



## Critical Reactions

Several months of meticulous planning have been completed and the proper measures are in place to ensure multi-million dollar equipment will make it safely to the job site. However, even the best laid plans can go awry, and an accident may occur. Straps inexplicably fail during loading, a truck overturns or a rogue wave hits the carrying vessel and your expensive and critical cargo is damaged. Thankfully, you secured adequate cargo insurance to protect your financial interests.

However, the steps you take now to manage your claim are just as critical as the preliminary measures taken to prevent damage and select the proper insurance coverage. In this article, we will examine various elements of the claims process, including basic steps to follow when a claim occurs, the settlement process and subrogation.

To begin, there are some basic steps that need to be followed in the event of a claim. These steps are almost always noted on a certificate of insurance. However, if no certificate is issued, it is best to make sure the proper party has this information at hand and is prepared to act.

### **1. Document the conditions of the cargo upon delivery. Make clear exceptions on the delivery receipt, noting any loss or damage to the cargo and/or the packing and/or containers.**

Be as specific as possible. For example, if you receive a crate and see the forklift driver has just driven through its side, note the fact on the delivery receipt. If the container arrives without the original seal and has been replaced with a new seal, note the new seal number on the delivery receipt and state this is not the original seal. If a full container load is received at your facility and you do not have the opportunity to note damages on the delivery receipt, open the container as soon as possible and call the carrier to notify of any problems with the shipment. Photographs of damaged cargo within the container or on the truck, as well as pictures taken after unloading the cargo, are helpful. It may be difficult to prove the loss occurred during transit if damage/shortage is not noted at the time of delivery. Pictures will help the insurance company to determine what may have caused the loss, as well as give them an indication as to how extensive the damage is.

### **2. Protect the cargo from any further loss or damage.**

Such protective measures could include separating wet cargo from dry cargo, re-packing to prevent further loss or damage and/or moving goods to a secure location. Failure to mitigate further damages may jeopardize coverage under your policy. An insurance company may not pay for damages that could have been prevented. For example, if cargo packed in cartons and then shrink-wrapped arrives wet and remains in its original packing without being opened so that the cargo can dry, the damages will inevitably increase. You may be responsible for additional damages that occur as a result of your failure to alleviate the loss. In order to protect your interests, you should always act as a prudent uninsured—act as you would if you did not have insurance. Would you leave the cargo sitting in your warehouse wet, creating mold and mildew, or would you start to sort and segregate the good from the bad to minimize the loss?

The insurance company does not own the cargo at any point during the investigation, so it becomes the cargo owner's obligation to assist in minimizing a loss as best as possible. If you need to spend money to protect your cargo, the insurance company may pay for these costs under a sue and labor clause of the policy. If you need to hire extra labor to sort the shipment because of a loss, you should notify the insurance company and submit a detailed list of costs for consideration as a sue and labor expense.

### **3. Preserve all packing, damaged goods and seals until further advised by the insurance company.**

The insurance company will make a determination when the loss is presented whether or not it will need to inspect the damages or investigate any thefts. If the packing material is disposed of prior to notification to the insurance company, there may not be any way to determine what caused the loss, and whether it can be prevented in the future. The same is true of the seal on a container. If a container arrives without the original seal, it is important to take pictures of the back of the container doors, including the seal numbers, locks and hinges. In some cases, an investigator may be able to determine if the doors of the container were taken off at some stage during transit and cargo stolen during that time.

#### **4. Contact a local surveyor who will assess the loss/damage immediately.**

A surveyor is hired by the insurance company to determine the nature, cause and extent of damage. Approved surveyors vary by insurance company, but most will accept a Lloyd's appointed surveyor. Lloyd's of London has a network of approved surveyors in every country. A list of those surveyors can be found at [www.lloydsagency.com](http://www.lloydsagency.com), under agents' directory. You may also wish to contact your insurance representative and/or the insurance company for its recommendation.

#### **5. File a formal written claim against each carrier involved, making sure to include the amount being claimed, bill of lading/waybill number, description of cargo and description of loss, as well as inviting the carrier to inspect the damaged cargo.**

This action will protect subrogation (recovery) rights under the policy and assist the insurance company in pursuing the liable carrier once a claim has been paid. Any party named on the bill of lading/air waybill/truck waybill, can file a formal claim against the carrier. An insurance company cannot file the claim on your behalf since it is not a named party to the contract. A carrier should be notified of a loss in writing immediately. Some carriers, such as air carriers, may limit the time frame in which you have to file a formal claim against them. For example, if cargo shipped via air arrives with obvious damage at the time of delivery and you note it on the delivery receipt, you have only seven days to notify the air carrier of the loss.

#### **6. Retain all copies of the ocean, air and/or inland bills of lading, delivery receipt, customs entries, commercial invoices, packing lists and any other documentation related to the shipment.**

You should also submit a detailed, written claim statement advising the amount being claimed to include repair estimates or salvage estimates where applicable. Submit all pertinent information to settle the claim to your insurance representative and/or directly to the insurance company. It is important to submit all of the shipping documents when a claim is first submitted. This step in the process will help to expedite the claims handling process. In some instances, you may not have all of the paperwork on hand. It is best to send in the claim and any documentation you have as soon as a loss is known, rather than wait to send in a claim once you collect all of the requested documents. The sooner you notify the insurance company of a claim and collect the necessary documentation, the sooner the claim will be finalized. In some complex cases, you may be asked to submit additional claim documentation, such as equipment interchange reports, consolidation and deconsolidation reports, port receipts or pre-shipment inspection reports. Undoubtedly, the steps outlined above are of great importance and vital towards an expedient and successful settlement. But, this information is only useful when made readily available to those who need to know. A simple outline, with the contact information for surveyors and your insurance representative added, could be an invaluable tool, should your plans go awry.

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