries with higher legal liability exposures provide much wider coverage.[62] Some of the covers/ add-on covers available abroad are listed below:

(i) Damage to Tangible property that a policyholder accepts while acting as a warehouse operator or bailee including items like forklifts, tools, hand trucks, rack systems, computers, networking systems and any other personal property used in a warehouse and logistics business.

(ii) Accounts receivable by the Warehouse Operator are also protected by the WLL policies. [E.g. If a covered loss results in direct physical damage to a warehouse's electronic records, the policy covers payments (up to specified limits) due from customers, that the policyholder is unable to collect.] This also covers costs to restore and replace missing records of accounts receivable.

(iii) Costs to restore, repair, replace, or reproduce valuable papers, data, and software lost, damaged or destroyed, up to specified limits.

(iv) Direct physical loss or damage to newly acquired property up to 90 days.

(v) Damage or loss of fixtures and equipment in leased or rented buildings subject to sub limits.

(vi) Earned storage and freight charges that a policyholder is unable to collect, due to a covered loss

(vii) Debris removal and pollution cleanup after a covered loss, when the insured is legally obligated to clean up pollutants after an accident. Sub limits usually apply.

(viii) Loss/ damage to property due to changes in temperature or humidity as a result of mechanical breakdown of a

---

[59] 'Guide to Key Issues in Development of Logistics Policy' of the United Nations Economic and Social Commission for Asia and the Pacific, (Dec. 2013) http://www.unescap.org/resources/guide-key-issues-development-logistics-policy

[60] Warehouse Legal Liability Insurance, Chub - https://www2.chubb.com/us-en/business-insurance/warehouse-legal-liability-insurance.aspx

[61] ibid

[62] https://www.thehartford.com/marine-insurance/warehouse-logistics

warehouse's or truck's heating or cooling systems, up to specified sub limits.

(ix) Property missing for unexplained reasons up to specified sub limit

(x) Carrier's Liability for Warehouses that transport others goods by truck.

(xi) Carrier's Liability for property in the policyholder's custody and control on policyholders' owned and leased vehicles during transit.

(xii) Contingent Carrier's liability for property transported by other vendors through subcontract is covered.

(xiii) Unscheduled Premises cover extends liability coverage to other Warehouse Operators or Bailees with whom the policyholder stores customers' goods and property. The Cover helps Warehouse Operators/ LSPs to take on more work without having to immediately update their policy when they exceed capacity and need to use another business's storage space.

(xiv) Employee Dishonesty: Direct physical loss of covered property due to fraudulent, dishonest or criminal acts by a policyholder's employees.

**Common Exclusions** under such WLL policies are (a) Accounts, bills and currency, (b) Mysterious disappearance, (c) Conversion, (d) Delay, loss of market or loss of use, (e) Loss caused by forged warehouse receipts, (f) Nuclear device, (g) War, (h) Governmental authority, (i) Change in temperature or increased humidity, (j) Infestation or deterioration of the property, (k) Contaminated goods, (l) Debris removal, (m) Legal defence costs and (n) Materials not covered by warehouse receipts.

**2.2.8 Warehousemen's Legal Liability policy (Available Abroad):** Though there is no conceptual difference between the Warehouse Legal Liability policy and the Warehousemen's Legal Liability[63] (WmLL) policies and both cover many common risks, the latter has recognition by the Inland Marine Underwriters Association of the USA and appears more popular in countries that follow US laws. The policy is worth attention for its construction; as also for the additional coverage.

WmLL policies cover Legal Liability of a Warehouseman or Bailee with respect to physical loss or damage to property of customers of the assured at specified locations subject to limits. Legal liability coverage may be limited to named perils, or on 'all loss' for which the warehouseman may be liable. Warehousemen's Liability insurance allows the warehouseman to provide direct insurance to customers to protect them in the event of loss irrespective of the warehouseman's liability. The insurance issued

Though the Bailee is bound to issue receipt for goods in his possession, his failure to do so does not diminish his liability.

by warehousemen to their customers is usually referred to as 'Certificates of Insurance' or 'Advices of Insurance', which are essentially of three types:

(i) Limited coverage insuring the perils of fire, extended coverage and other stated perils;

(ii) Broad form coverage insuring all risk of loss excluding damage caused by scratching, marring, denting or chipping;

(iii) Broad form all risks of physical loss or damage coverage including breakage usually subject to a deductible.

Warehousemen's insurance often permits (a) Warehousemen's Legal Liability insurance and (b) Common Carrier's Liability insurance - in cases where the warehouseman is in the cargo carriage business. The policy covers Warehousemen's legal liabilities and liabilities to insurers by way of subrogation also.

The General Conditions in WmLL Insurance are similar to those of Inland Marine policies. WmLL works like any bailee insurance and does not usually contain a defense clause obligating the underwriter to defend any action brought against the Warehouse.

**Legal Liability of Warehousemen:** To fully diagnose the liability of a warehouseman for loss or damage to stored goods, insurers look into various aspects. Some examples are given below.

(i) The relationship between the custodian and the depositor [e.g. Bailee - Bailer (the most common), Landlord and Tenant, Carrier and Shipper].

(ii) The specific agreements, undertakings or representations made by the warehouseman (including oral, written, correspondence, brochures or advertisements).

(iii) The extent to which the Warehouseman's liability may be affected by a custom of the trade.

(iv) Written contracts, warehouse receipts and other documents mentioning the obligations of the parties.

**Liability of Warehousemen as Bailee:** Though the Bailee is bound to issue receipt for goods in his possession, his failure to do so does not diminish his liability. When goods in the custody of a bailee are lost, stolen, damaged or destroyed by any cause, the latter is generally liable in law if the loss or damage was caused or contributed to by his negligence. WmLL covers both these liability scenarios.

Exclusions usually include inherent vice, deterioration, loss or damage from insects, moths, vermin, extremes of temperature, ordinary wear and tear, rotting, molding, and breakage, marring or scratching in addition to the usual exclusions of processing, war risks and infidelity.

[63] http://www.imua.org/files/reports/warehouseman's%20legal%20liability_%20an%20underwriting%20overview.html

**2.2.9 Public Liability Insurance:** Public Liability Policies are of three types, viz. (i) Public Liability - Non Industrial Risk - for offices, hotels, motels, club houses, restaurants, boarding & lodging houses, flight kitchens, cinema houses, auditoriums, theatres, public halls, pandals, open air theatres, residential premises, medical establishments, research institutes, laboratories, schools, educational Institutions, public libraries, exhibitions, fairs and fetes, stadia, permanent amusement parks, film studios, circus, zoos, offices, hotels, cinema houses, hospitals, schools etc.; (ii) Public Liability Industrial Risk - for godowns, warehouses and factories; and (iii) Public Liability Insurance Act 1991 - a policy mandating that those involved in the manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of hazardous substances as defined under Environment (Protection) Act 1986 in excess of the minimum quantity specified under the Public Liability Insurance[64] Act 1991 shall take out insurance policies covering death, injury or damage. Public Liability Policy can be usually extended to cover natural calamities like flood, earthquake etc., pollution risk and transportation risk on payment of additional premium. Public Liability policies cover the amounts which the insured becomes legally liable to pay as damages to third parties as a result of accidental death, bodily injury, loss or damage to the property belonging to a third party. The legal cost and expenses incurred in defending the case with prior consent of the insurance company are also payable subject to certain terms and conditions. While the Public Liability Act policy is mandatory for certain companies, it provides only limited protection. Such companies and all others exposed to liability risks can protect themselves using Public Liability Insurances to cover their wider exposures to the extent required, in terms of sum insured and policy coverage. Many insurers allow multiple units situated in different locations under a single policy. Most policies offer a retroactive benefit for policies renewed without a break, whereby claims pertaining to prior periods (post inception of the 1st policy), but reported subsequently also are payable.

In Public Liability Policies, the Sum Insured is referred to as the Limit of Indemnity.[65] Limits are fixed on a per accident basis and referred to - as Any One Accident (AOA) limit; and on a per policy period basis - as Any One Year (AOY) limit respectively. The AOA limit which is the maximum amount payable for each accident should be fixed taking into account the nature of activity of the insured and the maximum number of people who could be affected and maximum property damage that could occur, in the worst possible accident in the insured's premises. For Public Liability Insurance Act policies, the AOA limit should mandatorily represent the paid up capital of the company subject to maximum of Rs.5 crores. The AOY limit is fixed at 3 times the AOA limit (Max. Rs.15 Crores).

The legal cost and expenses incurred in defending the case with prior consent of the insurance company are also payable subject to certain terms and conditions.

In the context of this insurance, the term 'liability' would mean responsibility and 'legal liability' means responsibilities which can be enforced by law. Legal Liability is classified into Criminal Liability and Civil Liability, of which only Civil Liability claims are payable. Civil Liability claims will arise if there is prima facie evidence of negligence by the insured resulting in injury or death to any third party or resulting in damage to property belonging to a person other than insured, or in insured's custody.

In respect of the Logistic Industry, Legal Liability under the Law of Tort can arise under several circumstances in the contractors/ insured's premises such as (a) collapse of building structures, (b) accidental falling of fixtures, (c) bad maintenance or poor housekeeping resulting in accident to visitors on the premises, (d) accidental leakage of toxic substance which pollutes the atmosphere and injures or kills people. Claims arising out of contractual liability, intentional non-compliance of any statutory provision, loss of goodwill, slander, fines, penalties, libel, false arrest, defamation, mental injury etc. are not covered under such policies. Negligence will be proved only when the duty of care exists, this duty is breached and someone suffers an injury or property damage as a result of that breach. There are policies where the insurer has the option of arranging the defense of the case.

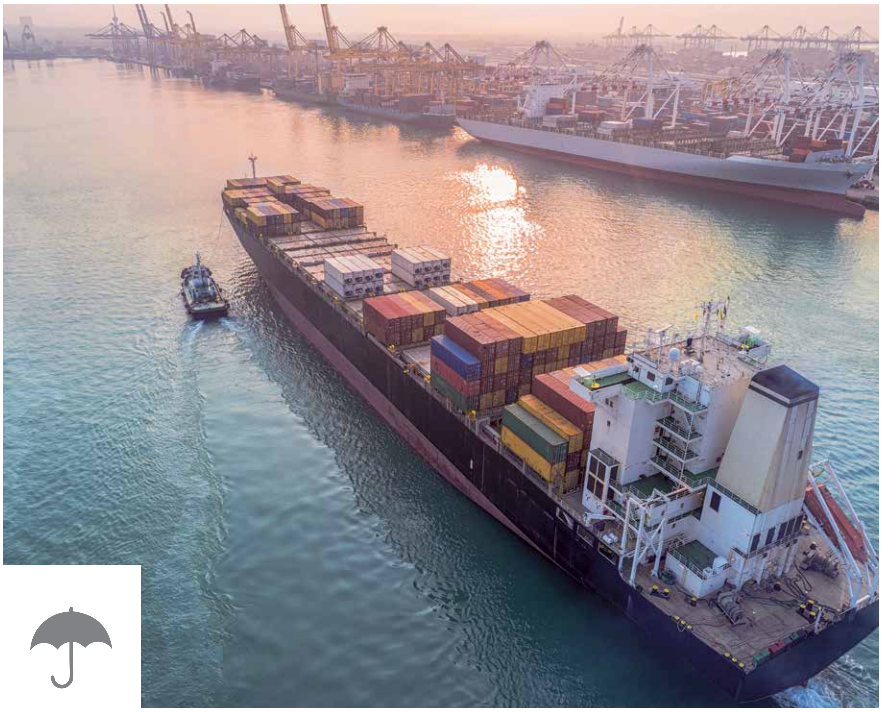
It would be in the interest of the Logistics industry if all related entities, exposed to liability to members of the public, protect themselves with appropriate insurances.

**2.2.10 Employers' Liability/ Workmen Compensation (WC) Insurance:** The Workmen's Compensation Act, 1923 (renamed as Employees' Compensation Act w.e.f. 31-5-2010), which aims at providing financial protection to the workmen and/ or their dependents in case of accidents arising out of and in the course of employment and causing either death or disablement of workmen, came into force on 1st July, 1924. The Act provides for paying compensations to workmen for certain occupational diseases contracted by them during the course of their employment. The minimum compensation in case of death is Rs.1,20,000 and Rs.1,40,000 for permanent total disability. Also funeral expenses of Rs.5,000 are payable. The employee shall also be reimbursed the actual medical expenditure incurred

[64] Source: http://pib.nic.in/newsite

[65] Source: Public Liability Insurance, The New India Assurance Policy - http://www.newindia.co.in

[66] Employer's Liability Policy, The New India Assurance Company Ltd., http://www.newindia.co.in



by him for treatment of injuries caused during the course of employment.

The Employee's Compensation Policy (earlier known as WC Policy) covers the statutory liability of employers under the WC Act 1923; the Fatal Accidents Act, 1855; and Common Law. It settles the claim directly with WC Commissioner in case of accident. The scope of the Policy[66] is to pay all sums which the insured is legally liable to pay to the employees in respect of personal injury by accident or diseases 'arising out of and in the course of the employment'. It covers the Insured's liability arising either under common law or the laws set out in the schedule of the Workmen's Compensation Act 1923. In addition, the costs/ expenses incurred by the insured with the consent of the company, to defend any claims are also paid.

Any employer, whether principal or contractor engaging 'workmen' as defined in the WC Act is eligible to purchase this policy to cover his liability to them under statute and at common law. Employers can cover employees who do not qualify as 'workmen' also under a separate table. Premium depends on the nature of work carried on by the insured. The Logistics Industry deals with a large number of workmen involved in risky and hazardous work. Liability due to a few deaths, injuries or treatment expenses can inflict heavy costs on the LSP, under common law.

*It would be advisable for all Logistic Service Providers who employ workmen to protect themselves and their employees with statutory Employees' Compensation Insurance.*

### 2.2.11 Fidelity Guarantee Insurance:

Fidelity Guarantee Insurance policies protect one's business from financial losses in the event of a breach of trust by an employee.

This policy covers[67] monetary loss that one might have to suffer as a result of forgery, embezzlement, larceny, fraud/ dishonesty or fraudulent conversion of money or money's worth or goods by one's salaried employees. The loss should be detected during the continuance of the Policy or within 12 calendar months of the expiry of the Policy and in the case of death, dismissal or retirement of the employee within 12 calendar months of such death or dismissal or retirement whichever is earlier. The cover may be required in respect of a single employee or a group of employees. Insurance policies normally do not pay more than one claim in respect of the action of any one employee.

The Logistics Industry deals with a large number of employees, handling large quantities of goods owned by third parties offering opportunity for dishonest adventurism and theft/ pilferage.

It would do well for Logistic Service Providers to purchase Fidelity Guarantee Insurance for all employees who are in positions of trust and deal with money, records and high value goods.

### 2.2.12 Commercial General Liability (CGL) Policy for Office Exposures:

The rising dimensions of legal liability exposures have made many business entities in developed countries encounter huge liabilities. Any normal situation like a walk-in customer slipping and falling in the premises may lead to personal injury liabilities triggering off a liability claim. There can be huge reputation damage claims from a badly worded advertisement as well. With our fast pace of development, it has become imperative for business entities to purchase Commercial General Liability (CGL) insurances. CGLs are regarded as the entity's first line of defense against liability arising out of its operations. CGL policies typically use broad-based wordings that have withstood scrutiny of legal experts in the most litigious jurisdictions of the world to cover third party liabilities arising from a range of business operations.

The policy[68] covers (1) Exposures like (a) Premises Liability, (b) Operations Liability, (c) Products Liability and (d) Completed Operations Liability; for (2) Duty to Defend, (3) Coverage for defence costs apart from damages. The following coverages are provided in clusters, viz.

- Coverage A – Bodily injury [includes humiliation, mental anguish, mental

---

[67] Fidelity Guarantee Policy, Bharti Axa General Insurance Co. Ltd. https://www.bharti-axagi.co.in/others/commercial/ property -crime/ fidelity

[68] https://www.tataaiginsurance.in/corporate-insurance/casualty/commercial-general-liability.html

injury and shock resulting from physical injury] and Property Damage.

- Coverage B – Personal [includes discrimination, harassment and segregation (other than employment-related)] and Advertising injury [includes trademark infringement.]
- Coverage C – Medical Expenses.

