MARSH

LEADERSHIP, KNOWLEDGE, SOLUTIONS…WORLDWIDE.

LIABILITY FOR HIGH VALUE CARGO
TRANSFERRING RISK TO CARRIERS

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Agenda

- Cargo Insurance and the Traditional Contract of Carriage
- The 3PL Model Creates Leverage for Shippers
- Risk Management Policies versus Logistics Reward
- Impact on 3PL Liability and 3PL Liability Insurance
- Insurance Implications and Managing Risk

Contracts of Carriage

Bills of Lading

- Transit Agreements
  - Land carriers
  - Ocean carriers
  - Air carriers

Receipts

- Warehousing Agreements
  - Domestic/foreign

Bills of Lading

The Bill of Lading serves both as a shipping contract and as a receipt for the goods shipped and evidence of title. It shows the date the goods were shipped, what was shipped, by whom, via what carrier, to an exact destination.

The Bill of Lading does not provide "**insurance**" to a customer.

The Bill of Lading specifies the carrier's terms of carriage, the limitations of liability should loss or damage occur, as well as the carrier's exemptions of liability. Even if a value is declared, carriers are not responsible at law for the following causes:

- Acts of God (unexpected flood, quake, hurricane, tornado);
- Public enemies;
- Inherent vice;
- Act or fault of the shipper or public authorities; and
- Terrorism, strikes, riots.

Carrier Limitations of Liability

The extent of financial Liability varies by mode of transport:

Examples:

Inland Trucking (Europe):	8.33 Special Drawing Rights (SDR) per Kilo
Inland Trucking (U.S.):	Actual value of the goods unless lower limits are provided via file published tariffs (Carmack Amendment)
International Air:	17 SDR per kilo
Carriage by Water:	Rotterdam: Greater of 3 SDR per kg or 875 SDR per package.
	Hague Visby: Greater of 666.67 SDR per package or 2 SDR per kg of gross weight
	U.S. Carriage of Goods by Sea Act (COGSA): US$500 per package

Bill of Lading Limitations and Cargo Insurance

- Since Carriers' Liability is limited, Cargo Insurance is the **cargo owner's** best protection for loss or damage in transit.

Cargo Insurance Expectations

- Traditional Cargo insurance is a first party cover purchased by the **cargo owner** to protect their interest and/or their contractual obligations to the buyer for the transport and temporary storage of cargo.

  – Coverage includes:
    - Valuation as required by cargo owner – for their own interest or as required under terms of sale
    - Extensions for loading/unloading
    - Extensions for inland and storage, addressing multimodal exposure
    - Potential to extend to include BI, allow for waivers of subrogation, protection from insolvency costs, etc.

  – Rating based on:
    - Low deductibles
    - Ample market capacity
    - Standard recovery expectations

Cargo Insurance vs. Carriers Liability

Cargo	Value	Insurance Cost	Payment Under Policy	Carrier Liability
Ocean Transit 300 Kg (1 pc.)	$25,000	$58.75	$25,000	$1,200 (2 SDR) or C$1,333 (666.67 SDR/pkg. - COGWA) or US$500/pkg - to/from U.S. (COGSA)
International Air 300 Kg (1 pc.)	$25,000	$42.50	$25,000	$10,200 (17 SDR/Kg)
Inland - Canada 300 Kg (1 pc.)	$25,000	$31.25	$25,000	$1,323 ($4.41/Kg) maximum liability total weight of shipment
Freight Forwarder 300 Kg (1 pc.)	$25,000	Depends on mode of transit	$25,000	No B/L - 2 SDR/kg Bill of Lading – same as Master Bill of Lading
Warehouse 300 Kg (1 pc.)	$25,000	$31.25	$25,000	2 months storage charges

Changing Client Expectations

- Despite the extended soft cargo insurance market, cost cutting efforts by many larger companies has resulted in some fairly aggressive premium reduction measures being implemented, including traditional low deductibles being replaced by high retentions, stock throughputs, captive programs, etc.

