

CARRIAGE OF GOODS

THE BUSINESS OF TRUCKING INVOLVES CARRYING ALL MANNER OF GOODS THE LENGTH AND BREADTH OF NEW ZEALAND. IN SEPTEMBER 2017, THE CARRIAGE OF GOODS ACT 1979 WAS REPEALED, AND ITS PROVISIONS INTEGRATED INTO PART 5, SUBPART 1 OF THE CONTRACT & COMMERCIAL LAW ACT 2017 ("THE ACT"). THIS SUBPART APPLIES TO VIRTUALLY EVERY CONTRACT FOR THE CARRIAGE OF GOODS PERFORMED IN NEW ZEALAND, BUT MANY TRANSPORT OPERATORS REMAIN UNAWARE OF THE APPLICATION OF THIS LEGISLATION. THE LEGISLATION DISCUSSED IN THIS ISSUE OF TRUCKERS' GUIDE TO THE LAW DOES NOT APPLY TO INTERNATIONAL CARRIERS.

Definitions

Goods

includes all things of value including animals, plants, baggage, money and documents.

Carrier

the person who, in the ordinary course of business, carries goods owned by another person, or who organises those goods to be carried or who either performs or organises any incidental service in respect of the goods carried.

Actual Carrier

is a carrier in possession of the goods at any time for the purpose of performing the carriage of goods or any incidental service.

Contracting Party

the consignor or consignee of the goods who has entered into the contract with the contracting carrier.

Contracting Carrier

the carrier who has entered into the contract with the contracting party.

Unit of Goods

This consists of:-

- i. In relation to bulk cargo, the unit of bulk, weight or measurement upon which the freight for that type of cargo is normally calculated.
- ii. In any other case where the goods are in a container, on a pallet or in a package, then the unit of goods will be that container, pallet or package and where the container, pallet or package is provided by the contracting party the unit includes the container, pallet or package.
- iii. Where goods are divided into units for the purpose of carriage in a manner not referred to above the unit means the unit of goods as so unitised. In relation to baggage it means each item of baggage.

What Types of Contract are There?

This subpart defines four different types of contract for the carriage of goods, each of which determines responsibility for loss or damage to the goods and the extent of that responsibility.

These contracts are:

- i. At "**Owner's Risk**" where the carrier will not be liable for the loss or damage to goods at all, unless the carrier intentionally causes the loss or damage.
- ii. At "**Declared Value Risk**" where a carrier will be liable for the loss of, or damage to, goods up to an amount specified in the contract.
- iii. On "**Declared Terms**" where the carrier will be liable for the loss or damage to any goods in accordance with the specific terms of the contract.
- iv. At "**Limited Carrier's Risk**" where the

carrier's liability is limited to the amount set out in the legislation, which is presently \$2,000 for each unit of goods.

Where a contract expressly mentions one of these four terms, the contract shall be of the sort mentioned. Where a contract does not claim to be of any particular type, it is presumed to be a contract at limited carrier's risk. Although it is presumed that a contract will be of the type mentioned in the contract, the Act sets out criteria that must be satisfied in each case and if the criteria are not satisfied then the contract is deemed to be at "limited carrier's risk".

Owner's Risk

A contract can only be "at owner's risk" if it:-

- i. Is in writing.
- ii. Is expressed to be at owner's risk.
- iii. Is signed by both parties to the contract.
- iv. Includes the following statement:

"These goods are to be carried at owner's risk. This means that the carrier will not pay compensation if the goods are lost or damaged unless he intentionally loses or damages them."

This statement must be signed by the contracting party. If the statement is included in the consignment note, then the statement must be conspicuous and separately signed by the contracting party.

The difference between the freight charged under the contract at owner's risk and what would have been charged under a contract at limited carrier's risk must be fair and reasonable having regard to the difference between the risk actually undertaken by the carrier and the risk that the carrier would have undertaken if the contract had been at limited carrier's risk.

Declared Value Risk

The contract can only be at declared value risk if it is:

- i. In writing; and
- ii. The difference between the freight charged under a contract at declared value risk and what would have been charged under a contract at limited carrier's risk must be fair and reasonable having regard to the difference between the risk actually undertaken by the carrier and the risk that would have been undertaken if the contract had been at limited carrier's risk.