**Other Add on Covers/ Extensions** offered by some Insurers[69] under CGL policy include: (i) Products completed operations[70] hazard, (ii) Damage to premises rented to the entity, (iii) Sudden & Accidental Pollution Liability (excluding USA & Canada), (iv) Coverage for additional insured when required by written contracts, (v) Vendors Endorsement, (vi) Oral and written contractual Liability for bodily Injury and Property damage.

**Exclusions:** Some of the common Exclusions under this policy are (a) Expected or intended injury, (b) Workers' Compensation and Similar Laws, (c) War, (d) Contractual Liability, (e) Pollution, (f) damage to insured's own property, (g) damage to insured's own products, (h) damage to insured's own work, (i) Aircraft, Auto or Watercraft, (j) Professional Liability, (k) Electronic data. However, some insurers allow some of the exclusions as Add-on covers at additional premium.

2.2.13 **Key Person Insurance:** Individual talents are critical to the success of many companies and employees are also becoming an important factor in investors' valuation of the entities. Every business has at least a few highly valuable employees who contribute significantly to the running and growth of the company. As the name implies, the 'Key person' is the key to the success of the business; without him or her, the company would stumble. It makes sense to insure against the unfortunate event of their untimely demise. This is because the company may face business/ financial loss in case of sudden death of such valuable employees.

It is here that Keyman insurance comes into play. 'Keyman Insurance'[71] helps a business recover from the loss of the valuable persons who run it and/or own it. The object of Keyman Insurance is to cover the life of a key person of the organization for a monetary value so that in case of the untimely death of such Keyman, the loss to the firm is recouped with monetary assistance (insured amount) received from the insurance company. This insurance is provided by Life insurers in the Indian market.


2.2.14 **Errors and Omissions Liability policy:** Indian policies covering Errors and Omissions do not have their focus on the Logistics Industry. These policies[72] seek to protect in situations where the performance of an insured's business activities results in a claim for financial compensation, including an injunction or restraining order, during the policy period due to reasons such as:

- Unintentional breach of a written contract with a client to design, produce or supply deliverables due to (i) the deliverables not conforming in all material respects with any written specification that forms part of the relevant contract and where it is an express term of the contract that the deliverables must comply with that specification; (ii) the deliverables containing a material defect; (iii) the deliverables failing to meet any implied statutory term concerning necessary quality, safety or fitness;
- Negligent act, negligent error, negligent omission, negligent misstatement, negligent misrepresentation or breach of an express or implied contractual duty to use reasonable care and skill
- Infringement of intellectual property rights (but not any patent or trade secret) including copyright, trademark, trade dress or moral rights or an act of passing-off
- Breach of confidence or infringement of any right to privacy, misuse of any information which is either confidential or subject to statutory restrictions on its use
- Defamation
- Civil liability, but not any liability for breach of contract beyond those specifically set out above.

2.2.15 **Fire/ Property policy to Cover Loss to Buildings and Warehouses:** Fire Insurances are one year policies that essentially cover losses and damages to physical property due to fire, lightning, explosion/ implosion, aircraft damage, riot, strike and malicious damage, impact damage, landslide/ rockslide, bursting and overflowing of water tanks, missile testing operation, leakage from automatic sprinklers and bush fire. The policy can be extended to cover Natural catastrophe - earthquake, storm, typhoon, cyclone, flood etc.

Warehouses face losses due to fire, flood, theft, lack of refrigeration, missing inventory, damage during handling, insufficient facility maintenance and

[69] https://www.hdfcergo.com/commercial-insurance/cgl.html

[70] 'Products - completed operations hazard' refers to liability arising out of the insured's products or business operations conducted away from the insured's premises once those operations have been completed or abandoned. https://www.irmi.com/ online/insurance-glossary/terms/p/products-completed-operations.aspx

[71] Source: How Keyman insurance can help protect the life of a business, C. Ramanathan Oct 27, 2015 Economic Times, http://economictimes.indiatimes.com/your-money/how-keyman-insurance-can-help-protect-the-life-of-a-business

[72] Errors and Omissions Insurance, Iffco Tokio General Insurance Co. Ltd. https://www.iffcotokio.co.in/specialty-insurance/errors-and-omissions-technology-insurance

a number of other causes. Additional coverages relevant to the logistic industry are deterioration of stock in cold storage premises, spontaneous combustion, leakage and contamination cover for the tanks located within the insured's premises or elsewhere, impact damage due to the Insured's own rail/ road vehicles etc., terrorism, loss of rent and expense of rent for alternative accommodation. Many Insurers usually customize their Fire Policies to the needs of the Warehousing industry. Property policies are generally available for one year terms.

As one of the policies most known and most used by the Logistics industry and its customers, some of the common issues faced by LSPs have been collected as part of the study. These can be summarized as follows:

- LSPs are not generally comfortable that these policies are required to be renewed every year regularly. Missing timely renewals can result in breaks in continuous coverage which could result in the claims being denied or settlement getting delayed.
- In order to be fully indemnified, the value of the property (on reconstruction basis) needs to be reworked and updated at every renewal. Based on multiple factors including the market condition, the cost of insurance may vary at yearly renewals. Customers usually fail to appreciate the logic of this requirement and unwittingly keep renewing the policies on expiring terms. When losses occur, such situations translate to undervaluation of assets and result in lower indemnification due to underinsurance.
- Customers who opt for add-on covers may do so without understanding their risk exposures which results in gaps in insurance coverage. After the loss, when a customer comes to realize that the insurance purchased did not match his expectations, it upsets him. For example, many of the people having fire insurances who were affected by the Bhuj earthquake were left high and dry as they had not opted for earthquake cover.


- One of the main issues faced by the logistic industry is that insurances are mechanically purchased without assessing the insured's need and understanding the coverage offered.
- A reason for confusion is that the insured do not readily understand that most Fire policies are 'named perils' or 'limited cover' policies where the insured has to select the coverage that is needed by him and pay for the same.

It would be advisable for the logistic Industry to advise all LSPs build internal capacity to understand their own insurance needs as also those of their customers. This would ensure that the risks/ properties are covered adequately and money is not wasted by procuring ineffective insurance covers that give only notional protection.

2.2.16 **Marine Cargo policies:** These protect Cargo Owners from loss/ damage to their goods during transit. In India and in many countries across the world, when the transportation involves sea/ ocean journey, cargo is covered as per Institute Cargo Clauses (I.C.C.). In India, for all Inland transits, irrespective of the mode of transit, Inland Transit Clauses (I.T.C.) are used. These clauses were derived from the Institute of London Underwriters are used in various parts of the world with minor amendments on conditions and deductibles. I.T.C. Clauses are classified in three broad categories: A, B and C.

- **Inland Transit Clauses** - C provide for covers Fire and Lightning only,
- **Inland Transit Clauses** - B (Rail/ Road) provide for named perils, viz. fire, lightning, breakage of bridges, collision with or by the carrying vehicle, overturning of the carrying vehicle and derailment or accidents of like nature to the carrying railway wagon/vehicle.
- **Inland Transit Clauses (Inland Vessel)**[73] cover named perils, viz. fire or explosion, vessel or craft being stranded, grounded, sunk or capsized.
- **Inland Transit Clauses** - A provide the widest cover on All Risk basis with certain exclusions. The Clauses cover all practical concerns of cargo owners such as fire, lightning, breakage of bridges, collision with/by the carrying vehicle, overturning of carrying vehicle, derailment and accidents of like nature, rainwater damage, deliberate damage or destruction by wrongful act of any person or persons, reasonable charges incurred to avert/ minimize Losses and charges incurred to protect the rights of recovery against carriers, other extraneous perils, sifting of cargo, breaking, crumbling, crushing, denting, heating and sweating, infestation, mould, mildew, hook/ sling losses, contact with mud/ oil/ other cargo,

[73] Regarded as the Inland Water a variant of I.T.C. - B (Rail/ Road)

## CERTIFICATE OF INSURANCE

This is a simple document containing particulars of the shipment/ dispatch insured, the terms of cover in brief and certifying that the said shipment/ dispatch is held covered. It is issued under an Open Cover or an Open (Floating) Policy as a substitute for a specific policy.

shortage, theft, pilferage, non delivery/ short delivery and other fortuitous losses.

- **Inland Transit** - Strike and Terrorism damages are covered by attaching Strike, Riot, Civil Commotion and Terrorism (S.R.C.C. &T.) Clauses.

**Duration:** Under I.T.C. - A and B, the risk will commence from the time the goods leave the warehouse and/ or store at the place named in the policy for the purpose of commencement of journey and shall terminate on expiry of 7 days after arrival of the railway wagon at the final destination railway station or destination town or in respect of transits by road only until expiry of 7 days after arrival of the vehicle at the destination town named in the policy whichever shall first occur. However, the following Extensions are available.

**Extension of Storage Cover:** If the goods are kept in the Carrier's godown, C&F agent's godown and Bonded warehouse at the final destination due to the reasons beyond control of the insured, the cover during storage may be extended for 8 weeks only in addition to 7 days, subject to prompt notice given to the underwriters.

**FOB Extension and Shut out cargo:** The cover can be extended until the goods are placed on board the ocean going vessel or lash barges (including Sling loss) or until expiry of two weeks after arrival of goods at the place of storage at the port town and/or docks awaiting shipment, whichever shall first occur.

The policy can also be extended to cover shut out cargo whilst the cargo is on board craft, raft or lighter until loaded on oceangoing vessel but not exceeding 48 hours or return to loading point and discharge.

**Exclusions:**[74] Exclusions include (i) loss, damage or expense proximately caused[75] by delay, inherent vice or nature of the subject-matter insured; (ii) loss, damage or expense proximately caused by the absence, shortage or withholding of labour of any description whatsoever during any strike, lock-out labour disturbances, riot or civil commotion; (iii) any claim for expenses arising from delay or other consequential or indirect loss or damage of any kind; and (iv) loss, damage or expenses caused by war, civil war, revolution, rebellion, insurrection or civil strike arising there from, or any hostile act by or against a belligerent power.

**Warranties:**[76] Inland Transit Insurances are subject to certain standard warranties, for which the clauses are well defined.

- For C.I.F value insurance: "Warranted insured value herein does not exceed C.I.F cost plus ten percent."
- For foodstuffs, meat, fish and similar edible item: "Warranted excluding the risks of rejection by government authorities at part of destination unless

[74] Marine Inland Policy, ICICI Lombard General Insurance Company Ltd. https://www.irda.gov.in/ADMINCMS/cms/ Uploaded files/1-Marine_Inland_Policy.pdf

[75] 'Proximate cause' refers to a direct cause of loss, without which the loss would not occur. Therefore, it is a highly relevant principle in the insurance industry. "For an act or event to be considered a proximate cause, it does not necessarily have to directly precede a loss or begin a chain of occurrences leading to the same. Establishing a proximate cause is important in determining whether coverage applies or if liability can be imposed on the negligent party." https://www.insuranceopedia.com/definition/472/proximate-cause.

"The insurer is liable for a loss proximately caused by a peril insured against. The cause which is truly proximate is that which is proximate in efficiency". Definition as per English case of Leyland Shipping Company v Norwich Union Fire Insurance Society Ltd. (1918) by Lord Shaw.

[76] Marine Inland Policy, ICICI Lombard General Insurance Company Ltd. https://www.irda.gov.in/ADMINCMS/cms/ Uploaded files/1-Marine_Inland_Policy.pdf

for damage recoverable as per Policy conditions."

- For grains, seeds and similar cargo: "Warranted excluding natural loss in weight and/ or trade shortage."
- For fragile goods such as glass, firebricks etc.: "Warranted excluding the risks of loss or damage due to chipping, denting and scratching."
- For Bagged cargo: "Excluding the risks of shortage from sound bags."
- Cutting clause for goods such as cast iron pipes, asbestos sheets, etc.: "Warranted that the damaged portion should be cut off and the balance utilised."
- Label clause for bottled, tinned, canned goods: "Excluding damage to labels unless the goods themselves are damaged at the same time."
- Institute Replacement clause: "In the event of loss or damage to any part or parts of an insured machine caused by a peril covered by the Policy, the sum recoverable shall not exceed the cost of replacement or repair of such part or parts plus charges for forwarding and refitting, if incurred, but excluding duty unless the full duty is included in the amount insured, in which case loss, if any, sustained by payment of additional duty shall also be recoverable. Provided always that in no case shall the liability of the Company exceed the insured value of the complete machine."
- Pair and set clause: "Where any item insured under this policy consists of articles in a pair or set, the Company's liability shall not exceed the value of any

Inland Transit Insurances are subject to certain standard warranties, for which the clauses are well defined.

## DIFFERENCES BETWEEN 'OPEN POLICY' AND 'OPEN COVER'

The open policy differs from an open cover in certain important respects. They are:

(a) The open policy is a stamped document and is, therefore, legally enforceable in itself, whereas an open cover is unstamped and has no legal validity unless backed by a stamped policy/certificate of insurance.

(b) An open policy is issued for a fixed sum insured, whereas there is no such limit of amount under any open cover. As and when shipments are made under the open policy, they have to be declared to the insurers and the sum insured under the open policy reduces by the amount of such declarations. When the total of the declarations amounts to the sum insured under the open policy, the open policy stands exhausted and has to be replaced by a fresh one.

particular part or parts which may be lost or damaged without reference to any special value which such articles may have as part of such pair or set and in any event not more than a proportionate part of the insured value of the pair or set."

- Replacement Clause for second hand goods: "Where goods lost or damaged are second hand, this insurance is only to pay such proportion of the cost of repair or replacement plus charges for forwarding and refitting if incurred as the insured value bears to the cost of new goods based on present values. The consignment covered hereunder is insured for the market value on 'as is where is' condition."
- If rate of premium is applicable only to goods dispatched in closed wagons/ covered vehicles: "Warranted despatched at closed wagons/ covered vehicles only."
- Refund for no claim: "Warranted if there is no claim under the policy, refund premium as may be determined in the sole discretion of the Company will be allowed."

**Types of Cargo Policies:** There are various types of Cargo policies to suit different needs.

**a. Specific Policy:** The specific policy covers a particular consignment for a specific voyage/ transit.

**b. Open Policy or Floating Policy:** A Floating or Open policy[77] describes the insurance in general terms, and leaves the name(s) of the ship(s) and other particulars to be defined by subsequent declaration, usually in the order of dispatch or shipment, comprising all consignments within the terms of the policy. The values[78] "of the goods are expected to be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith." The Sum Insured would be sufficiently large to cover the total value of shipments/ dispatches to be made over a specified period, usually 12 months. These policies are generally issued to cover inland consignments and all shipments/ dispatches made by the Insured are held covered under the policy. The values declared would be deducted from the Sum Insured under the policy. The insured is bound to declare all shipments/ dispatches coming within the scope of this policy and he does not have the option to run his own risk on certain shipments/ dispatches or to insure them elsewhere. Omissions or incorrect declarations may be rectified even after the loss or arrival provided such omissions or errors were genuine. When the total of the amounts of the various declarations reaches or exhausts the amount for which the Policy was originally issued, the Policy is said to have been fully declared. The Policy may be reinstated for a fresh total value to be effected over the remaining period.

> As per the Marine Insurance Act, 1963, the values of the goods are expected to be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

On receipt of each declaration, a separate Certificate of Insurance is issued. An Open Policy is a stamped document, and, therefore, Certificates of Insurance issued there under need not be stamped. The advantages of Open Policies compared to specific policies are: (a) Automatic and continuous insurance protection, (b) Reduction of clerical labour, (c) Saving in stamp duty, which can be substantial, when the frequency of inland consignments is high.