- At the same time the traditional in-house logistics department has been saddled with greater responsibility for costs related to cargo losses that would have otherwise been absorbed by a traditional cargo placement.

- In addition, these cost cutting efforts have resulted in smaller in-house logistics groups, who are looking to outsource more of the logistics functionality.

Changing Face of 3PLs

- Why are more cargo owners turning to 3PLs to handle the movement of cargo?
- They offer:
  - Greater flexibility
  - Improved operational efficiency, much of which comes through the use of technology introduced over the past decade
  - Enhanced customer service capabilities
  - Reduction of capital expenditures (equipment, distribution centres.)
  - Lower cost…
- But why is a 3PL different to a common carrier, and what are 3PLs doing to the standard liability for carriage of cargo?

Changing Face of 3PLs

The term 3PL was registered by Accenture as a trademark in 1996, and defined as:

> "A supply chain integrator that assembles and manages the resources, capabilities and technology of its own organization with those of complementary service providers to deliver a comprehensive supply chain solution."

The term is no longer registered, and in the US has been redefined under the Consumer Product Safety Act as:

> "A person who solely receives, holds or otherwise transports a consumer product in the ordinary course of business but who does not take title to the product."

Changing Client Expectations

- The rise of the 3PL market has resulted in forwarder and carrier consolidations creating large global 3PLs, as well as greater and more aggressive competition among transportation service providers, who are continually looking for ways to differentiate themselves to their clients.

- While their primary focus has been on their ability to provide the global shipping and warehousing services their clients need, many cargo owners have found 3PLs, in the interest of **partnering with their clients**, more and more willing to take on greater levels of liability for loss, damage and delay. While this was not uncommon in the auto industry during the move to JIT, it is now far more widespread, and is increasing creating challenges for the 3PL's and their underwriters.
- And what about 4PLs?

Rise of the 3PL and Outsource Logistics

- http://www.logisticslist.com/what-is-3pl.html
- http://www.scdigest.com/assets/Experts/ManagingPerformance.php

3PL/Carriers Insurance

3PLs are generally expected to have three types of cargo related insurance:

1) **Cargo Legal Liability which covers:**
   - Their legal and/or contractual liability for their insured services;
   - Their legal/defense costs; and
   - Consequential loss resulting from such loss or damaged cargo.

2) **Errors and Omissions which covers:**
   - The client from the financial loss incurred by their customers resulting from breach of duties, acts of neglect, and/or errors or omissions.

3) **Contingent Cargo Liability which covers:**
   - The failure of the underlying carrier's cargo legal liability insurance to respond to loss or damage that the carrier would have otherwise been legally liable for.

Optional insurance they may provide:

- **Marine Cargo (Shipper's Interest)** covers customer's cargo in transit against "all risks" of physical loss or damage.

Competition Allows New Levels of Contractual Liability

- At some point a couple of the large shippers realized that there was an opportunity to leverage the 3PL's interest in "partnering" with a change in the traditional cargo owner/carrier relationship.

- New contracts were developed that changed and increased the carrier's liability, and drew in the 3PL/forwarder/load broker as if they were the carrier, taking carrier's liability to new levels.

- 3PL's signed these agreements – not necessarily because they wanted to, but because if they wanted to handle cargo for Wal-Mart or Home Depot they had no choice. Because if they didn't, someone else would.
  - And because they were signing these for Wal-Mart and Home Depot, suddenly these contracts became the norm for the smaller clients…

Competition Allows New Levels of Contractual Liability

- **Liquidated Damages** – specific payments for late delivery, sometimes limited, sometimes unlimited.
- **Full Value of the cargo whether declared or not** - often with the valuation to be determined by the cargo owner, and based on something other than invoice value.
- **Contingent Cargo Liability** – holding the 3PL liable if the underlying carrier's insurance fails to respond. Surprisingly frequent.
- **Liability to the 3PL rather than the carrier** – holding the 3PL liable regardless of the underlying carrier's actual liability – also great for loads taken by identity theft.