On Declared Terms

A contract can only be "on declared terms" if:

- i. Freely negotiated between the parties.
- ii. In writing.
- iii. Signed by both parties to the contract.

The question of whether any contract was freely negotiated will be decided after consideration of:

- The respective bargaining strengths of the parties.
- The dealings between the parties including any previous transactions.
- The value of the transaction.
- Any extraordinary features of the goods or the route

What is the liability of the Contracting Carrier?

The contracting carrier is liable to the contracting party for loss of, or damage to, goods occurring while the carrier is responsible for the goods, whether or not the loss or damage is caused by the contracting carrier or by any actual carrier.

The responsibility of the contracting carrier begins when the goods are accepted for carriage, and

- A. Where the goods are to be delivered to the consignee, responsibility ends when the goods are tendered to the consignee in accordance with the contract OR in the case of unpaid charges due to be paid on delivery, ends when the party liable to pay is notified that delivery is ready to be made.
- B. Where the goods are to be collected by the consignee, responsibility ends when the goods are collected OR five days after the consignee is notified that the goods are available for collection.
- C. If the consignee is unable to be found, responsibility ends when reasonable steps have been taken to find the consignee and give notice that the goods are ready to be delivered or collected.

What is the Liability of the Actual Carrier?

Separate Liability

Where one actual carrier is involved, that carrier is separately liable (whether or not the loss was caused by the actual carrier) to the contracting carrier for the loss or damage from the time the goods were accepted by the actual carrier for carriage until the time when:

- i. They are tendered to the next actual carrier, or
- ii. In the case of the last actual carrier when the applicable alternative set out in (A), (B) or (C) above occurs.

Where more than one actual carrier is involved, each actual carrier is separately liable (whether or not the loss was caused by that carrier) to the contracting carrier for loss or damage to goods from the time when the goods were accepted by the carrier until the time when:

- i. They are tendered to the next actual carrier, or
- ii. In the case of the last actual carrier, when the applicable alternative set out in (A), (B) or (C) above occurs.

Joint Liability

Where more than one actual carrier is involved, the carriers are jointly liable to the contracting carrier for loss or damage during the period of the contracting carrier's responsibility, namely from the time when the goods were accepted for carriage until any of the applicable alternatives set out in (A), (B) or (C) above occurs.

However, if the actual carrier can prove that the damage occurred when it was not separately responsible for the goods in accordance with (A), (B) or (C) above, the actual carrier will not be liable.

If the actual carriers are jointly liable for the loss or damage occurring during the time from acceptance to the time when the contracting carrier's responsibility ends in accordance with (A), (B) or (C) above, the extent of the liability is limited in proportion to the amount each carrier is paid in comparison to the amount the other actual carriers are paid.

These rules are subject to the actual terms of the contract, and the parties may agree to expressly vary them in such a contract.

Limitation of Liability

The liability of the contracting carrier to the contracting party and the separate liability of any actual carrier to the contracting carrier and the joint liability of any actual carriers is limited to \$2,000 for each unit of goods lost or damaged OR, in the case of a contract at declared value risk, the amount specified in the contract.

The limitation does not apply to any loss or damage intentionally caused by the carrier or any liability arising out of the terms of the contract for damages other than for the loss of or damage to the goods or any liability arising out of the terms of the contract for damages consequential upon the loss of, or damage to, the goods.

Liability of Carrier's Employee

A carrier's employee is only liable to the owner of the goods if in the course of his or her employment she or he intentionally causes the loss or damage to the goods. A carrier's employee is otherwise not liable.

Actions Against Carriers

Before any action may be brought against a contracting carrier for loss or damage to goods, written notice giving reasonable particulars of the alleged loss or damage must be given within 30 days of the carrier's responsibility for the goods ending.

This summary is intended only as a guide. It is not a full summary of the Carriage of Goods provisions of the Contract & Commercial Law Act 2017.

If you have specific questions, or need legal advice on a particular issue, please contact Cathy Fisher or Shafraz Khan at Fortune Manning Lawyers. Cathy and Shafraz have extensive experience in all areas of the law relating to the transport industry.

Cathy Fisher
cathy.fisher@fortunemanning.co.nz

Shafraz Khan
shafraz.khan@fortunemanning.co.nz

www.fortunemanning.co.nz

0800 4 FM LAW

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