**c. Open Cover:** An open cover[79] describes the cargo, voyage and cover in general terms and automatically takes care of all shipments which fall within its scope. Usually issued for a period of 12 months and is renewable annually. There is no limit to the total number or value of shipments that can be declared under the open cover. However, since no stamps are affixed to the open cover, specific policies or certificates of insurance are issued against declaration and they are required to be stamped according to the Stamp Act. The important features of an open policy/ open cover are:

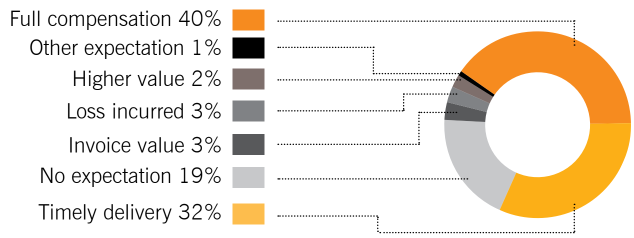
- *Limit per bottom or per conveyance:* The value of a single shipment declared under the open cover should not exceed a stipulated amount.
- *Basis of Valuation:* The 'basis' is normally the prime cost of the goods, freight and other charges incidental to

[77] Marine Insurance, Practice of General Insurance (Module 4), National Institute of Open Schooling - http://www.nios.ac.in/ media/documents/ VocInsServices/m4-2f.pdf

[78] Sec 31 of the Marine Insurance Act, 1963

[79] Marine Insurance, Practice of General Insurance (Module 4), National Institute of Open Schooling - http://www.nios.ac.in/media/documents/ VocInsServices/m4-2f.pdf

Expectations of compensation for deficiencies in services




shipment, cost of insurance, plus 10% to cover profits.

- *Location Clause:* In addition to the per bottom limit, per location limits are also sometimes prescribed to reduce accumulations and limits insurers' liability at storage locations, warehouses and ports of shipment. Some insurers set the per location limit the same as the per bottom limit while others may have set a multiple thereof.

Open Covers are particularly useful a permanent form of insurance protection for large export and import firms - making numerous regular shipments who would otherwise find it very inconvenient to obtain insurance cover separately for each and every shipment. It is also possible that through an oversight on the part of the insured a particular shipment may remain uncovered.

**d. Special Declaration Policy:** This is a form of 'floating policy' issued to customers whose annual estimated turnover (i.e. value of dispatches) by rail/ road/ inland waterways exceed Rs 2 crores. Declaration of dispatches shall be made at periodical intervals and premium is adjusted on expiry of the policy based on the total declared amount. The Sum Insured is fixed based on the previous year's turnover or on a fair estimate of annual dispatches, in case of fresh proposals. Based on high amounts of turnover and low loss ratios, insurers often offer discounts on premium for such policies.

**e. Special Storage Risks Insurance:** This insurance is usually issued in conjunction with an Open Policy or a Special Declaration Policy to cover goods lying at the Railway premises or Carrier's Godowns after termination of the transit, pending clearance by the consignees. The cover terminates when delivery is taken by the consignee or payment is received by the consignor, whichever is earlier.

**f. Annual Policy:** This policy, issued for 12 months, covers goods belonging to the insured, which are not under contract of sale, and which are in transit by rail/ road from specified depots/ processing units to other specified depots/ processing units.

**g. 'Duty' Insurance:** Cargo imported into India is subject to payment of Customs Duty, as per the Customs Act. This duty can be included in the value of the cargo insured under a Marine Cargo Policy, or a separate policy can be issued in which case the Duty Insurance Clause is incorporated in the policy. Warranty provides that the claim under the Duty Policy would be payable only if the claim under the cargo policy is payable.

> Insurers specializing in logistics and transportation offer combinations like Errors & Omissions insurance and Cargo Liability insurance.

**2.iv.1 Logistics Insurance Package:** The coverage of a Logistics Insurance Package[80] (LIP) designed by a Canadian Insurer along with the Transport Mutual Insurance Association Limited (TT Club) is worth a closer look. LIP covers Freight Forwarder/ Logistics Cargo Liability, Errors and Omissions, Contingent Cargo, Property, Business Interruption, Commercial General Liability (including Non-owned automobile/ Contingent Auto), Crime Coverage (optional), Warehouseman's Legal Liability, Custom Broking. Logistics Insurance Packages can be further customized to cover the risks associated with specific logistics operations.

**2.2.17 Bespoke Combination policies:** Insurers specializing in logistics and transportation offer combinations like Errors & Omissions insurance and Cargo Liability insurance. Some build warehousing and related exposures in their Commercial General Liability forms. Some combine several related covers to design a single tailor-made policy to suit the customer as well.

Whilst on this, it may be worth observing that when asked an open ended question about their expectations of compensation for service deficiencies, 40% of the customers of the Logistics Industry had a simple need of 'Full Compensation'. 32% mentioned their expectations were just a 'Timely Delivery', while 3% expected to receive 40% to 75% of the Invoice Value as compensation and another 3% wanted 25% to 50% of loss incurred as compensation. 2% customers felt that 10 times the freight or 10% of the Invoice value, whichever is higher should be the proper compensation, while the remaining 1% had other expectations like 3% of the bank Guarantee and free reverse transit of damaged goods.

[80] Logistics Insurance Package was designed by Marsh Brokers as comprehensive insurance coverage for logistics providers. It was underwritten by Continental Casualty Company along with the Transport Mutual Insurance Association Limited (TT Club) and Logistics specialists. Currently this Logistics Insurance Package solution is available to Canadian customers only. https://www.cargocover.com/Prelogon/logistics-insurance.aspx

**2.2.18 A Comprehensive All Risks Policy - An Industry Wish:** As observed earlier in this Report, as Logistic Service Providers continue integrating[81] with the Supply Chain, services are becoming more complex and setting up limits of liability and minimum standards for liability insurance has become more difficult.

However, Experts in both the industries concur that the ideal solution would be designing a **comprehensive policy for Logistics Service Providers on all-risks basis,** covering all possible risks that they would actually face, which would allow assuming enhanced liabilities and providing special services under specific customer contracts. However, the absence of such policies even in advanced markets indicates the challenges in designing such solutions and the importance of package policies which can be customized as required.

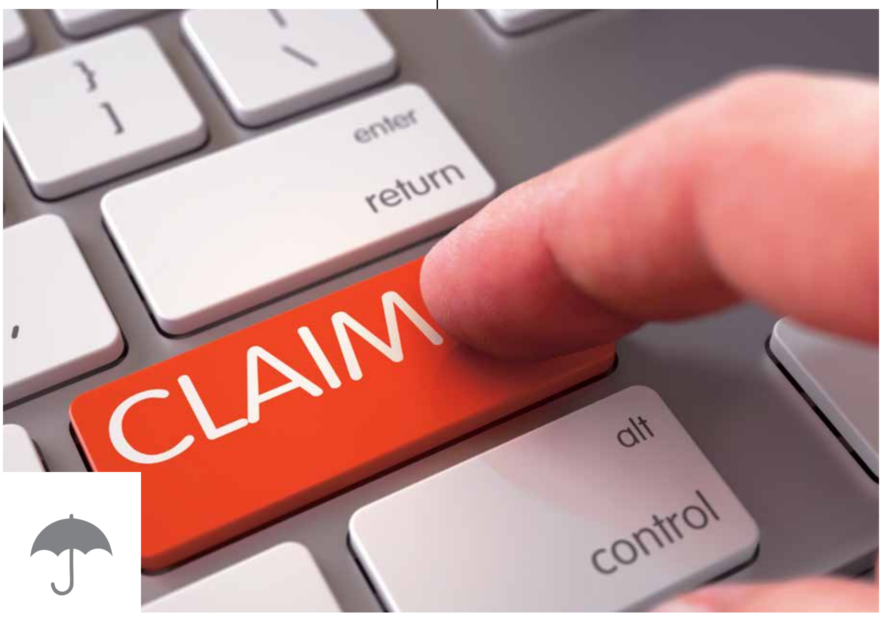
## 2.3. Claims Settlement:

Insurance companies follow their own internal parameters for admitting liability and settling claims. If Logistic Service Providers understand how insurers look at claims and comply with their requirements in advance, it would become easier for insurers to settle claims and to settle them faster. A few suggestions[82] regarding handling and settling insurance claims are discussed below.

**2.3.1 Inspection of Goods:** Logistic Service Providers should conduct a careful examination if there is any indication of a shortage or of damaged goods. Documents should be signed only with qualifying remarks based on the ascertained position.

**2.3.2 Informing the Liability Insurer:** In situations where the Logistic Service Providers suspects or anticipates a claim or comes across any incident that may lead to a claim, they should keep their insurers informed immediately. When notifying insurers, they should provide as much relevant information as they can, so that insurers can advise how to minimize the claim. Insurers usually provide Claims Notification Forms which detail the information and documents that they usually need for the purpose. In cases where the liability can be fixed on any third party, they would try to secure recovery.

**2.3.3 Arranging a Survey and Report:** In cases where surveys are required to prove or disprove a liability, usually above a threshold level, the Liability Insurer would need a cargo survey to be conducted to determine the extent and cause of the loss or damage. In such situations insurers arrange surveys by in-house or third party experts, who are usually licensed for the job.




**2.3.4 Securing Recovery rights:** Insurers advise that in case a loss or damage is manifested, Logistic Service Providers should take proper care and sign documents only after making proper endorsements indicating the factual position. In situations where subcontractors or other third parties are liable for the expected loss or damage, in order to secure recovery rights against them, Logistic Service Providers should ensure that a proper written document exists. This should be done without the slightest time delay after noticing the manifestations of the loss or damage.

**2.3.5 Accepting Liability:** Logistic Service Providers may sometimes expect that a claim would be readily payable under the customers' cargo insurance and try to facilitate claim settlement by being casual and careless about the documents generated. In this process, without proper verification of the liability angles, they may unwittingly end up accepting responsibility for a loss or damage which they would not be responsible for. Liability Insurers advice that in cases of doubt, especially in the case of high value claims, the LSP should consult the insurers' claims adjustment experts[83] before accepting liability.

## 2.4. Judicious Selection of Insurance Coverages

The general feedback from the industry was that most LSPs, except the big few, had no clue on what insurance to buy and what add-on covers to ask for. This rendered the LSP (and others in the transportation/ warehousing industry) practically unprotected or partially when claims situations arise.

The Burglary policy of an LSP examined as part of the study had a deductible of Rs.20,000 for normal claims and Rs.50,000 for theft claims on the top

[81] 'Guide to Key Issues in Development of Logistics Policy' of the United Nations Economic and Social Commission for Asia and the Pacific, (Dec. 2013) http://www.unescap.org/resources/guide-key-issues-development-logistics-policy

[83] ibid

sum insured location. Though the equation appeared reasonable in the context of the case examined, it was felt advisable that individual LSPs or the Logistics industry should evolve internal policies and standards with regard to preferable insurance practices, including fixing reasonable deductibles based on goods and routes. This would be of immense value for the industry comprising a large number of small LSPs, which do not have the data or the experience to make judicious decisions, especially while dealing with theft-prone high value consignments like electronic goods with high per bottom/ per location concentrations.

It was observed that the Fire Insurance policy of an LSP had opted for 'spontaneous combustion' as an 'add on' cover for flammable stock - a healthy practice for any LSP to follow.

Likewise, a Carrier's Legal Liability examined had a meaningful retroactive clause going back to 4 years. It had a counter claims clause as well. Contrary to the general market scanario, these only indicate that the particular LSP had an evolved legal department or an expert broker or responsible Insurer which had advised them to judiciously select their insurance covers.

For a particular LSP, the losses under the Carrier's Legal Liability was estimated at Rs.1.56 crores from 36 instances over a 3 year period, averaging to around Rs.4,34,000 per incident. As the data collected was not sufficient to state the same as a finding, the figures are presented as an indicative illustration.

Another point that surfaced was that for a particular LSP, Rs. 65,30,000 worth losses were estimated over a 5 years period under the Fire policy for recorded reasons of theft, accident, fire and damage in transit. Though the reasons for delay in payments could not be examined, only Rs.15.32 lakhs had been received from the insurances. Without going into the claims wise reasons for delay/ declinature of individual claims, the payment position appeared disturbing in terms of knowledge, trust and communication deficits between the two industries.

*Legal Disputes:* When customers of the Logistics Industry were asked to comment about disputes and litigation, 8% of them stated that Insurance Companies had forced them into situations of litigation due to (i) delays in claims processing and (ii) improper claims settlement. Another 10% of customers reported that they had litigation with their Logistics Service Providers on matters relating to (i) delayed delivery, (ii) shortage of goods, (iii) damages to consignments due to mishandling and putting the blame on the shipper for inadequate/ improper packing.

## 2.5. Risk Retention Models


Risk is naturally borne/ retained at an entity level, i.e. at a person level or corporate level. Sometimes, risk is shared by a group of individuals who have a common affinity - like family or a clan or a small community who are affected in a more or less similar way by unfortunate events. In contrast to these entities which work on a risk retention cum risk sharing model, through the insurance mechanism the risk gets transferred to a professional entity (insurance company) which has expertise in dealing with risk on commercial terms.

There are some models where risks are shared and retained by communities formed by entities which share similar interests. Here, entities which have similar interests come together and share the losses of their unfortunate fellow members by contributing to a common fund from which losses are borne.

Typically the need for forming such communities arises in certain situations as follows:

- When insurers are not keen to insure some types of risks which they feel are unviable or impracticable - like people below poverty line staying in remote geographies;
- When insurers are not willing to take up very high risk exposures - like US insurers shying away from giving product liability covers in the 1980s; or
- Insurers not willing to provide full coverage or give coverage only upto certain monetary limits resulting in gaps in the insurance protection - like most hull insurers provide only 3/4th of collision liability losses.

Risk retention models work differently - in the form of Mutuals and Cooperatives (for small communities), as self-insuring Risk Retention Groups (for large liability exposures), and as Protection and Indemnity Clubs (for ship owners). In some contexts these are collectively referred to as Alternative Risk Management (ARM) models.

## 2.6. Protection and Indemnity Clubs

In addition to the insurance protection that Insurance Companies offer for Marine Hull liabilities, some entities like Ship Owners need certain supplementary arrangements to take care of their liabilities. This protection is provided by Protection and Indemnity Clubs (P&I Clubs). P&I Clubs are mutual insurance associations that provide risk pooling, information and representation for their members. Unlike insurance companies that report to shareholders, P&I Clubs report only to members of the particular club. The liabilities to the Ship Owners caused by collisions, loss of life and injuries were typically not covered under Marine Insurance policies or fell beyond the monetary limit available under these policies. To take care of such situations, Ship Owners form Protection and Indemnity Clubs. These Clubs use pooled resources and provide funds to take care of the liabilities of the Club Members in the event of huge claims. They use a complex system to determine liability.

## 'LOGISTICS INSURANCE COMPANY', BRITISH VIRGIN ISLANDS

*Recommendations for Preventing Theft.*

1. Control of delivery documentation and security checks of persons:

- Original freight letter of the carrier
- Identity of the driver
- Identity card / passport
- Registration certificate / car license / license plates
- Insurance document or proof of insurance
- Any proof of company registration

2. If a driver should contact you via a mobile number, automatically additional control measures become necessary. Double-check the registered data of the driver with the trading platform or with the registered company. [NOTE: Accept no queries via mobile phone, only via fixed land phone lines.]

3. E-mail messages from free mail providers (for example: hotmail, gmail, webmail, yahoo): Counter-check through fax confirmation and control the data provided.

Additional control measures: All documents submitted must be checked for validity/ authenticity plus enquiry by telephone at the head office of the carrier.

4. When placing an order for the first time, definitely enquire about the name of the driver and make an identity check.

5. Check authenticity of the fax number with that of the owner of the holders / subscribers of the relevant fax connection.

6. Examine the insurance certificate with the CMR insurer.

7. Whenever in doubt regarding the carrier/ truck driver: make additional enquiries about his credibility with the ultimate carrier and the freight broker as well as in various media.

8. Check the value of goods.

9. Unloading control: react immediately in case of discrepancies.

10. All staff in the shipping department should be trained continuously in order to raise their awareness of the situation.

11. Stick to all criteria of control, particularly during peak periods such as Friday afternoons.

12. Only well-known and experienced carriers should carry out shipments with values exceeding EUR 200.000.

*Source: Logistics Insurance Company, British Virgin Islands http://www.logistics-insurance.com/downloads/*

While insured persons pay premiums to insurers for protection for a particular period like a voyage or a year, P & I Club members pay a sum of money (called 'call') into the Club's pool to create a fund. The funds position is assessed at the end of the year, and depending on the actual payouts, each Member will pay a reduced call or a higher call the following year. In case the Club needs to make a major payout (say, due to an oil spillage liability) Club Members would immediately have to pay a further call to replenish the pool. P&I Clubs were originally formed in the United Kingdom, Scandinavia, Japan and the United States; and included only ship owners, ship operators or charterers. However, in recent times, freight forwarders and warehouse operators have also been able to form such clubs. The Transport Mutual Insurance Association[84], known as 'TT Club' is an example of a P&I Club for Logistic Service Providers. The salient features of the TT Club are edited and excerpted below, so that Indian Logistic Service Providers can examine the extent to which such models can suit their needs. Their website asserts, "TT Club is a mutual association. Unlike an insurance company with share-holders to satisfy, TT Club is run by, for, and in the interests of its Members, providing comprehensive transport and logistics cover throughout the world." TT Club, in its stature as a membership based organization, states on its website that it seeks to provide the following distinct advantages.