Competition Allows New Levels of Contractual Liability

- **Consequential Loss** – liability for **undefined** consequential losses, which would include BI, loss of market, loss of profits, etc.
- **Waiver of Limitation and Convention** – removal of the protections provided by any/all conventions.
- **Liability regardless of fault or cause**
- **Full Indemnity** requiring the 3PL to agree to protect the cargo owner from all claims that may arise in relation to the handling of the cargo.
- **Claim payment terms** that are not aligned with underlying carrier liability or with underwriter's claim settlement process.
- Cargo owner to be added as a **Named Insured** to the Cargo Legal Liability policy.

Carrier’s Liability Insurance

- Cargo Insurance arranged by the 3PL…
  - Pros:
    - Addresses all risk requirement
    - Generally flexible enough on valuation
    - Cost effective
    - Added value service
  - Cons:
    - Does not address liquidated, contingent or other liabilities
    - Challenging to rate if no values declared
    - May conflict with cargo insurance already in place – does the 3PL need to get permission to arrange?
    - Is the current rating right if there is no subrogation?

3PL Risk Management

- Understand the Risk:
  - Ensure that contractual obligations are clearly and completely passed through to the carrier – or where the liability cannot be passed through, that the underlying carrier has at least the expected standard liability
- Align Objectives:
  - Understand what the cargo owner is trying to accomplish
- Manage the Risk:
  - Greater obligations need increased risk management and loss control.
    - Confirming carriers are legitimate – identity theft
    - Ensuring that the understood insurances are in place - check certificates.
    - Implement vigilant loss control measures

CargoNet

- A division of the Verisk Crime Analytics unit at Verisk Analytics, CargoNet® helps prevent cargo theft and improve recovery rates through secure and controlled information sharing among theft victims, their business partners, and law enforcement.
- CargoNet is centered on a national database and information-sharing system managed by crime analysts and subject-matter experts.
- By applying a synchronized, layered approach, CargoNet exploits the weakness of cargo thieves at multiple points and offers integrated databases, a theft alert system, task force and investigations support, a tractor/trailer theft deterrence program, and the TruckStopWatch® program.
- CargoNet also provides driver education and incentives, secondary-market monitoring and interdictions, crime trend analysis and loss control services, and training.

CargoNet

CargoNet is centered on a national database and information sharing system managed by supply chain security analysts and subject matter experts.

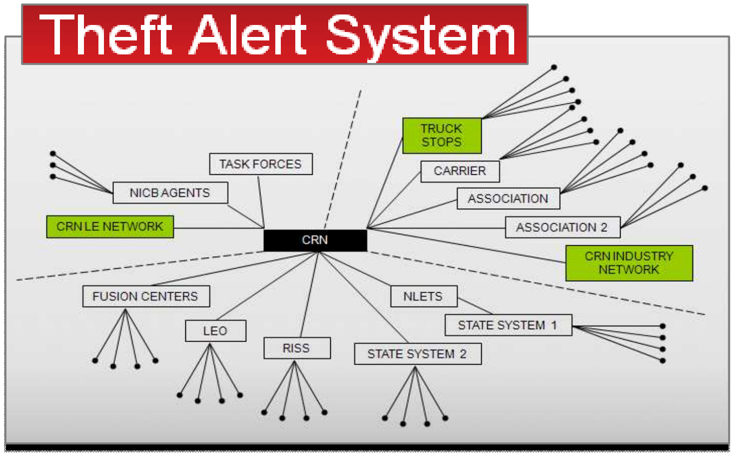
- Fast Reporting and Dissemination of Stolen Trailer Details.
- 24-7/365 Command Center.
- Link Analysis – Identify Crime Patterns.
- Driver Training via e-Learning and Learning Management.
- Grey-Market Monitoring.
- The Publishing of Vital Industry Information.
- TruckStopWatch Program.

