Freight Payment Terms and "Risk of Loss"

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We often get questions about which party (the shipper or the consignee) is entitled to file a claim for freight loss or damage.

The Uniform Straight Bill of Lading (and most bills of lading used by shippers and carriers) has a provision for identifying the party to whom the carrier should send its freight bills. The "official" version of the bill of lading as published in the National Motor Freight Classification has a box that states: "Freight charges are PREPAID unless marked collect" and a place to "CHECK BOX IF COLLECT". Many bills of lading also have a "Bill To" box if the freight bills are to be sent to someone other than the shipper or the consignee, such as a freight payment agent.

It is a common misconception that the identification of the party to pay the freight charges, i.e., whether the freight charges are "prepaid" or "collect", also determines which party should file a claim for loss or damage.

The first step in any claim case is to ascertain who has *risk of loss* in transit. This concept is significant because it determines who has the legal right or obligation to file the claim, and who is the proper "party in interest" in the event of litigation.

Under common law and the old Uniform Sales Act, which has been replaced by the Uniform Commercial Code, risk of loss generally followed "title" to the goods. However, under the Uniform Commercial Code, risk of loss is related to "delivery" of the goods.

While the parties may specify otherwise in the contract of sale, UCC 2-319 and 2-320 establish certain presumptions, based on the "terms of sale" used in the contract between the seller and the buyer:

F.O.B. Place of Shipment - When F.O.B. place of shipment is specified, the seller is bound to ship the goods at that place and bears the risk and expense of putting the goods in possession of the carrier. Thereafter, the risk of loss is on the buyer.

F.O.B. Place of Destination - When the term is F.O.B. place of destination, the seller must transport the goods to that place at his own risk and expense and tender proper delivery. Thus, the risk of loss is on the seller during transit.

F.A.S. means "free along side" and requires the seller to deliver the goods to the pier or dock. Risk of loss remains on the seller until such delivery is completed.

C.I.F., in a contract for the sale of goods, refers to "cost, insurance and freight" and means that the price includes the freight and surface costs to the named destination. Risk of loss, however, passes to the buyer once the seller has delivered the goods to the carrier at origin, prepaid the freight, obtained insurance and sent the shipping documents to the buyer.

C.&F., another common shipping term, imposes the same obligations on the seller except the requirement to pay for insurance.

For most domestic shipments, the rules can be summarized as follows: (1) if the shipment is "FOB Origin", the risk of loss passes to the buyer/consignee once the goods are put in possession of the carrier at origin (and the buyer/consignee still has to pay for them even if they are lost or destroyed in transit, and (2) if it is "FOB Destination", the seller/shipper retains risk of loss until delivery at destination.

Terms of sale are not (usually) shown on a bill of lading. They are set forth in a purchase order, sales contract, invoice, etc. Sometimes the sales agreement between the seller and buyer is silent as to these terms of sale. In that case, the general rule is that risk of loss passes to the buyer upon delivery to the carrier at the place of shipment. The custom and usage of the particular trade or business are also relevant in determining risk of loss in such situations.

It should be noted that, in practice, claims are very often not filed by the party who has risk of loss. For example, a large shipper that has an experienced traffic department may file claims for its customers as a courtesy or service. Also, regardless of which party has risk of loss, either party named on the bill of lading does have the right to file the claim.