**(i) Member Focus:** Being run by Members, the entire focus is on the issues that matter to them. As regards coverage, service advice and technical capabilities, they constantly evolve in tune with the changing challenges faced by their members.

**(ii) Value Proposition:** Having no shareholders, they can provide cover at the best possible value

**(iii) Advice:** They can provide specialized advice to solve disputes, more expeditiously and efficiently than lawyers.

**(iv) Claims:** Claims being overseen by elected Members for the industry, better understanding and empathy can be expected.

**(v) Expertise:** The mutual club being made up of Members from all areas of the transport and logistics industry, they bring valuable insight and real experience to most of the issues faced by members.

### 2.7. Risk Management through Loss Prevention/ Loss Minimization

As per their business models, insurers shy away from risks that are not well understood by them and those which do not yield themselves to discernible loss patterns. The low premiums that insurers collect can keep them commercially viable only if the frequency and severity of losses can be more or less anticipated over large numbers and long periods. More data on loss patterns and information about soft spots in the industry help insurers make certain knowledgeable assumptions that improve the industry and make it more insurable. Experts point out that whenever a loss happens by whatever reason, the consignor and consignee are quick to make the LSP as the whipping boy. If they are successful in fixing the liability, the LSP's insurer ends up paying. If they are not successful, the cargo insurer has to pay. In either case, if an insurer is anywhere in the picture, he would have to pay, whether his

[84] Source: TT Club Website - https://www.ttclub.com/

subrogation rights have been secured or otherwise. The irony is that despite being on a weak wicket, both the insurer and the LSP look forward to the consignor-or-consignee duo for their continual business interests.

This situation makes it important for both the insurers and the LSPs to promote the risk management practices in the industry to prevent losses from happening and to minimize the impact of loss causing events. Hence, they sustained efforts in creating customer awareness and putting the best practices in place. As insurers have to deal with multiple industries and pay for diverse risk situations, they often take the lead in such risk management/ loss prevention/ loss minimization initiatives. Studies in the area of risk improvement done by insurers and researchers in other countries based on certain tried and trusted practices can give us valuable insights on reducing risk.

**2.7.1 Prevention of Theft:** As per a study by an insurer in the British Virgin Islands, specializing in transportation and logistics[85], "The disappearance and loss of cargo is still a very serious problem. Black sheep are nothing new in our business. However, what is new is that those who commit fraud are becoming ever more shameless and daring... security checks of the carriers are indispensable."

One reason cited for cargo theft is the use of unknown carriers, located through the internet. The study found that an increased number of fake documents including CMR[86] insurance policies seemingly issued by first-class insurance companies were in circulation, especially as faxed and scanned copies where detecting the falsification is difficult. As some measures suggested by the study to avoid fraud and theft could be considered by the Indian industry as part of their standard operating procedures or checklists, these are reproduced in the box alongside.

> The irony is that despite being on a weak wicket, both the insurer and the LSP look forward to the consignor-consignee duo for their continual business interests.

**2.7.2 Emphasis on Packing:** The Insurance industry has been traditionally giving importance to packing. Insurers used to reward good packing with lower premiums and refuse to insure or charge high for bad packing.

The stand of the insurers as regards packing is emphasized in all the Institute Cargo Clauses (A), (B) and (C) of 01/01/09 under clause 4.3, which reads as follows: "4. In no case shall this insurance cover… 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a

[85] Logistics Insurance Company, British Virgin Islands http://www.logistics-insurance.com/downloads/

[86] CMR Convention 'Convention on the Contract for the International Carriage of Goods by Road' – an EU law which requires goods carriers to produce a CMR consignment at customs and when unloading (CMR is not an English acronym)

## CHECKLIST ON LOADING & UNLOADING PACKAGES

*(Excerpted from an Indian Shipper's Contract with the LSP)*

1. Check the condition of wooden packaging.

- Box should be strong enough to withstand the weight and handling at the destination
- Box should not be broken or wet.

2. Check the condition of corrugated packaging.

- Should be strong enough to withstand the weight and handling at the destination.
- Should not be crumpled.
- Corrugated box should not be wet.

3. Medium and large boxes needed to be strapped securely

4. Check for parts packaging marked "fragile/handle with care", handle these boxes carefully

5. Parts marked 'heavy' need to be stacked at the bottom while loading.

6. If boxes get damaged during transit, inform Shipper immediately, take images and approval from the team before delivery at the destination

7. Do not handle/pick up/hold the boxes using strapping as a handles.

8. At the transshipment points ensure all the boxes mentioned in the Lorry Receipt have been loaded into the vehicle for the next leg.

9. Check weather condition and accordingly use good quality of tarpaulin cover, ensure tarps are not torn.

10. Check condition of pallet for palletized shipments. The wooden block should be secure.

11. Ensure that the Vertical Lift Sequencer (VLS) is signed off as per the number of boxes and invoices received against a delivery note.

12. Management Information Systems (MIS) reports to be sent daily

13. Prescribed reports to be sent every month/ quarter without fail.

*Source: Logistics Insurance Company, British Virgin Islands http://www.logistics-insurance.com/downloads/*

container and "employees" shall not include independent contractors)." The logic found in the Institute Cargo Clauses, which attach when the goods are first moved "for the purpose of immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit" holds good for in-country cargo movements as well. Insurers take the stand[87] that it is always the responsibility of the shipper to pack the goods in such a manner that the packing is suitable for the mode of transportation, duration of the transportation, the terrain and road conditions; the anticipated weather conditions etc. and that it would withstand the ordinary incidents of the transit. Consequently, the premium rates used to differ based on the packing.

Insurers, however, take it upon themselves to educate the market about good practices in multiple aspects of shipping including packaging. They bring out notes, circulars or knowledge papers for the information of shippers and other stakeholders. For instance, the marine specialists of the German Insurance Association (GDV e.V.) share their experiences and insights on various aspects of the transport sector through the Transport Information Service (TIS) though their website and at customer contact points.

As regards packaging, TIS observes that often savings are made on packaging in order to reduce total costs. TIS tries to sensitize Shippers, Logistics and Warehousing Service Providers and every other stakeholder that the packages used often do not fulfill the requirements placed upon them, due to which, they cannot withstand the mechanical, climatic, biotic and chemical stresses to which they are exposed during transport, storage and cargo handling. TIS emphasizes that "correct selection, design and construction of the packaging is just as important for loss-free transport as are the requirements placed on the product itself". From the accumulated experience of the insurance industry, the German body provides helpful hints and information relating to packaging. Initiatives of TIS and others on 'Influencing Packaging Behavior to Limit Liability' are presented at Annexure C.

**2.7.3 Training of Employees:** The Experts interviewed emphasized on the necessity of a planned skill-training regimen for the industry. Though the large LSPs had their own need-based training arrangements, the bulk of the industry and most of outsourced entities were mostly at an unskilled/ semi-skilled level.

In pursuance of Rule 9 (3) of the Central Motor Vehicle Act 1989, some State Governments utilize the services of expert organizations like the Indian Chemical Council (ICC) to conduct training programs for drivers on topics like Safe Transportation of Hazardous Goods. Such programs would help in sensitizing drivers on the challenges in transporting hazardous cargo. Conceptually, such programs for Driver would cover topics such as causes of accidents, accident statistics, drivers' personal fitness, conditions of the vehicle, breaking distance, highway driving, road/ pedestrian crossing, railway crossing, adapting to whether conditions, head-on collisions, rear-end collisions, night driving, first-aid and life saving techniques etc. It is understood that such trainings actually happen seldom. In most situations, training programs are mostly for compliance purposes and that too mostly on paper covering a small number of Drivers who are not actually involved in the focus area. As of now, such trainings are practically insufficient to address the enormity of the problem and needs to be attended by the Logistics and Warehousing Industry.

[87] Packing of Goods–Not just pretty wrapping', Kari Koljonen, Head of Marine Underwriting Finland, LL.M. https://www.if-insurance.com/ web/industrial/ifnews/pages/if-news_3_2015_ marine.aspx

**2.7.4 Delayed Delivery:** The recommendations locate[88] how the CMR provisions (in the EU context), can work against the interests of Logistic Service Providers and points out that most transport liability policies do not provide cover for claims from penalties and fines. It recommends Logistic Service Providers insured with them to abstain "from agreeing on penalties for delays in delivery."

The point over here is that Logistic Service Providers in India also need advisory mechanisms which can study data and market experience and waive red flags, where required.

**2.7.5 Retaining Goods to Secure Payment of Freight:** The study[89] points out situations where Logistic Service Providers retained consignments in part or full to secure pending freight payments from their customers.

It elucidates how such practices can become counter-productive and attract fines/ penalties for delay. It points out that insurers do not pay for such claims. The study recommends: "*If you retain goods to secure freight payment, keep an eye on the costs, and check possibilities in advance to pass these costs on.*"

## 2.8. Concluding Remarks

The TCIL-III Research Study has been able to compile all the major aspects relating to the topic at hand from the points of view of the Logistics as well as Insurance industries. The suggestions/ recommendations provided in the report emanate from compendious literature survey, views of renowned Experts from both the industries and some of the customers. Some of the major suggestions are presented below.

**2.8.1 Self-Regulation:** 'The Warehousing Development and Regulatory Authority' (WDRA) was established to regulate warehouses and promote orderly growth of the warehousing business.

In respect of the Logistics industry, the non-existence of a Regulator stands out.

One can see the absence of a sectoral regulator as 'benign neglect'[90] from the Government's side allowing the young industry to grow unfettered. While this policy has worked for the growth of the industry in its initial stages, possibly the industry is maturing into a stage where such 'benign neglect' is no longer felt necessary. Notwithstanding the Governmental thinking on the subject, the leading players of the industry would do well to come together and form a self-regulatory framework or an industry guild where like-minded players come together and look into matters of common interest and set standards for voluntary adoption.

Such associations can collect, collate and provide data support for the industry and large and even provide fee based special advisory services. Setting up a Self-Regulatory Mechanism would be a step whereby there would be one single body to take ownership of the Logistics industry and represent it in matters of common concern.

**2.8.2 Risk Management:** The Logistics Industry is highly exposed to property and liability risks. The fast pace of digitization is adding to the complexity of the situation in multiple ways. As elaborated in the report, learning from the experiences of more advanced markets, the Logistics industry has to come together and protect itself through multiple risk management mechanisms.

Two important components of risk management are (i) the creation of professional standards for staff handling goods or transporting them and (ii) the establishment of training courses coupled with certification of professionals to ensure that only qualified professionals are employed in key positions of operation. Also several guidance manuals on good practice should be produced on safe and proper handling of cargo including the selection of appropriate vehicles, proper loading, covering and lashing of cargo. These will immediately result in reduction of losses and in turn, lead to reduction in liabilities and insurance costs for the LSPs; and protection of the nation's wealth.

**2.8.3 Risk Improvement:** As mentioned in the report, there are various ways by which the larger players can promote better hygiene in the industry by setting up best practices and creating adherence to such practices. Once a better environment is created, the smaller players would see value in the same and emulate best practices with less resistance.

**2.8.4 Risk Transfer Policy:** Risk transfer through the insurance mechanism is a proven tested mechanism used across the world. This should be a three pronged plan:

- *Getting all stakeholders to insure their part of the risk.* Logistic Service Providers as an industry should be able to insist to all Shippers that they would not deal with uninsured cargo. This would be challenging from a business point of view. However, if Logistic Service Providers, as an industry, decide so, they could be doing a great service to themselves and create better discipline in the market The same logic would apply to all the sub-contractors, truck-owners, warehouse

[88] Logistics Insurance Company, British Virgin Islands http://www.logistics-insurance.com/downloads/

[89] ibid

[90] Benign neglect is a policy proposed in 1969 by Daniel Patrick Moynihan, American politician and sociologist. While serving as an urban affairs adviser of the US Government, he sent the President a memo suggesting, "The time may have come when the issue of race could benefit from a period of 'benign neglect.' It means "an attitude or policy of noninterference or neglect of a situation, which may have a more beneficial effect than assuming responsibility; well-intentioned neglect." http://www.dictionary.com/ browse/benign-neglect

operators etc. with whom they are dealing with.

- *Protecting own interests through appropriate Insurances.* LSPs have to assess their own risk exposures and protect themselves through appropriate insurances. When they cannot find a policy that suits their needs, they should approach the insurance industry and try to get policies designed to take care of their needs.

- *Identifying residual risk and managing it appropriately.* LSPs should have a clear understanding of the risks that they are not insuring and have a plan for managing the same. This could include retaining the risk with oneself and setting aside contingency funds for the same or retaining it within the industry by sharing it among members through P&I Clubs. LSPs should have a board approved risk transfer policy whereby the top management is clearly aware how risks are being managed.

**2.8.5 Risk Retention:** Risk transfer may not take care of all risk exposures or work economically for special situations. In such cases, Indian Logistic Service Providers may also emulate the Protection and Indemnity Club model of retaining risk. However, there would be quite some risks that they may consider too trivial or too costly to insure or share with their Club, for which they would be self insured. They should have a risk policy, possibly approved by their Board, listing out the type of risk they would carry themselves, share with their Club and transfer to Insurance Companies.

Risk transfer may not take care of all risk exposures or work economically for special situations.

**2.8.6 Complementary Mechanisms:** In many real life scenarios, even when the legal scenario is generally in their favor, because of business interests, customer relationships, gaps in wording etc., LSPs end up paying for losses that they are not actually liable for. Hence, the LW industry needs to work laterally with multi-pronged strategies complementary mechanisms to manage their risks. This would include (a) incentivizing/ facilitating cargo owners to insure, (b) creating congenial environments to make insurers interested in insuring them, (c) adopting best practices from other industries/ other markets, (d) creating evidence-based studies to convince cargo owners to insure and follow risk management practices; and (e) commencing advocacy through an association of Logistics Service Providers. One step towards achieving this is by members of the LW Industry coming together and forming a strong professional body to take care of common purposes and interests. The body should be as inclusive as possible and be able to secure Governmental recognition.

**2.8.7 Communication:** It emerges from the report that the simplest solution that emerges is to have better communication with the insurance industry at an industry to industry level, by understanding each other better, building mutual trust and getting a comprehensive insurance policy on 'all risks' basis designed exclusively for Logistics Service Providers.

The Logistics and Warehousing industry may like to use the TCIL & III Report to communicate to the different stakeholders

(i) For sensitizing the Government to mandate that Shippers should compulsorily insure,

(ii) Work with insurers to design policies that are of use (Talk to the General

Insurance Council/ Insurance Industry Leaders/ Insurance Regulatory and Development authority of India),

(iii) For working with Insurers to provide the required cover for the LWI's needs as a regular policy,

(iv) For working with Insurers to create situations for insurers and LSP's to work together in a sustainable manner.

(v) To get standard systems/ practices and procedures established in the industry and

(vi) To create an association/ body that can be the LW industry's voice.

**2.8.8 Empowering the Industry with Risk Education and Insightful Research:** The Logistic industry needs to look at itself as a knowledge industry than a process based industry. This includes logistics and risk management being taken to classrooms – where students learn the importance of this vital industry and the critical knowledge elements that go into 'getting the right thing at the right place' physically and conceptually. Every single entity in the industry, in addition to the skilling trainings that are given by many LSP companies, need to be trained in practicing safety matters; the importance of wording their contracts properly; assessing, managing and improving the risk; the company philosophy of retaining risk and transferring risk to insurance companies; taking care of company interests in Courts of Law; getting the full benefit from insurance policies when losses/ liabilities arise; creating internal databases and knowledge repositories; and enriching the company and the industry by sharing experiential knowledge.

At an industry level, there is a need for dedicated research work synergizing the internal insights and experiences of the industry with the academic strength of organizations of repute. This will broaden the outlook of the Logistics industry by bringing in fresh perspectives from other markets and other industries as also the objectivity that academic institutions can provide.

