

Logistics and Warehouse Exposures: Understanding the Risk



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What are you liable for?

- The Warehouse Receipt
- Goods in Due Course of Transit or at a Terminal
- CAT Perils

Copersucar Sugar Terminal in Brazil.

30,000 tons of bulk sugar valued at \$130,000,000 was lost in this fire. Cause of the fire was poor maintenance of the equipment at the Storage Terminal.



Warehouse Legal Liability

- Who needs Warehouse Legal Liability coverage?
 - Anyone who stores goods of others and provides a warehouse receipt.
 - A Freight Forwarder may need Warehouse Legal Liability Coverage.
 - A Terminal Operator may need Warehouse Legal Liability Coverage.

Freight Forwarders

Why are the goods in a Warehouse?

- In the “due course of transit”
 - Temporary storage while still under the bill of lading (NVOCC; Shippers Interest; Air Legal Liability)
- Warehouse Legal Liability
 - Goods are in the care, custody and control of the Freight Forwarder under a storage contract or warehouse receipt. FF could own or lease the warehouse.
- Storage
 - Goods are stored in warehouse but not under contract or receipt with Freight Forwarder
- Bailee
 - Goods are in the care, custody and control of the Freight Forwarder but there is no contract or warehouse receipt
- Consolidation/Deconsolidation
 - Coverage while goods are at warehouse temporarily to be packed or unpacked into smaller/larger containers

**Beware of stacking limits when providing multiple limits at the same location



Terminal Operators Legal Liability

- Covers good in the due course of transit under the original bill of lading
- Can also include Warehouse Legal Liability (WLL) coverage if transit has ended up the bill of lading and is now stored under separate contract or warehouse receipt
 - Most Terminal Operators Legal Liability form do not specifically address WLL
 - If you determine there is an exposure, you should add WLL endt to the Terminal Operators form to properly address the coverage
 - If the exposure exists and you do nothing, coverage is provided but may not properly address your insureds exposure



Which Receipt - Warehousekeeper

- Warehouse Legal Liability – At the location only
 - The Warehouse Receipt determines the Legal Liability
 - What if the damage occurs while unloading the truck?
 - What if there is concealed damage
 - Do they provide contracts separate from the standard receipt?

Which Receipt - Terminal Operators

- Terminal Operators – Due Course of Transit Only?
 - The Bill of Lading determines the Legal Liability...Right?
 - What if a Warehouse Receipt is issued?
 - Is the policy clear that coverage is limited to Due Course of Transit, or does it include coverage if a Warehouse Receipt has been issued and the goods are taken out of transit?

What's the Risk:

What does the receipt say?

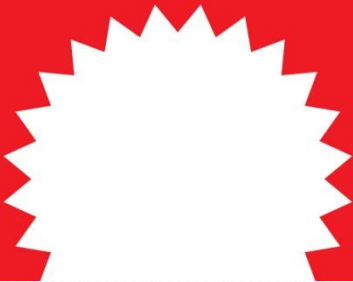
Which is the better risk

- Limited to 100X the monthly receipt
- Limited to \$50 per pound
- Limited to 300X the monthly storage charge
- Replacement cost
- The least of the following...
- Whichever is more...
- And/or

Example of Limitation

The depositor declares that the damages are limited to _____ x(times) the base rate, provided however that such liability made at the time of acceptance of this contract as provided in Section 3 be increased on part or all of the goods hereunder in which event a monthly charge of \$_____ will be made in addition to the regular monthly storage charge.

- ***Blank spaces in the limitation of liability can be a source for errors and omission when the receipt is completed. This can cause issues in the event of a claim. How will the policy respond?***



Example of Replacement Cost Liability

In the event of loss, damage or destruction to stored goods for which a warehouseman is legally liable, depositor declares that warehouseman's liability for damages shall be replacement cost of all material or product that is lost, damaged or destroyed during warehouseman's handling or storage of such material or product in the course of warehousing operations. If such loss, damage or destruction occurs due to the negligence or willful misconduct or warehouseman, its agents or assigns, then warehouseman will be fully liable for all loss, damage or destruction. If such loss, damage or destruction occurs without the negligence or willful misconduct by a warehouseman, its agents or assigns then warehouseman will receive a loss damage allowance.

Do you want to provide Replacement Cost?