Deterrence and Prevention

- Loss control analytics
- Truck/trailer marking program
- Employee screening and education
- Virtual community
- Proactive prevention services
- Increase risk for thieves

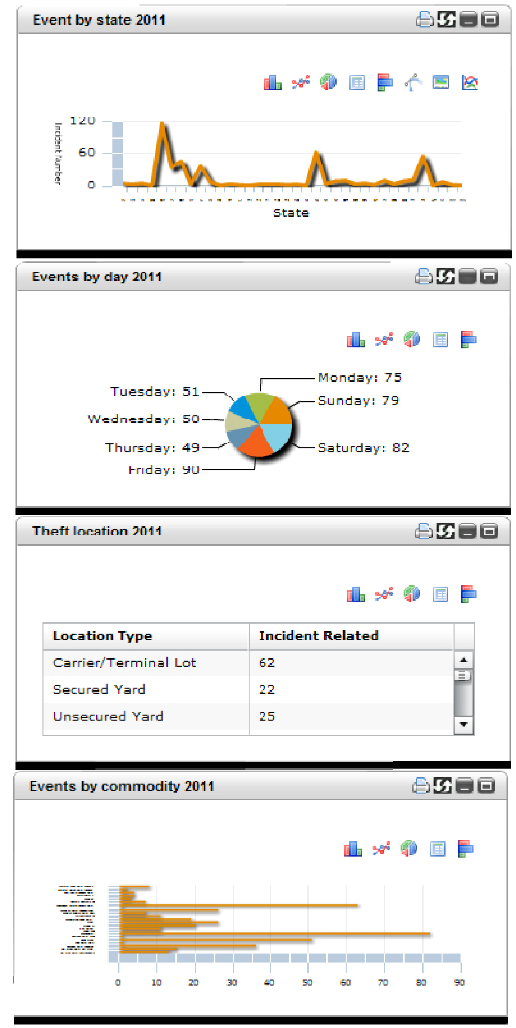
Recovery

- Recovery network
  - -Tractor/trailer
  - -Cargo
- Command center and analysts
- Database
- Investigations support
- Task force integration
- Police training



Analytics

- Crime pattern reports
- Shortage pattern reports
- Driver and suspect analytics
- Integration with other data
- Grey market monitoring



Case Studies

Case Study – Collaboration

A trailer loaded with $400,000 of electronics left a shipper's manufacturing facility in Fort Worth, TX. Due to the driver's irregular behavior, he was asked by the shipper to return to the manufacturing facility. The driver refused to return and ceased communication with the shipper.

The shipper contacted the CargoNet command center immediately. CargoNet's analysts worked with their law enforcement network to locate, intercept and secure the fully loaded trailer.

The trucking company was then able to dispatch two local drivers to meet the interdiction team, take possession of the trailer, and haul it to the original destination. The fully loaded trailer arrived to the retailer's distribution center just before the original estimated time of arrival.

Lesson Learned: *If shippers and transportation companies see a red flag and take swift action, a theft can be averted.*

Case Study – Information Sharing

During a routine traffic stop in Union City, NJ, a police officer uncovered a cache of LCD televisions. Suspecting the TVs were stolen, UCPD confiscated them and started an undercover investigation. As part of the operation, detectives issued an alert through the Critical Reach system. CargoNet received a Critical Reach alert and television serial numbers; CargoNet's command center uploaded the data to the CargoNet system.

A few days later, CargoNet's database filters identified a claim made by one of its member insurance companies that matched the make and quantity of the suspicious product held by the UCPD. Using the theft information issued with the insurance claim, CargoNet analysts contacted the trucking company from which the theft occurred to verify the incident. CargoNet also contacted the television manufacturer to obtain product serial numbers and confirm that the items held by the UCPD were in fact stolen and related to the crime. They were.