At an industry level, there is a need for dedicated research work synergizing the internal insights and experiences of the industry with the academic strength of organizations of repute.

In essence, every employee of the industry should be taught and trained to feel proud about being part of a knowledge rich industry; as well as on how he/ she can contribute in improving the internal culture and public perception of the industry, to take it to greater glory in the years to come.

ANNEXURE A

# International Commercial Terms (INCOTERMS)

**Shipper (the Party Shipping the Goods):** The Shipper is the original owner of the goods who is either selling them to another entity (involving a change of ownership) or sending them to another location without any change in ownership. Depending on the terms of the contract (globally called INCOTERMS[91]), the ownership of the goods gets transferred from the seller to the buyer of the goods during the transit. These two parties are primarily interested in the safety of the goods, during transit, storage and receiving them in perfect condition at the final destination.

**The Logistics Provider (Transporter):** The Logistics provider is the company which takes responsibility of the transporting goods against the freight charges they would be receiving from the shipper. In case of a loss or damage to the goods, the liability would fall on the logistics provider. In case of intermediate storage[92] of goods, third party storage facility may have to be used, where again there is chance for loss or damage to accrue to the Logistics provider.

**Insurer (The Insurance Company):** The Insurer is the entity who provides the insurance for the particular transit. The Insurer can cover the transit and storage risks that the Shipper or the Consignee is exposed to in respect of their goods. Insurers cover a set of liabilities that attach to logistic providers under Carrier's Legal Liability policies, which are discussed in detail later on.

**Consignee:** The Consignee (the End-user or the Consumer) is to whom the logistics operator delivers the goods and signs off on delivery of the goods. The losses or damages are usually detected at this stage by the Consignee and the liability attaches to the logistics provider. Even in cases where the Consignee and the Shipper are the same entity, the liability in case of loss or damage in transit would rest with the logistics provider. In many cases, it is very difficult to locate the exact reason for the loss/ damage and the stage in transit where it happened. This is considered a specialists job. In case of e-commerce with returned/ un-delivered goods also in transit locating the leg of the journey in which the loss/ damage happened becomes more challenging.

**International Commercial Terms (INCOTERMS) (For reference)**

**EXW – Ex Works (named place):** The seller makes the goods available at their premises. This term places the maximum obligation on the buyer and minimum obligations on the seller. The Ex Works term is often used when making an initial quotation for the sale of goods without any costs included. EXW means that a buyer incurs the risks for bringing the goods to their final destination. Either the seller does not load the goods on collecting vehicles and does not clear them for export, or if the seller does load the goods, he does so at buyer's risk and cost. If parties wish seller to be responsible for the loading of the goods on departure and to bear the risk and all costs of such loading, this must be made clear by adding explicit wording to this effect in the contract of sale.

The buyer arranges the pickup of the freight from the supplier's designated ship site, owns the in-transit freight, and is responsible for clearing the goods through Customs. The buyer is also responsible for completing all the export documentation.

These documentary requirements may cause two principal issues. Firstly, the stipulation for the buyer to complete the export declaration can be an issue in certain jurisdictions (not least the European Union) where the customs regulations require the declarant to be either an individual or corporation resident within the jurisdiction. Secondly, most jurisdictions require companies to provide proof of export for tax purposes. In an Ex Works shipment, the buyer is under no obligation to provide such proof, or indeed to even export the goods. It is therefore of utmost importance that these matters are discussed with the buyer before the contract is agreed. It may well be that

[91] INCOTERMS or 'International Commercial Terms' are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC). They are widely used in International commercial transactions or procurement processes. A series of three-letter trade terms related to common contractual sales practices, the INCOTERMS rules are intended primarily to clearly communicate the tasks, costs, and risks associated with the transportation and delivery of goods. INCOTERMS 2010 is the eighth set of pre-defined international contract terms. Please refer annexure for more details on INCO terms. Source - Wikipedia.org - https://en.wikipedia.org/wiki/Incoterms#Incoterms_2010

[92] Intermediate storage - storage at intermediate places in course of transit is called as intermediate storage. Such storage is normally done at Port warehouses, Transit sheds, Bonded warehouses, Carriers' go down, Clearing and Forwarding Agent's warehouse, Railway platform, Railway yard etc. Apart from the above, storage is also done at warehouses owned or hired by the client.

another Incoterm, such as FCA seller's premises, may be more suitable.

**FCA – Free Carrier (named place of delivery):** The seller delivers the goods, cleared for export, at a named place. This can be to a carrier nominated by the buyer, or to another party nominated by the buyer.

It should be noted that the chosen place of delivery has an impact on the obligations of loading and unloading the goods at that place. If delivery occurs at the seller's premises, the seller is responsible for loading the goods on to the buyer's carrier. However, if delivery occurs at any other place, the seller is deemed to have delivered the goods once their transport has arrived at the named place; the buyer is responsible for both unloading the goods and loading them onto their own carrier. Risk is on to seller

**CPT – Carriage Paid To (named place of destination):** CPT replaces the venerable C&F (cost and freight) and CFR terms for all shipping modes outside of non-containerized sea freight.

The seller pays for the carriage of the goods up to the named place of destination. Risk transfers to buyer upon handing goods over to the first carrier at the place of shipment in the country of Export. The Shipper is responsible for origin costs including export clearance and freight costs for carriage to named place (usually a destination port or airport). The shipper is not responsible for delivery to the final destination (generally the buyer's facilities), or for buying insurance. If the buyer does require the seller to obtain insurance, the Incoterm CIP should be considered.

**CIP – Carriage and Insurance Paid to (named place of destination):** This term is broadly similar to the above CPT term, with the exception that the seller is required to obtain insurance for the goods while in transit. CIP requires the seller to insure the goods for 110% of their value under at least the minimum cover of the Institute Cargo Clauses of the Institute of London Underwriters (which would be Institute Cargo Clauses (C)), or any similar set of clauses. The policy should be in the same currency as the contract.

CIP can be used for all modes of transport, whereas the equivalent term CIF can only be used for non-containerized sea freight.

**DAT – Delivered at Terminal (named terminal at port or place of destination):** This term means that the seller covers all the costs of transport (export fees, carriage, unloading from main carrier at destination port and destination port charges) and assumes all risk until destination port or terminal. The terminal can be a Port, Airport, or inland freight interchange. Import duty/taxes/customs costs are to be borne by Buyer.

**DAP – Delivered at Place (named place of destination):** Can be used for any transport mode, or where there is more than one transport mode. The seller is responsible for arranging carriage and for delivering the goods, ready for unloading from the arriving conveyance, at the named place. Duties are not paid by the seller under this term. The seller bears all risks involved in bringing the goods to the named place.

**DDP – Delivered Duty Paid (named place of destination):** Seller is responsible for delivering the goods to the named place in the country of the buyer, and pays all costs in bringing the goods to the destination including import duties and taxes. The seller is not responsible for unloading. This term is often used in place of the non-Incoterm "Free In Store (FIS)". This term places the maximum obligations on the seller and minimum obligations on the buyer. With the delivery at the named place of destination all the risks and responsibilities are transferred to the buyer and it is considered that the seller has completed his obligations

**Sea and Inland Waterway Transport:** To determine if a location qualifies for these four rules, please refer to 'United Nations Code for Trade and Transport Locations (UN/LOCODE)'.

The four rules defined by Incoterms 2010 for international trade where transportation is entirely conducted by water are as per the below. It is important to note that these terms are generally not suitable for shipments in shipping containers; the point at which risk and responsibility for the goods passes is when the goods are loaded on board the ship, and if the goods are sealed into a shipping container it is impossible to verify the condition of the goods at this point.

Also of note is that the point at which risk passes under these terms has shifted from previous editions of Incoterms, where the risk passed at the ship's rail.

**FAS – Free Alongside Ship (named port of shipment):** The seller delivers when the goods are placed alongside the buyer's vessel at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment. The FAS term requires the seller to clear the goods for export, which is a reversal from previous Incoterms versions that required the buyer to arrange for export clearance. However, if the parties wish the buyer to clear the goods for export, this should be made clear by adding explicit wording to this effect in the contract of sale. This term can be used only for sea or inland waterway transport

**FOB – Free on Board (named port of shipment):** FOB means that the seller pays for delivery of goods to the vessel including loading. The seller must also arrange for export clearance. The buyer pays cost of marine freight transportation, bill of lading fees, insurance, unloading and transportation cost from the arrival port to destination. The buyer arranges for the vessel, and the shipper must load the goods onto the named vessel at the named port of shipment according to the dates stipulated in the contract of sale as informed by the buyer. Risk passes from the seller to the buyer when the goods are loaded aboard the vessel. This term has been greatly misused over the last three decades ever since Incoterms 1980 explained that FCA should be used for container shipments.

**CFR – Cost and Freight (named port of destination):** The seller pays for the carriage of the goods up to the named port of destination. Risk transfers to buyer when the goods have been loaded on board the ship in the country of Export. The Shipper is responsible for origin costs including export clearance and freight costs for carriage to named port. The shipper is not responsible for delivery to the final destination from the port (generally the buyer's facilities), or for buying insurance. If the buyer does require the seller to obtain insurance, the Incoterm CIF should be considered. CFR should only be used for non-containerized sea freight; for all other modes of transport it should be replaced with CPT.

**CIF – Cost, Insurance & Freight (named port of destination):** This term is broadly similar to the above CFR term, with the exception that the seller is required to obtain insurance for the goods while in transit to the named port of destination. CIF requires the seller to insure the goods for 110% of their value under at least the minimum cover of the Institute Cargo Clauses of the Institute of London Underwriters (which would be Institute Cargo Clauses (C)), or any similar set of clauses. The policy should be in the same currency as the contract. CIF should only be used for non-containerized sea freight; for all other modes of transport it should be replaced with CIP.

**DAF – Delivered at Frontier (named place of delivery):** This term can be used when the goods are transported by rail and road. The seller pays for transportation to the named place of delivery at the frontier. The buyer arranges for customs clearance and pays for transportation from the frontier to his factory. The passing of risk occurs at the frontier.

**DES – Delivered Ex Ship:** Where goods are delivered ex ship, the passing of risk does not occur until the ship has arrived at the named port of destination and the goods made available for unloading to the buyer. The seller pays the same freight and insurance costs as he would under a CIF arrangement. Unlike CFR and CIF terms, the seller has agreed to bear not just cost, but also Risk and Title up to the arrival of the vessel at the named port. Costs for unloading the goods and any duties, taxes, etc. are for the Buyer. A commonly used term in shipping bulk commodities, such as coal, grain, dry chemicals; and where the seller either owns or has chartered, their own vessel.

**DEQ – Delivered Ex Quay (named port of delivery):** This is similar to DES, but the passing of risk does not occur until the goods have been unloaded at the port of discharge. [This is no more. In ICC 2010 it is deleted]

**DDU – Delivered Duty Unpaid (named place of destination):** This term means that the seller delivers the goods to the buyer to the named place of destination in the contract of sale. A transaction in international trade where the seller is responsible for making a safe delivery of goods to a named destination, paying all transportation expenses but not the duty. The seller bears the risks and costs associated with supplying the goods to the delivery location, where the buyer becomes responsible for paying the duty and other customs clearing expenses.

## Allocations of costs to buyer/ seller according to Incoterms 2010

| Incoterm 2010 | Export customs declaration | Carriage to port of export | Unloading of truck in port of export | Loading on vessel in port of export | Carriage (Sea/ Air) to port of import | Insurance | Unloading in port of import | Loading on truck in port of import | Carriage to place of destination | Import customs clearance | Import taxes |
|---|---|---|---|---|---|---|---|---|---|---|---|
| EXW | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer |
| FCA | Seller | Seller | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer |
| FAS | Seller | Seller | Seller | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer |
| FOB | Seller | Seller | Seller | Seller | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer | Buyer |
| CPT | Seller | Seller | Seller | Seller | Seller | Buyer | Seller | Buyer/ Seller | Seller | Buyer | Buyer |
| CFR (CNF) | Seller | Seller | Seller | Seller | Seller | Buyer | Buyer/ Seller | Buyer | Buyer | Buyer | Buyer |
| CIF | Seller | Seller | Seller | Seller | Seller | Seller | Buyer/ Seller | Buyer | Buyer | Buyer | Buyer |
| CIP | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Buyer/ Seller | Seller | Buyer | Buyer |
| DAT | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Buyer | Buyer | Buyer | Buyer |
| DAP | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Buyer | Buyer |
| DDP | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller |

Previous terms from Incoterms 2000 eliminated from Incoterms 2010

ANNEXURE B

# History of Logistics & Supply Chain

HISTORY OF LOGISTICS AND SUPPLY CHAIN

VERSION 02

## 1810

### LOGISTICS IN EARLY LITERATURE

William Muller announces the upcoming book named "The Elements of the Art of War",this book published on year later and has one section for "Logistics'

## 1905

### FIRST USE OF THE WORD SUPPLY CHAIN

"The Independent" newspaper used the word "Supply Chain" in the news article about wartime situation

## 1927

### MASS PRODUCTION

Production of Ford's "Model A Car" utilizes "mass production" concept to achieve economy of scale.

## 1950

### POSTPONEMENT CONCEPT

Wroe Alderson publishes paper to explain the concept of "Postponement".

## 1952

### BARCODING

US Patent no. 2612994 issued to Norman Woodland and Bernard Silver for Barcoding System.

## 1957

### AMERICAN PRODUCTION AND INVENTORY CONTROL SOCIETY (APICS)

American Production and Inventory Control Society established to develop body of knowledge in operations management.

## 1961

### FORRESTER EFFECT

Jay Forrester explains demand amplification in his book “Industrial Dynamics”.

### MATERIAL REQUIREMENT PLANNING

Gene Thomas at IBM develops “bill of material” or earliest version of MRP.

## 1962

### TRAVELLING SALEMAN COMPETITION

Gerald Thompson of Carnegie Mellon University wins travelling salesman contest organized by Proctor and Gamble.

## 1963

### COUNCIL OF LOGISTICS MANAGEMENT CLM

Council of Logistics Management founded under name National Council of Physical Distribution Management.

## 1969

### EARLY WORK ON CUSTOMER/SUPPLIER RELATIONSHIP

J.F. St G.Shaw,Partner.Preece,Cardrew and Rider explore early form of “customer/supplier relationship.”

## 1971

### EARLY STATE OF REVERSE LOGISTICS

William Zikmund and William Stantion discuss early form of reserve logistics.

## 1982

### INCEPTION OF TERM SUPPLY CHAIN MANAGEMENT

Keith Oliver of Booz,Allen and Hamilton Inc coins the term “supply Chain Management”.

## 1984

### THEORY OF CONSTRAINTS

Eliyahu Goldratt and Jeff Cox introduce the concept of “Theory of Constraints” in book “The Goal”.

### EARLY FORM OF COST/SERVICE TRADE-OFFS

Roy Shapiro, Donald Rosenfield and Roger Bohn discuss early form of “Cost and Service Trade-offs.”

## 1985

### FIRST SUPPLY CHAIN ANALYSIS

Kurt Salmon Associates conduct full scale supply chain analysis for textile and apparel industry.

### EARLY DEVELOPMENT OF THIRD PARTY LOGISTICS (3PL) CONCEPTS

Ken Ackerman and Dean Wise present paper about early state of Third Party Logistics in Council of Logistics Management Annual Conference.

## 1988

### ESTABLISHMENT OF TERM "LEAN MANUFACTURING

John Krafcik introduces term "Lean Manufacturing" in his article "Triumph of the Lean Production System" after studying "Toyota Production System.

## 1991

### OPERATION DESERT STORM

Military Logistics Community achieves superb performance during "Operation Desert Storm" in Iraq.

## 1993

### RE-ENGINEERING

Michael Hammer and James Champy publish book "Reengineering the Corporation : A Manifesto for Business Revolution ".

### EFFICIENT CONSUMER RESPONSE (ECR)

Andy Wood publishes first journal article about "Efficient Consumer response".

## 1995

### TOTAL COST OF OWNERSHIP

Lisa Ellram proposes 2 classifications of Total Cost of Ownership model.

## 1996

### SUPPLY CHAIN COUNCIL (SCC)

Pittiglio Rabin Todd & McGrath (PRTM), AMR Research and 69 voluntary member companies establish Supply Chain Council.