Example of Released and Declared Limitation

In the event of loss, damage or destruction to stored goods for which a warehouseman is legally liable, depositor declares that warehouseman's liability for damages shall be limited *to the lessor of the following*:

- a) The actual cost to depositor of replacing or reproducing the damaged goods,
- b) 100x the monthly storage charge applicable to such lost, damaged or destroyed goods,
- c) 50 cents per pound.

Provided, however that within a reasonable time after receipt of this warehouse receipt, depositor may, upon written request increase warehouseman's liability on part or all of the goods stored under this warehouse receipt, in which case an increased charge will be made based upon such increased valuation



- **§ 7-204. Duty of Care; Contractual Limitation of Warehouse's Liability.**
- (a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. However, unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care



- (b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. The warehouse's liability, on request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt, may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.
- (c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement

LOGISTICS PROVIDERS AND LEGAL LIABILITY

- Try To Give The Customer Everything It Needs For Supply Chain Management.
- Only By Reading The Contract Can You Understand What He Is Agreeing To Be Responsible For.
- Contract Damages and Penalties



LIABILITY OF CARRIERS/BAILEES FOR ACCESSORIAL SERVICES

Failure to Procure Insurance Required Under Contract

Failure to Properly Process Goods

Negligent Supervision

Negligent Security

Completed Operations



LIABILITY TRENDS

Identity Theft

Seal Integrity or Breach of Chain of Custody

Adulterated Products

Loss of Warranty

Diminished Value

Consequential Damages



CAT Perils and Acts of God

I read the entire policy and I can't find the Acts of God Exclusion – where is it?!?



CAT Perils – Why do we care?

- **How can I be legally liable for a Cat Peril?**
- **Courts have held many warehouseman liable for CAT losses so we can't assume that we won't pay a loss.**
- **If I sublimit Flood or Quake, doesn't that imply that I intend to cover all Acts of God?**



Flood

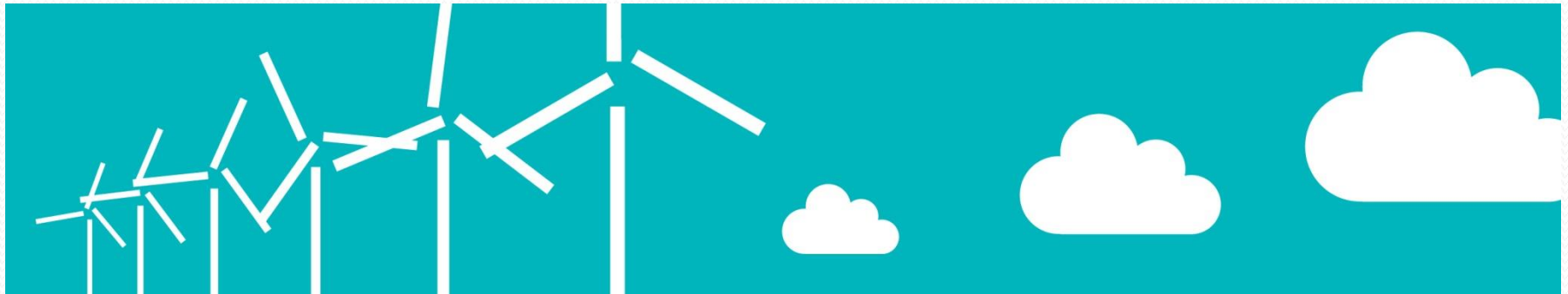
- **Are the goods stored a minimum of 4 inches off the floor?**
- **Was the building constructed in a known flood zone above the 100 year plain?**
- **Is there sufficient waterproofing in the building?**
- **Are docks constructed with proper drainage to prevent it from being shut down for an extended period?**
- **Are there water drains found in the floor throughout the warehouse?**



Wind

Windstorm

- **Is the building in compliance with local codes?**
- **Windows boarded up?**
- **Roof tarped after a storm?**



Earthquake

- **Is the sprinkler system properly braced?**
- **Are the goods property stored?**
 - **Heavier goods on the bottom racks**
 - **Bracing or reinforced shelving**
- **Has the building been brought up to code for earthquake?**





Understanding the CAT Risk

- Did the warehouse make any promises?
 - *HURRICANE PROOF BUILDING*
 - *NEVER FLOODS*
 - *GUARANTEED BACK UP GENERATORS*
- What action will they take to prevent further loss?
 - Tarps on the roof

Questions