The insurance company was then able to contact the UCPD, and the televisions were picked up at a later date. The individuals apprehended by the UCPD will stand trial in the near future.

Lesson Learned: *Although fast reporting of thefts is critical it is* ***never too late*** *to report a theft to CargoNet*

Case Studies

Case Study – Database

A trailer containing $1,000,000 worth of electronics was stolen from a truck stop outside of Lubbock, TX. The CargoNet command center was notified, and the theft incident information was uploaded into the CargoNet Recovery Network which includes a multi-layered secure alert system.

For the following three months, the CargoNet command center continued to research the case and collect detailed information from the theft victims, their supply chain partners and law enforcement.

While working on an investigation, law enforcement officers entered a warehouse containing large quantities of various types of electronic merchandise. Officers contacted CargoNet to run the serial numbers of goods found against the serial numbers of stolen cargo that were stored in the database.

CargoNet analysts were able to identify $300,000 worth of cargo associated with this incident. The cargo was later returned to the theft victim.

Lesson Learned: *Once stolen cargo is removed from a vehicle, detailed records of the stolen cargo are critical and, when added to the CargoNet database, become a powerful investigative tool for law enforcement.*

Case Studies

Case Study – Database

A trailer containing $250,000 of apparel was stolen in Carteret, NJ from a CargoNet member transportation company.

The transportation company contacted the CargoNet command center, which transmitted a regional theft alert, and uploaded the theft incident into CargoNet's Recovery Network.

The empty trailer was recovered three days later 13 miles away in Newark, NJ.

Seven months later, State Troopers attached to the New Jersey Cargo Theft Task Force entered a facility while working on a separate investigation and came across 26 pallets of apparel.

State Troopers contacted the CargoNet command center in efforts to identify the owners of the cargo found. CargoNet analysts were able to identify ownership by matching lot numbers and the bill of lading found at the scene with what was attached to the incident file in the CargoNet database, which resulted in a full recovery. The cargo was later returned to the theft victim.

Lesson Learned: *Once cargo is taken from the back of a trailer it is often considered to be* ***"unrecoverable" if not serialized****. Many goods have other markings that will allow law enforcement to identify stolen merchandise as long as the theft is reported with enough detail.*

Case Studies

<u>Case Study – Alerting, Analytics & Collaboration</u>

A distribution center was broken into, the single on-duty guard was incapacitated, and four fully loaded trailers containing $400,000 of electronics were stolen from the facility.

The shipper contacted the CargoNet command center, which broadcasted an alert to law enforcement officials within a 300-mile radius.

On patrol 60 miles away, an officer who had received the alert noticed the four trailers sharing the same description of the trailers stolen, parked in a warehouse drop-lot.

An investigation was launched, and a full recovery of the stolen cargo was made. This recovery also allowed officers to make six arrests. The cargo was later returned to the theft victim.

<u>Lesson Learned:</u> *There is understandable concern over diminishing law enforcement resources in the face of budgetary pressures, particularly those dedicated to cargo theft. However if the right information is provided to an officer in the right place at the right time there are many thousands of officers who can and will help us fight the problem.*

Case Studies

Theft Recovery; load of electronics; televisions

A driver picked-up a load of televisions worth $350,000 from a manufacturing facility in San Diego, CA. Shortly after the load left, the shipper's security department noticed that the cargo was deviating from an originally planned route through the use of a covert telematics device buried inside the cargo.

After not being able to get the driver to respond to calls, the shipper contacted the CargoNet operations center, who passed the information along with further intelligence to the California Cargo Theft Interdiction Program (CTIP). The intelligence provided allowed CTIP to carry out targeted surveillance within an industrial area containing 140 potential storage locations.

The resulting investigation and search led to the recovery of the $350,000 worth of stolen televisions, along with over $650,000 worth of stolen property from seven other cargo theft incidents, including electronics, building materials, household goods, and clothing.

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