## 1997

### BULLWHIP EFFECT

Hau Lee,V.Padmanabhan and Seungjin Whang show the World how to reduce impact of Bullwhip Effect.

### CONTINUOUS REPLENISHMENT

Gerard Cachon and Marshall Fisher demonstrate continuous replenishment concept.Using Case study of Campbell Soup's.

## 2000

### LOGISTICS AS A PROFESSION

US Department of Labor gives classification to Logistics job as "13-1081 Logisticians."

### EMERGENCE OF 'SUPPLY CHAIN FINACING

William Roland Hartley-Urquhart of Chase Manhattan Bank obtains US Patent no.6167385 for "Supply Chain financing system and method."

## 2001

### GREEN SUPPLY CHAIN

First Version of Green House Gas Protocol, carbon accounting tool for supply chain, released.

## 2002

### CONTAINER SECURITY INITIATIVE

Container Security Initiative released to address threat to border security and global trade

## 2004

### COUNCIL OF SUPPLY CHAIN MANAGEMENT PROFESSIONAL (CSCMP)

CLM changes name to "Council of Supply Chain Management Professionals" to reflect broader roles of logistics professionals.

## 2010

### SUPPLY CHAIN AS A PROFESSION

O'NET gives classification to supply chain job as "11-9199.04 – Supply Chain Managers."

### SCM 2.0

W.P.Carey School at Arizona State University releases most viewed supply chain video on Youtube.com.

### SUPPLY CHAIN TRANSPARENCY

State of California introduces Senate Bill 657 or "Supply Chain Transparency Law" to combat Human Traficking in Global Supply Chain.

## 2011

### SUPPLY CHAIN LEADERSHIP

Tim Cook, supply chain leader, named CEO of Apple.

## 2012

### GLOBAL SUPPLY CHAIN SECURITY

Obama Administration announces "National Strategy for Global supply chain Security" to minimize impact of various global supply chain risks.

*Source: http://i0.wp.com/cerasis.com/wp-content/uploads/2013/07/Supply-Chain-and-Logistics-Management1.png*

# Annexure C: Influencing Packaging Behavior to limit Liability

## 1. Efforts of the German Insurance Association on Packaging

The Transport Information Service (TIS)[93] provides specialized information to educate the industry on a regular basis. A list of some of the 'Notes' published by them relating to packaging are presented below to indicate the depth to which the topic is dealt with in more developed markets.

- Fit-for-Purpose Packaging (Tips on selecting appropriate packaging for the consignment)
- Packaging Regulations (A compilation of relevant regulations like Dangerous Goods Regulations, HPE Guidelines, VDI Guidelines)
- Own or Third-Party Packer (Care to be taken when Packing is outsourced)
- Disposable or returnable packaging (TIS gives tips on using disposable packaging, practices relating to reusable packaging and care while returning them. This has become a specialized area recently.)
- Special packaging (e.g. for transporting works of art, heavy-lifts, prototypes)
- Inner packaging (Tips on corrosion protection, plastics films, cushioning materials, securing/ fastening)
- Outer packaging and Packaging materials (Tips on using fibrous material, glass, lumber, cardboard, plastic, metal/ sheet metal, paper, millboard, corrugated board.)
- Packaging containers (Concerns while using bales, bags, cans, barrels, bottles, jerricans, boxes, sacks, cartons, shrink covers, stretch wrappers, drums, crates etc.)
- Packaging aids (Concerns while using films, edge protectors, markings, adhesive strips, corrosion protection agents, nails, metal and other seals, cushioning materials, straps etc.)
- Marking (Importance of Marking. Challenges in making/ implementing handling instructions)
- Modularization (Concerns relating to the size of packages, phyto-sanitary certificates, fumigation certificates, stackability of modules, printed/ promotional messages)
- Corrosion Protection (General information about corrosion and corrosion protection, Classification of corrosion protection methods)
- Cushioning Materials (Purpose of using cushioning materials, Required characteristics of cushioning materials, Description of various kinds of cushioning materials, Mode of action of cushioning materials, Selection criteria for cushioning materials)
- Functions of Packaging (Primary functions, Protective function, Storage function, Loading and transport function, Secondary functions, Sales function, Promotional function, Service function, Guarantee function, Tertiary functions, Additional functions)
- Paper/Cardboard/Paperboard (Treatment of paper, cardboard and paperboard, Perforation options for shipping cartons for tropical and subtropical fruits, Paper types in packaging, Types of corrugated board, Designs, styles and delivery forms of cartons, Flute shape and size in corrugated board.)
- Plastic (Plastics welding processes, Additives in plastics processing, Mechanisms of formation of plastics, Processes used in plastics manufacturing, Special packaging plastics.)
- Lumber and derived lumber products.

GDV has also published a compilation of logistics 'Terminology', a 'Packaging Handbook'; and technical notes on topics like 'Identification of packages: RFID', 'Formation of load units' and 'Dimensional Standards' through TIS.

From a Packing cum Stowage[94] point of view, GDV has published Notes[95] on 'Packing, Stowage, Cargo handling, Unpacking' covering topics like - Own or third-party staff, Deck loading or below deck loading, Handling types and methods (for example, Ramps, Conveying equipment, Ground conveyors, Lifting gear or cranes, Continuous conveyors, Load suspension devices, Cargo securing, Cargo securing equipment and aids, Cargo securing guidelines and recommendations, Combined loading prohibitions according to dangerous goods regulations, Goods inwards and outwards inspection,

[93] Cargo Loss Prevention, The Transport Information Service (TIS) of the German Insurance Association (GDV e.V.) - http://www.tis-gdv.de/tis_e/verpack/markier/markier.htm

[94] This study recognizes that 'Stowage' of cargo into containers and ships is a distinct technical field by itself. Hence matters relevant from a packaging angle only are included in this Annexure.

[95] Notes and risk factors in cargo insurance, The Transport Information Service (TIS) of the German Insurance Association (GDV e.V.) - http://www.tis-gdv.de/tis_e/bedingungen/trp_faktoren/trp_faktoren.htm#anfang

and Inspection of means of transport and transport receptacles before packing.

This study wishes to mention that though the responsibility of creating such repositories of knowledge and dissemination of practical information is with no one in particular, the Insurance industry in more developed markets recognize the common grounds that they share with the Logistics/ Warehousing industry and work together or separately on such matters that bear business sense for them. Whereas in the case of the not-so-evolved markets, either the Government or a couple of big players of the Logistics/ Warehousing industry may (or may not) do this task based on their corporate vision.

## 2. Advice to Shippers/ Packers by International Experts[96] (edited/ adapted)

The general advice that insurers or consultants offer to shippers is 'when in doubt, consult a freight forwarder, transport professional or an export packer'. However, some pieces of advice are excerpted below to indicate the evolved nature of other markets and the extent to which Indian insurers and LSPs can collaborate to achieve common goals.

- Pack goods in strong, lightweight containers (Cargo might be handled by humans or mechanical equipment like lifts, cranes or conveyors or throughout the distribution network.)
- Load cargo in a shipping container or securely on pallets. (Reduce physical handling and minimize the probability of damage.)
- Brace and distribute cargo weight evenly (Cushion cartons to prevent movement or rubbing against other products during transit. E.g. Use foam-rubber cushions/ air bags for reducing vibration and preventing the cargo from shifting.)
- Declare any hazardous goods in advance to the transportation company (Cautionary markings should be in English, the language of the country of destination and the international handling symbol.)
- Package goods in the water-resistant material to avoid rust, corrosion or ruin.
- Avoid stating brand names on cartons to reduce pilferage (Accept that cargo theft is a global problem affecting consumers, businesses, transporters, warehouse operators alike. Keep markings to a minimum and apply with waterproof ink. Be sensible in making any statement on the carton.)
- Label goods as required by law or practice (In case of overseas shipments, check with the buyer and transport company to determine which export marks should appear on the cargo for easy identification by receivers. Consult whether labels should be in destination country's language.)
- Clarity on number, dimensions, weight, of cartons/ units. (Mention carton size in dimensions of height, length and width as well as in cubic meters. Mention whether the weight is 'net' or 'gross'.)
- Visualize Stacking. (How many units will be loaded on each pallet? Can the packing withstand the weight?)
- Visualize the Container from inside (Are there enough products to fill a container? How much weight and volume each pallet will take up inside the container?)

## 3. A Sample Questionnaire on Packaging[97] (edited/ adapted).

Though the questionnaire was designed by a group of international consultants, focusing on international shipments, the thought pattern is relevant for inland consignments as well. Hence an adapted version is presented.

(v) How sturdy is the carton? (If the shipper tosses the box into a truck or onto a vessel, will it hold up or will the contents break?)

(vi) How secure is the seal that holds the carton together? (Testing to find out if a carton will hold up against pressure at all points.)

(vii) Is the inside packing strong enough? (Will it keep the contents undamaged if the box is thrown into a truck?)

(viii) What markings should be shown on the outside of the carton? (The need for communication between the Shippers, Logistics Service Providers and Consignees - to abide by laws of all governing countries.)

(ix) Is it important that the package arrive at your doorstep by a certain date? (Has this been communicated to the Logistics Service Providers? Have due margins for error been provided for?)

(x) Is any special documentation required to accompany the package? (Do you need a country of origin certificate, a license or packing list?)

(xi) Importance of little things like - Who is authorized to receive the consignment? (Do you require to be notified prior to delivery? If so, how - by phone/ email/ text message? Who/ How to send a confirmation to your supplier that the delivery took place and was well received?

(xii) What about insurance? (Has the Shipper insured it? What does the policy cover? If the package gets lost or is damaged in transit, what should the Carrier do? Do you expect anything other than the Carrier's usual procedures?)

[96] How To Prepare Packaged Goods For Overseas Delivery, Seven Guidelines to Consider - Laurel Delaney, 18th October 2016 https://www.thebalance.com/how-to-prepare-packaged-goods-for-overseas-delivery-1953527

[97] 10 Factors to Consider on Packing for International Shipping, Laurel Delaney, 06 August 2016 - https://www.thebalance.com/packing-for-international-shipping-1953523

D

ANNEXURE

# Warehousing, Storage, Stowage Standards and Loss Reduction

## Efforts of the German Insurance Association

The Transport Information Service (TIS)[98] provides specialized information to educate the industry on a regular basis. A list of 'Notes' published by them relating to Storage is presented below. It provides an insight into the kind of knowledge insurers bring to the table in more developed markets.

- Planned or transport-determined storage,
- Intermediate storage,
- Customs warehouse procedure,
- Duration of storage,
- Warehouse size (e.g. Area in m$^2$, throughput, average stocks, extent of product range, orders per day),
- Own or third-party storage,
- Inside or Outside storage,
- Type of storage by product/ structure:

i. General cargo storage (e.g. Flat storage, Open air storage, Elevated flat storage, Elevated shelf storage, Multi-storey storage, Air-inflated structures, Tented structures.)

ii. Bulk cargo storage (e.g. Bunkers, Open air storage, Open air storage with enclosure, Closed storage facility, Silo),

iii. Liquid storage facilities (e.g. Buried reservoirs, Elevated reservoirs, High pressure reservoirs, Low pressure reservoirs, Open reservoirs, Tank storage),

iv. Gas storage facilities (e.g. Liquid gas reservoirs, High pressure reservoirs, Spherical gas holders, Low pressure reservoirs, Telescopic gas holder, Underground gas storage),

- Storage facilities:

i. Static warehousing (e.g. Block storage, Floor storage, Storage on staging, Storage on compartmentalized shelving, Storage on high shelving, Storage on cantilevered shelving, Storage on pallet shelving, Storage on stacking frame shelving)

ii. Dynamic warehousing (e.g. Flow shelving, Circulating conveyor, Warehousing in vehicles, Paternoster shelving, Roller conveyor, Rotary shelving)

- Storage operation (e.g. manual, mechanical, automatic)
- Storage principles, (e.g. FIFO - first in, first out, LIFO - last in, first out)
- Protective measures (e.g. Connection to security service/police, Guarding of storage facility, Burglar and fire alarm installations, Security zones, Video monitoring, Valuables compartments)
- Local environment
- Necessity of storage facility inspection

It is interesting to note that the German Insurance Association's 'Note on Stowage[99] and Securing of various goods'[100] contain a few points relevant to stacking and storage. It discusses technicalities of cartons, boxes and crates, rolls and coils, pallets, fork-liftable unitized loads, vehicles, barrels, metal drums and poly-drums, glass sheets, machinery, heavy-lifts and out-of-gauge cargoes, liquids, bagged cargo, solid bulk cargoes, bales, long goods, cartons, boxes and crates. A few insights from the Note (edited/adapted) are presented below:

**a. Cartons:** When loading cartons in a container, two points in particular should be borne in mind. (i) The load-carrying capacity of the cartons reduces as humidity levels rise. (ii) If cartons are able to move in the container, they may easily suffer abrasive damage. This can be prevented by tight stowage, filling of dead space and bracing of the cargo.

**b. Pallets, forkliftable unitized loads:** Pallet dimensions determine capacity utilization of the container. The best pallet size is a function of the internal container dimensions and the shape and weight of the packages. Four-way pallets (accessible by fork-lift trucks from all four sides) allow the floor area available in the container to be put to the best use.

**c. Barrels, metal drums and poly-drums:** Prior to loading, ensure that the barrels or drums are not leaking; do not load leaking barrels or drums. Always arrange barrels or drums so that their tap openings are at the top. Metal drums are best loaded upright and close together. In the door area, the barrels and metal drums must be secured by bracing with wood, encircling with interlinked steel

---

[98] Cargo Loss Prevention, The Transport Information Service (TIS) of the German Insurance Association (GDV e.V.) - http://www.tis-gdv.de/tis_e/verpack/markier/markier.htm

[99] This study recognizes that 'Stowage' of cargo into containers and ships is a distinct technical field by itself. Hence matters relevant from a storage angle only are included in this Annexure.

[100] Excerpts from the Note on 'Stowage and Securing of various goods' by the Transport Information Service (TIS) of the German Insurance Association (GDV e.V.) http://www.tis-gdv.de/tis_e/ containe/stauen/stauen.htm

strapping. When stowed on their sides, as the curved nature of wooden barrels makes them unsuited to absorbing stress, support the barrels at the ends, such that the curved area does not come into contact with the container floor; and use to wedges to secure them against rolling. As a leaking poly-drum endangers the stability of the entire stow check poly-drums for leaks when loading in containers. Cover all layers with stowage gratings or dunnage, to ensure stow stability.

**d. Rolls and coils:** Rolls and coils may be loaded in containers upright or on their sides. Paper rolls (loaded horizontally) can be stowed in several layers. Secure the bottom layer of rolls with wedges. Lay plastic mats between layers to increase friction. Fill spaces at the sides. Heavy rolls of steel sheet (loaded horizontally) should be loaded on a wooden bed with a high loading capacity and supported on beams or sleds to increase the bearing surface. Secure the rolls to the sled with steel straps or disposable belts through their central holes. Reinforce the end walls of the container additionally by transverse beams at the level of the roll middle. Fill spaces with wood. When paper rolls are vertically loaded (eyes to the sky), stow them close together, fill dead space and secure them with nets or beams on the door side. Vertically loaded rolls of steel sheet too may be likewise stowed close together. For cargo securing purposes, attach to one another with steel straps or brace with wood. Ensure that heavy rolls of steel sheet loaded on skids or pallets are attached securely to them.

A few studies/ articles on reducing Warehousing and Storage related risks are mentioned below for supplementary reading.

a. 'Pallet Storage Methods in the Warehouse' (Martin Murray 13 July, 2016, https://www.the balance.com/pallet-storage-methods-in-the-warehouse-2221396)
b. 'Order Picking in the Warehouse' (Martin Murray 03 February, 2017 https://www.thebalance.com/ order-picking-in-the-warehouse-2221190)

ANNEXURE E

# Starmakers v. Acme Fast Freight

## STARMAKERS PUBLISHING CORP., Plaintiff, v. ACME FAST FREIGHT, INC., Defendant.

No. 84 Civ. 8637-CSH. 646 F. Supp. 780 (1986), United States District Court, S.D. New York., September 30, 1986. *781. Bernard Raphan, P.C., New York City, for plaintiff; Bernard Raphan, of counsel. Moore, Berson, Lifflander & Mewhinney, New York City, for defendant; Charles D. Cole, Jr., New York City, Neil Garson, Garson & Grossman, Fairfax, Va., of counsel.

## MEMORANDUM OPINION AND ORDER

**HAIGHT, District Judge:** Starmakers, a shipper, filed this diversity action pursuant to 28 U.S.C. § 1332 to recover damages for the alleged late delivery of goods shipped by Starmakers pursuant to a contract of carriage with Acme, a freight forwarder. In a Memorandum Opinion and Order dated July 17, 1985, 615 F. Supp. 787 (S.D. N.Y.1985), familiarity with which is assumed, the Court dismissed all plaintiff's causes of action except for the fourth.

That fourth cause of action alleged that the merchandise entrusted to defendant for delivery had a value of $9,720; and that as a result of defendant's breach of contract, the merchandise "had become unsaleable, unuseable and of no value." Accordingly damages were claimed in the amount of $9,720. Complaint at ¶¶ 18-20.

In accordance with applicable authority, the Court construed the fourth cause of action as one for diminution in the market value of the goods between the time of delivery and the time when they should have been delivered. 615 F. Supp. at 791.

Pre-trial discovery then took place. Defendant now moves for summary judgment dismissing the fourth cause of action and, with it, the complaint. Plaintiff cross-moves for summary judgment in its favor on that cause of action. For the reasons which follow, I deny plaintiff's cross-motion, grant defendant's motion, and direct the entry of summary judgment in defendant's favor, dismissing the complaint with prejudice.

The shipped material in suit consisted of quantities (known in the trade as "dumps") of copies of two posters depicting characters from the movie "The Gremlins." On June 8, 1984 plaintiff delivered the posters to defendant in New York City, for delivery to a company called Circus World in Taylor, Michigan. Circus World was a customer of plaintiff Starmakers, which is in the business of producing, selling, and distributing posters in the entertainment world.

Defendant delivered the posters to Circus World on July 9, 1984. Plaintiff's claim is that delivery should have been made within four days after June 8, 1984.

Defendant served plaintiff with a request to admit that the "value of the [posters] ... on July 9, 1984 was not less than their value on June 8, 1984." Plaintiff's sworn response to that key request consisted of the single word "unknown." Interpreting that rather cryptic response as evidence "that even [plaintiff] had no reason to believe the value of the posters had changed," defendant's brief at 5, defendant moved for summary judgment on the fourth and sole surviving cause of action.

Plaintiff's cross-motion for summary judgment on the fourth cause of action relies upon the affidavits of two of its officers. These affidavits state, in substance, that plaintiff received a purchase order for the Gremlin posters from Circus World on May 14. The affidavit of Abraham Weinberger, plaintiff's vice president, states in part:

"The `GREMLIN' poster which is the subject matter of this action was to be sold to our customers so that our customers could sell it to retailers who would sell it ultimately to consumers. All of this was timed to coincide with a movie called `THE GREMLINS,' which was to be shown at the movie theatres. ACME should have delivered the dumps with *782 [sic] 4 to 5 days after pickup on June 8, 1984." Affidavit at 4.

The cause and consequence of plaintiff's loss are further explained in the Weinberger affidavit (at 7) as follows:

"The value of dumps on June 9, 1984 was $9720.00. On July 9, 1984, the posters were refused by CIRCUS WORLD because they were useless to them as a sales item. It would take two to three weeks after to distribute from the warehouse to their stores. On July 9, 1984, they became worthless to CIRCUS WORLD and certainly worthless to STARMAKERS. We still have the cartons delivered back to us from CIRCUS WORLD sitting on our floor. We cannot sell them for one cent each. "The merchandise was stale and CIRCUS WORLD did not pay the plaintiff $9720.00. The $9720.00 is the measure of plaintiff's damages."

I conclude from the undisputed facts in this case that plaintiff's remaining claim is one for special damages, and is not recoverable as a matter of law.

Plaintiff's sole remedy for the breach of a contract embodied in a bill of lading is that provided by the Carmack Amendment to the Interstate Commerce Act. 49 U.S.C. § 11707.[1]Starmakers Publishing Corp. v. Acme Fast Freight, Inc., 615 F. Supp. 787, 791 (S.D.N.Y.1985). That amendment incorporates the existing common law rules of contract damages. Comtempo Metal Furniture Co. v. East Texas Motor Freight Lines, Inc., 661 F.2d 761, 765 (9th Cir. 1981).

A breaching party will be liable for those damages which were reasonably foreseeable. See Corbin on Contracts § 1011 at 83 (West 1984). Reason to foresee damages will exist where the damages occur in the ordinary, natural course of the typical breach ("ordinary damages"). Reason to foresee will also arise where the damages do not ordinarily and naturally occur, provided that the breaching party had notice, at the time of contracting, of the special circumstances which made such unusual damages probable in the event of a breach ("special damages"). Starmakers Publishing, supra, 615 F. Supp. at 791.

Plaintiff's only claim for damages is that the late delivery resulted in a total loss of value of the posters. These damages cannot be considered "ordinary." Ordinarily, one would not expect a three week delay in delivery of printed matter in general, or of posters in particular, to result in a total, or even appreciable, loss of value of the goods themselves. Therefore, Acme will be liable for the loss claimed by Starmakers only if Acme had notice that Starmakers was shipping time-sensitive posters that would suffer a catastrophic loss of value if not delivered in time for the movie opening.

Plaintiff has failed to show that a genuine issue of fact exists as to such notice. The bill of lading issued to Acme for the goods bears the simple description "Printed Matter" (Exhibit C, Weinberger affidavit). The freight bill bears the notation "carton P2D Matter NOI Discount 20%"; there is uncontroverted testimony in the record from an Acme employee explaining that this notation signifies "printed matter not otherwise indexed." (Gonzalez Dep. at 36). Neither of these notations even remotely suggests that untimely delivery would result in a total loss of value. Nor has the plaintiff come forward on this motion with any reason to believe that the parties' prior dealings should have put defendant on notice of the consequences of delay.

Because plaintiff's claim is for special damages, and because plaintiff has come forward with no evidence that defendant was on notice of the special circumstances that would give rise to such damages, I conclude that defendant's motion for summary judgment should be granted, and plaintiff's cross-motion denied. The Clerk *783 of the Court is directed to dismiss the complaint with prejudice and with costs.

The foregoing is SO ORDERED.

NOTES: [1] The Carmack Amendment provides, in pertinent part, that "[t]he liability imposed under this paragraph is for the actual loss or injury to the property...." 49 U.S.C. § 11707(a) (1).

F

ANNEXURE

# Definitions of Logistics Providers

### Table 1 Services covered by different definitions of logistics (example)

| Scope of sector | Described services | Service 1D 1 | Service 1D 2 | Service 1D 3 |
|---|---|---|---|---|
| "Logistics can be defined as the management of global supply chains. The services provided by logistics companies include: management of customs procedures, setting up of assembly and manufacturing plants; groupage warehousing; information logistics services; and transportation with a selection of carriers and negotiation of tariffs. Some value-added services include management of warranty support programmes, return and repair as well as global logistics services" | Management of customs procedures | Customs and other formalities | X | X |
| | Setting up of assembly and manufacturing plants | Assembly | X | X |
| | Groupage | Consolidation | Handling | X |
| | Warehousing | Warehousing | X | X |
| | Information logistics services | Information services | X | X |
| | Transportation with a selection of carriers | Carriage | Selection of carriers | Negotiation of tariffs |
| | Management of warranty support programmes | Customer service | Value added service | X |
| | Return and repair | Customer service | Repair | Value added service |
| | International service | Value added service | X | X |
| 3PL firms specialize in integrated logistics services. They address the logistics needs of their clients by integrating transportation, Warehousing, inventory control, order processing, customs brokerage and other logistics activities in a comprehensive and seamless supply chain management system. Firms in the 3PL sub-sector provide e designed set of customized logistics services, tailored to the exact needs and specifications of their clients." | Transportation | Carriage | X | X |
| | Warehousing | Warehouse | X | X |
| | Inventory control | Inventory | X | X |
| | Order processing | Order processing | X | X |
| | Customs brokerage | Customs and other formalities | X | X |
| | Customized logistics service | Customized logistics service | X | X |
| | Integration of services | Integration of suppliers | X | X |
| "Fourth party logistics (4PI) goes one step further than 3PL and involves the Integration of all companies involved in the supply chain. This guarantees that planning, steering and controlling of all logistics procedures will be done by a single service provider with a long-term strategic objective." | Integration of all companies involved in the supply chain | Integration of suppliers | X | X |
| | Planning all logistics | Design of supply chain | X | X |
| | Steering and controlling of all logistics procedures | Management of supply chain | X | X |

## Table 1 Services covered by different definitions of logistics (example)

| Services | Carrier | Warehouse provider | Terminal operator | Freight forwarders | NVOCC | MTO | Logistics Service Providers |
|---|---|---|---|---|---|---|---|
| Carriage | x | | | | | (x) | x |
| Information services, including track and trace | x | | | x | x | x | x |
| Arrangement of transport operations | (x) | | | x | x | x | x |
| Warehousing (CFS) | | x | x | (x) | (x) | (x) | x |
| Consolidation | | x | x | x | x | x | x |
| Customs formalities and other order administration | | | x | x | x | x | x |
| Selection and integration of multiple carriers | | | | x | x | x | x |
| Kitting | | x | | x | | | x |
| Assembly and processing of goods | | | | | | | x |
| Technical testing | | | | | | | x |
| Localization | | | | | | | x |
| Quality inspection | | | | | | | x |
| Lead logistics provision | | | | | | | x |
| Logistics consulting and supply chain design | | | | | | | x |
| Management of supply chain (including transport, warehousing and inventory) | | | | | | | x |
| Operation of supply chain | | | | | | | x |
| Project logistics | | | | | | | x |
| Procurement | | | | | | | x |
| Financial services, such as collateral management or insurance brokering | | | | | | | x |
| After market services, e.g. reverse logistics, returns and repairs | | | | | | | x |
| Outsourced call centre (e.g. technical and warranty enquiries) | | | | | | | x |

* Some companies may choose to outsource some services they offer. In the context of this table, outsourced services are also considered to be included in the role in question.

** (x) indicates that the service is considered to be sometimes relevant to the role in question.

## ANNEX II. SERVICE ID DESCRIPTIONS

| Service ID | Included descriptions |
|---|---|
| Assembly | Setting up of assembly and manufacturing plants |
| | Assembly |
| | Taking over parts of production and servicing activities in just-in-time or just-in-sequence processes |
| | High-tech assemblies prior to delivery to the final product assembly |
| Carriage | Transportation with a selection of carriers |
| | Transportation |
| | Implementing, and controlling procedures for transportation |
| | Implementing and controlling the flow of raw materials, in-process inventory and finished goods |
| | Cargo transportation |
| | Organization, management, execution and control of freight transport operations |
| | Freight transportation |
| | Organization, management, control and execution of freight transport operations in the supply chain |
| | Surveillance of the accomplishment of the transport |
| | Organization, management, control and execution of freight transport operations in the supply chain |
| | Process of implementing and controlling the movement of raw materials, half-finished products and finished goods |
| | Organization and management of international shipment operations |

| Service ID | Included descriptions |
|---|---|
| Consolidation | Groupage |
| Consulting | Logistics consulting |
| | Analysis and development of production schemes |
| Customer service | Management of warranty support programmes |
| | Return and repair |
| Customized logistics services | Customized logistics services |
| Customs and other formalities | Management of customs procedures |
| | Customs brokerage |
| | Border clearance |
| | Preparation of the shipment with all necessary documents |
| | Customs and administrative procedures |
| Delivery (inbound) | Delivery of supplies for manufacturing |
| Delivery (outbound) | Delivery to warehouses and distribution centres |
| Design of supply chain | Planning all logistics procedures |
| | Designing the supply chain |
| | Related supply chain planning activities |
| Design of transport operations | Planning procedures for transportation |
| | Planning the flow of raw materials, in-process inventory and finished goods |
| | Planning of freight transport operations |
| | Planning of freight transport operations in the supply chain |
| | Planning, organization, management, control and execution of freight transport operations in the supply chain |
| | Process of planning movement of raw materials, half-finished products and finished goods |
| Design of warehousing | Planning procedures for storage of goods |
| | Planning the storage of raw materials, in-process inventory and finished goods |
| | Planning of intermodal freight transport door to door |
| Distribution | Final distribution to point of consumption |
| Equipment | Logistics equipment lease |
| Handling | Groupage |
| | Handling |
| | Load and unload |
| | Transshipment |
| Information services | Information logistics services |
| | Planning, implementing, and controlling procedures for related information |
| | Flow and storage of related information |
| | Logistics information processing |
| | Information technology infrastructure |

| Service ID | Included descriptions |
|---|---|
| Integration of suppliers | Integration of services |
| | Integration of all companies involved in the supply chain |
| | Integration of individual transport acts to door-to-door supply chains |
| | Organization, management, control and execution (implementation) of intermodal freight transport door to door |
| Inventory | Inventory control |
| | Management of materials at the plant |
| | Inventory maintenance activities |
| Management of supply chain | Steering and controlling of all logistics procedures |
| | Managing the supply chain |
| | Related supply chain management and related administrative activities |
| Management of transport operations | Implementing, and controlling procedures for transportation |
| | Implementing and controlling the flow of raw materials, in-process inventory and finished goods |
| | Organization, management, execution and control of freight transport operations |
| | Organization, management, control and execution (implementation) of intermodal freight transport door to door |
| | Organization, management, control and execution of freight transport operations in the supply chain |
| | Surveillance of the accomplishment of the transport |
| | Manager of the shipment |
| | Organization, management, control and execution of freight transport operations in the supply chain |
| | Process of implementing and controlling the movement of raw materials, half-finished products and finished goods |
| | Organization and management of international shipment operations |
| | Quality of transport |
| Management of warehousing | Implementing, and controlling procedures for storage of goods |
| | Implementing and controlling the storage of raw materials, in-process inventory and finished goods |
| Negotiation of tariffs | Transportation with a selection of carriers |
| | Cargo transportation brokerage |
| Order processing | Order processing |
| | Order-picking |
| | Order processing activities of the logistical transactions |
| Packaging | Packaging |
| Packing | Packing of cargos |
| Payment | Payment systems |
| Processing of goods | Sorting |
| | Processing |
| | Classifying |
| | Labeling |
| | Simple sorting activities |
| Repair | Return and repair |
| | Repairing |
| Sales | Sales |

| Service ID | Included descriptions |
|---|---|
| Selection of (multiple) carriers | Transportation with a selection of carriers |
| | Cargo transportation brokerage |
| | Choice and combination of transport modes |
| Track and trace | Telecommunications |
| | Tracking and tracing |
| Value added service | Management of warranty support programmes |
| | Return and repair |
| | Processing |
| | Assembly |
| | Classifying |
| | Repairing |
| | Packaging |
| | Labeling |
| | Sales |
| | Telecommunications |
| | International services |
| Warehouse | Warehousing |
| | Implementing, and controlling procedures for storage of goods |
| | Implementing and controlling the storage of raw materials, in-process inventory and finished goods |
| | Logistics facility operating business |
| | Store |
| | Storage |

**Definitions of Logistics Service Providers:** 'Guide to Key Issues in Development of Logistics Policy' of the United Nations Economic and Social Commission for Asia and the Pacific, (Dec. 2013)

**Source:** http://www.unescap.org/resources/guide-key-issues-development-logistics-policy

ANNEXURE G

# Carrier's Legal Liability - Specimen Coverages

## Carrier's Legal Liability Insurance Policy

| | | "Indian Product 1" | "Indian Product 2" | "Indian Product 3" | "Indian Product 4" | "Indian Product 5" | "Indian Product 6" | "Overseas Product 1" | "Overseas Product 2" |
|---|---|---|---|---|---|---|---|---|---|
| | COVERAGE | | | | | | | | |
| 1. | Carrier's liability for actual physical loss/ damage to cargo directly caused by fire/ explosion or accident to the carrying vehicle whilst in transport, provided the fire/ accident was on account of negligence/ criminal act of his servants ONLY if the vehicle is also damaged in the same incident AND claim is admitted under the Motor Policy of the vehicle. | Y | Y | Y | Y | Y | | | |
| 2. | Liability due to Breakage/ Leakage due to improper handling, | Included ** | Y | | Included ** | | | | |
| 3. | Liability due to Flood/ water damage | Included | Y | | Included | | | | |
| 4. | Liability due to Damage by other cargo | Included | | | Included | | | | |
| 5. | Liability due to Taint damage | Included | Y | | Included | | | | |
| 6. | Liability due to Shortage of cargo due to theft | Included | Y | | Included | | | | |
| 7. | Liability for Removal of Debris | Included | | | Included | | | Y | Y |
| 8. | Liability under Carriers Act 1865/ Carriage by Road Act 2007 | Y | Y | Y | Y | Y | | | |
| 9. | Costs towards Cargo salvage, transhipment, emergency storage | Y | | | Y | | | | |
| 10. | Loss of Freight in respect of the damaged part of the cargo | Y | | | Y | | | | |
| 11. | Legal and other costs incurred in the litigation against the claimants | Y | | Y | Y | | | Y | Y |
| 12. | Costs of average adjusters | Y | | | Y | | | | |
| 13. | Liability due to Loss/ Damage by Fire while at Warehouse Transhipment Yard | Excluded** | Y | | Y | | | | |
| 14. | Liability due to Loss/ Damage by Burglary while at Warehouse Transhipment Yard | Excluded ** | Y | | Excluded ** | | | | |
| 15. | Liability due to Damage due to Riot, Strike, Malicious Damage while at Warehouse Transhipment Yard | Excluded ** | Y | | Excluded ** | | | | |
| 16. | Liability arising out of Delay/ Loss of market/ Consequential loss arising from loss or damage to goods | | | | | | | Y | Y |
| 17. | Liability arising out of insured's subcontractor acting on insured's behalf as if the subcontractors were the Insured | | | | | | | Y | |

| | | "Indian Product 1" | "Indian Product 2" | "Indian Product 3" | "Indian Product 4" | "Indian Product 5" | "Indian Product 6" | "Overseas Product 1" | "Overseas Product 2" |
|---|---|---|---|---|---|---|---|---|---|
| 18. | Liability due to unintentional Breach of Driving Licence Requirement by Employee/ Agent provided the insured was not aware of such circumstances or the driver did it innocently (abridged wording) | | | | | | | | Y |
| 19. | Liability arising out of handling of Dangerous goods/ Hazardous substances | | | | | | | | Y |
| 20. | Liability arising out of handling Valuable cargo | | | | | | | | Y |
| | PERIOD OF COVERAGE | | | | | | | | |
| 1. | Cover commences from the loading of cargo on vehicle until unloading at discharging point of cargo OR expiry of three days from arrival of vehicle. | | | Y | | Y | Y | | |
| 2. | Cover commences from the loading of cargo on vehicle until unloading at discharging point of cargo OR expiry of seven days from arrival of vehicle. | Y | Y | | Y | | | | |
| | EXCLUSIONS | | | | | | | | |
| 1. | Liability beyond Carriers Act 1865/ Carriage by Road Act 2007 | Y | Y | Y | Y | Y | Y | | |
| 2. | Liability under any Contract or Agreement | Y | Y | Y | Y | Y | Y | | |
| 3. | Liability in respect of damage to property belonging to/ under the control of the insured/ his employees/ agents/ sub-contractors | Y | Y | Y | Y | Y | Y | | |
| 4. | Liability arising from Inherent defect or vice, including insects, moth, vermin, mildew, mould, damp-ness, wear and tear, deterioration, spontaneous combustion or decay of perishable goods. | Y | Y | Y | Y | Y | Y | | |
| 5. | Consequential Loss arising from loss or damage to goods | Y | Y | Y | Y | Y | Y | | Y |

| | | "Indian Product 1" | "Indian Product 2" | "Indian Product 3" | "Indian Product 4" | "Indian Product 5" | "Indian Product 6" | "Overseas Product 1" | "Overseas Product 2" |
|---|---|---|---|---|---|---|---|---|---|
| 6. | Liability arising as a consequence of war, acts of foreign enemy, hostilities, civil wars, rebellion, mutiny, insurrection or usurped power | Y | Y | Y | Y | Y | Y | Y | Y |
| 7. | Liability arising as a consequence of riots, strikes, malicious damage | Y | | Y | Y | Y | Y | Y | Y |
| 8. | Liability arising as a consequence of terrorism | Y | | | | Y | Y | Y | Y |
| 9. | Liability arising as a consequence of Act of God | | | | | Y | Y | | |
| 10. | Liability arising due to refusal on part of any government/ government agency/ other competent authority/ statutory provision to grant any necessary permit/license or deciding to revoke or qualify any such permit/ expropriation | Y | Y | Y | Y | Y | Y | Y | Y |
| 11. | Liability for loss or damage or expenses arising from goods which may be illicit/ illegal/ smuggled/ contraband | Y | Y | Y | Y | | Y | Y | |
| 12. | Liability or expenses arising from Fines/ Penalties/ Punitive/ Exemplary damages | | Y | | | | | Y | |
| 13. | Liability for loss or damage arising from any chemical, biological, bio-chemical or electromagnetic weapon | | Y | Y | Y | Y | Y | Y | Y |
| 14. | Liability for loss or damage arising from Nuclear risk, ionising radiation, contamination by radioactivity from any nuclear fuel, nuclear waste or its combustion | | Y | Y | Y | Y | Y | Y | Y |
| 15. | Depreciation | | Y | Y | | Y | Y | | |
| 16. | Intentional loss/ damage caused by the insured/ his employees/ agents/ sub-contractors | | Y | Y | | | | Y | Y |
| 17. | Liability for loss or damage arising from vehicle being driven by person under the influence of intoxicating liquor/ drug | | | | | | | | Y |
| 18. | Liability for breach of Statutory provisions including those relating to driving license by Employee/ Agent | | Y | | | Y | | | Y |

| | | "Indian Product 1" | "Indian Product 2" | "Indian Product 3" | "Indian Product 4" | "Indian Product 5" | "Indian Product 6" | "Overseas Product 1" | "Overseas Product 2" |
|---|---|---|---|---|---|---|---|---|---|
| 19. | Liability due to non-compliance of any technical standards commonly observed in occupationsl/ professional practice as per laws/ regulations | | Y | | | | | | |
| 20. | Liability directly or indirectly connected with Asbestos | | | | | | | | Y |
| 21. | Liability directly or indirectly connected with Bio-security or Infectious diseases | | | | | | | | Y |
| 22. | Liability due to Insolvency of the insured | | Y | | | | | | Y |
| 23. | Liability due to Seepage/ Pollution/ Contamination | | | | | | | | Y |
| 24. | Liability directly or indirectly arising from Mechanical / Electrical breakdown | | | | | | | | Y |
| 25. | Liability directly or indirectly arising due to incorrect/ incomplete Documentation | | | | | | | | Y |
| 26. | Liability due to loss/ damage to Cash/ Jewellery/ Valuables (unless specifically covered) | | Y | | | | | | |

** Inclusions are part of the 'all risks' cover given by the company. Coverages specifically excluded are mentioned.

Note: The above is not a comparison of the efficiencies of Insurance Policies. The details are merely from an academic point of view to indicate the wide range of Insurance Coverages available in the Indian/ Overseas markets and the Exclusions generally applicable. Insurers allow some of the Exclusions to be included as 'add-on' covers at additional premium. Errors and Omissions excepted.

H
ANNEXURE

# Multi Modal Transport Operators Liability - Specimen Coverages.

## Multi Modal Transport Operators Liability Insurance Policy

| | | "Indian Product 1" | "Indian Product 2" | "Indian Product 3" | "Indian Product 4" | "Overseas Product 1" | "Overseas Product 2" |
|---|---|---|---|---|---|---|---|
| | COVERAGE | | | | | | |
| 1. | Liability to the shipper for actual physical loss/ damage to cargo while in the care, custody and control of the insured. | Y | Y | Y | Y | Y | Y |
| 2. | Liability to the shipper for actual physical loss/ damage to cargo while in the care, custody and control of insured's contractor/ sub-contractor for transport services | | Y | Y | Y | Y | Y |
| 3. | Physical Loss or damage to vessel or equipment owned and/or damage to containers and/or pallet containers or operated by a subcontractor or customer or property of the others | Y | Y | Y | Y | | Y |
| 4. | Consequential loss and/or business interruption resulting from 1 above | | | Y | Y | | |
| 5. | Contribution to general average contribution in respect of unrecoverable cargo, which is unrecoverable by the insured | Y | | Y | Y | | Y |
| 6. | Liability of the insured due to unintentional breaches of regulatings resulting into fines, duty and extra costs | | Y | Y | Y | | Y |
| 7. | Legal liability arising out of the operations of the insured following a negligent act, error or omission by the insured, his agent or sub contractor | | | Y | Y | Y | Y |
| 8. | Legal liabilities arising out of physical loss or damage to Third Party property, death/ bodily injury/ illness arising out of the operations of the insured. | Y | Y | Y | Y | Y | Y |
| 9. | Legal liabilities arising out of legally recoverable consequential loss arising out of the operations of the insured. | | | Y | Y | Y | |
| 10. | Legal liability for the payment of damages in respect of customer's property cargo damaged during transit, shipment or reshipment due to improper packing, loading, wrapping, cushioning, improper selection of the design of crates etc. (abridged wording) | Y | | | | | |
| 11. | Legal Liability for pollution and/or contamination of soil, air or water, if the said pollution and/or contamination is the direct consequence of a sudden and accidental incident and when and to the extent that this was caused by or as a consequence of the Insured activities. | | | | | | Y |
| 12. | Costs/ expenses incurred in defending/seeking redress where there has been interference with the operations of the insured activities by any legislative/ executive authority of any country. (The insurer decides whether costs are warrented | | | | | | Y |

| | | "Indian Product 1" | "Indian Product 2" | "Indian Product 3" | "Indian Product 4" | "Overseas Product 1" | "Overseas Product 2" |
|---|---|---|---|---|---|---|---|
| | **EXCLUSIONS** | | | | | | |
| 1. | Liability or claim arising from illegal trade, dishonesty, infidelity or fraud, collusion, malicious, willful or deliberate act(s) or reckless conduct | Y | Y | Y | Not available | Y | Y |
| 2. | Liability towards extra costs & fines and duty arising out of forged bill of lading or warehouse receipt, illegal trade of cargo which is contraband | | Y | | | | |
| 3. | Liability arising out of Seepage, Pollution or Contamination other than by accident | Y | Y | Y | | Y | Y |
| 4. | Liability due to the dumping, handling, processing, treatment, storage of any waste or spoil | | | Y | | | |
| 5. | Liability due to inhalation or ingestion of asbestos, tobacco, coal dust, silica, benzene, lead, talc, dioxin, or drugs, pesticides or herbicides, or human immune virus. | Y | | Y | | | Y |
| 6. | Loss, damage, liability or expense directly or indirectly caused by, contributed to by or arising from: ionizing radiations, toxic, radioactive, any weapon employing atomic or nuclear fission, biological weapon | Y | Y | Y | | Y | Y |
| 7. | Loss, damage, liability or expense directly or indirectly caused by war, act of terrorism, industrial dispute, boycott, strike, lock-out, civil commotion, civil strife etc | Y | Y | Y | | Y | Y |
| 8. | Liability to valuable Cargo like bullion, cash, bank notes, bonds, stamps, vouchers, tokens, negotiable instruments or securities of any kind, blueprints, drawings, photos and goods of which the with difficulty to calculate its value | Y | Y | Y | | Y | |
| 9. | Liability arising out of any infringement of copyright, patent, service mark, registered design or trade name | Y | | Y | | | Y |
| 10. | Liability due to inherent vice, latent defects, ordinary leakage, loss in weight or volume, ordinary wear and tear | Y | | Y | | Y | |
| 11. | Liability arising out of any contractual penalties, liquidated damages, punitive or exemplary damages | | Y | Y | | | Y |

| | | "Indian Product 1" | "Indian Product 2" | "Indian Product 3" | "Indian Product 4" | "Overseas Product 1" | "Overseas Product 2" |
|---|---|---|---|---|---|---|---|
| 12. | Liability due to the failure to commence/ abandonment of/ inability to perform any of the services insured | | | Y | | | |
| 13. | Liability due to mysterious disappearance or unexplained loss/ shortage | Y | | Y | | | |
| 14. | Liability due to Cargo being hijacked during road or rail transportation | | | Y | | | |
| 15. | Liability due to inability to collect monies that are due to the insured, including duties/ freight monies collected but not paid to Customs | Y | | | | | |
| 16. | Liability due to increase in Declaration of value by a customer, agent or sub-contractor | | | Y | | | |
| 17. | Liability arising out of Dredging or land reclamation operations | | | Y | | | Y |
| 18. | Consequential loss occurred from non-fortuitous delay and wrongful delivery/ insufficient packing/ infidelity of insured's employee or attendant/ interruption of business | Y | Y | | | Y | |
| 19. | Loss or Damage caused by burglary or theft | | Y | | | | |
| 20. | Liability directly or indirectly caused due to goods defined in the international air contract as 'Goods Not Acceptable' /illegal objects | | Y | | Not available | Y | Y |
| 21. | Liability arising out of consignments of live Animals and Plants, Perishables, Frozen Goods, Seedling and Bulbs | | Y | | | | |
| 22. | Liability towards loss or damage to the goods covered under more specific insurance policies like Employers Liability | | Y | | | | Y |
| 23. | Loss of or damage caused by the possession, use or movement of ship craft, air craft, railway rolling stock | | Y | | | | |
| 24. | Loss of or damage caused by the possession or use of road vehicles which are covered under any other insurance policy | | Y | | | | |
| 25. | Loss, damage, liability due to Cyber Attack, malicious code, computer virus etc as well as Loss of Electronic Data | Y | | Y | | | |
| 26. | Liability arising out of or relating to Injury to Persons | Y | Y | | | | |
| 27. | General Average, General Average Contribution and salvage charges | | | | | Y | |

| | | "Indian Product 1" | "Indian Product 2" | "Indian Product 3" | "Indian Product 4" | "Overseas Product 1" | "Overseas Product 2" |
|---|---|---|---|---|---|---|---|
| 28. | All liabilities, costs and expenses due to capture, seizure, arrest, restrain, detention and consequences thereof | | | | Not available | | Y |
| 29. | All liabilities, costs and expenses arising out of claims against the personal estate of Directors and Members (and former Directors/ Members) of the supervisory board of the insured | | | | | | Y |
| 30. | Liability or claim arising from insured's insolvency, liquidation, bankruptcy, receivership, trading whilst insolvent or any other financial default or the extension of credit or from the insured's inability or failure to pay/ collect its debts. | | | Y | | | |
| 31. | Liability or claim arising from repetitive motion/ stress/ cumulative trauma related to improper design of goods/ equipment/ machinery etc., including improper supervision. | | | Y | | | |
| 32. | Liability arising due to lifting, loading, unloading or stowing of the Goods | | | | | Y | |
| 33. | Loss of/ damage to/ delay in delivery of goods caused by Driving/ Controlling of a carrying conveyance by driver/ operator who does not have valid license required by law or under influence of addictive drugs or alcohol | | | | | Y | |
| 34. | Loss of/ damage to/ delay in delivery of goods caused by deterioration/ unsuitability of a carrying conveyance/ overloading/ towing that exceeds the capacity of the carrying conveyance | | | | | Y | |
| 35. | Liability, costs and expenses arising from contracts subject to USA Law and Jurisdiction | | | | | | Y |
| 36. | Liability, costs and expenses arising from or connected with slander or libel | Y | | | | | Y |

Note: The above is not a comparison of the efficiencies of Insurance Policies. The details are merely from an academic point of view to indicate the wide range of Insurance Coverages available in the Indian/ Overseas markets and the Exclusions generally applicable. Insurers allow some of the Exclusions to be included as 'add-on' covers at additional premium. Errors and Omissions excepted.

**Transport Corporation of India Ltd**
TCI House, 69 Institutional Area,
Sector 32, Gurgaon – 122001
Tel : +91 124 2381603-07
Fax: +91 124 2381611
E mail: corporate@tcil.com
Website: www.tcil.com

Digital Presence:

**Insurance Institute of India**
C-46, G-Block, Near American Consulate,
Bandra-Kurla Complex, Mumbai - 400 051
Phone: +91-22-26541154 / +91 22 26541156.
Fax:+912226541170
Email: research@iii.org.in
Website: www.insuranceinstituteofindia.com

Digital Presence: