

IMPORTANT CHARACTERISTICS OF CARRIER LIABILITY INSURANCE

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Abstract: *There are many needs for the insurance in the field of transport and logistics, with special emphasis on the carrier liability insurance. In this paper it has been indicated what exactly the insurance coverage according to the CMR Convention means, and what exclusions are there. The sub-limit of coverage has been defined, along with the method of determining the amount of damages. Some experiences and differences present on the market have been described, as well as some examples of case law related to the loss of the right to limitation of carrier's liability.*

Key words: *insurance, CMR, carrier liability, coverage, sub-limit of coverage*

INTRODUCTION

Carrier liability insurance is one of the most important insurances needed in the field of transport and logistics. The object and purpose of this paper, which was based on the practice of Wiener Städtische insurance company, is to define the most important characteristics and to clarify the coverage in accordance with the CMR Convention. The first chapter lists the types of insurance needed in transportation and logistics. The second chapter explains the insurance coverage according to the CMR Convention, as well as the exclusions. Third chapter describes the use of sub-limit of coverage, while in the fourth some examples and differences present on the market have been listed.

Wiener Städtische Osiguranje a.d.o. Beograd (further WSO) is one of the members of VIG (Vienna Insurance Group), founded in 1824 in Austria. From local insurance company, it has developed to a leading international insurance group, which in Central and Eastern Europe has been operating for more than 25 years and has around 50 companies in 25 countries with nearly 24.000 employees. In Serbia, WSO has been operating since 2003 and today has over 1.000 employees in more than 40 outlets throughout Serbia. It occupies the top position in life insurance, while the total product portfolio is among the leading insurance companies in the domestic market. It offers a wide range of life and non-life insurance services, dedicated to population, retail, small business and the economy.

1. NEEDS FOR INSURANCE IN TRANSPORT AND LOGISTICS

Transport and logistics, as a wide-range field, involve series of activities that carry different risks. Therefore, in certain phases of different logistics chains insurance is needed in order to reduce the harmful effects of these risks. It is necessary to insure the goods and means of transport itself, but also the liability of the carrier. Thus, the types of insurance that are used within the road transport of goods are:

1. Insurance related to the motor vehicles:
 - Motor third party liability insurance,
 - Motor Casco insurance,
 - Road assistance insurance;
2. Insurance related to the goods:
 - Goods in transit insurance;
3. Insurance related to transport and logistics service providers:
 - Carrier liability insurance,
 - Forwarder liability insurance.

Motor third party liability insurance (MTPL) is obligatory insurance for all owners or users of motor vehicles. It refers to liability insurance of vehicle owners for damage caused to third parties and in Serbia it is defined by the Law on Compulsory Insurance in Traffic.

Combined insurance of motor vehicles (Casco) insurance is voluntary and it represents insurance protection from destruction and damage to the vehicle and its components as a result of the realization of certain risks, which may be: traffic accident, fire, lightning, storm, hail, snow avalanches, fall or impact of an object, the sudden thermal or chemical operation from the outside, explosion, fall of an aircraft, events or demonstrations, malicious processes or prank of the third party, damage to the upholstery of the vehicle resulting in the provision of assistance to persons who were injured in a traffic or other accident, intentionally causing damage to insured items in order to prevent greater damage to that or other things or persons, flood, torrent and high water, landslide, dipping, damage caused by animal bites on rubber hoses, cables, upholstery and isolation materials, unauthorized use of a vehicle, vehicle theft and robbery. Road assistance insurances covers costs in case insured vehicle is not drivable or is unsuitable for further safe driving. The user is provided with help within 24 hours every day, in case of realization of some of the following risks: failure, damage, destruction, theft, accident. The insurance is valid throughout Europe.

Goods in transit insurance in domestic and international transport by ship, rail, road, aircraft and postal traffic, remains the only true protection of the owner of goods from losses that may be suffered. During transport from the place of departure to the destination, goods are exposed to various risks that may cause their damage or loss. The insurance coverage should be selected depending on the type of goods, relations, means and conditions of transport and can include the following risks: marine or traffic accidents, natural disasters, fire or explosion, theft and non-delivery, handling risks, other risks.

2. CARRIER LIABILITY INSURANCE - COVERAGE IN ACCORDANCE WITH THE CMR CONVENTION

CMR insurance is a common name for carrier liability insurance for damages in the international road transport of goods, since it refers to the CMR Convention (Convention on the Contract for the International Carriage of Goods by Road). According to the Article 1 of the CMR Convention [1], "This Convention applies to every contract for the carriage of goods by road in vehicles, irrespective of place of residence and nationality of the parties, if the place of acceptance of your shipment and the place provided for the delivery, according to their designation in the contract, are in two different countries, least one of which is a contracting country." The subject of insurance is liability of carrier, as the insured, for damages caused to transport shipments of goods from the moment of take up to the moment of delivery, due to [2]:

- total or partial loss of goods and for damage thereto, which occurred between the time of acceptance of the goods and its release,
- delay in delivery.

It is important to note this definition of coverage, because many insurance companies offer carrier liability insurance, which is called CMR insurance, although its coverage is not in accordance with the CMR Convention, since it includes insurance protection only in the case of realization of some of these three risks: **traffic accident, fire** and **theft**. Some insurers do not even cover the risk of theft. According to the Article 17 of the Convention, "carrier shall be relieved of liability if the loss or damage arises from the special risks inherent in one or more of the following:

- a) vehicles' use of open and unsheeted, when their use has been expressly agreed and specified in the consignment;
- b) missing or defective packing, if the goods, because of its natural properties, in the absence or faulty packaging, are vulnerable to loss or damage;
- c) manipulation, loading, stowage or unloading of goods by the consignor or the consignee or person acting on behalf of the sender or recipient;
- d) the nature of certain goods, may cause total or partial loss or damage, especially through breakage, rust, decay, dry, leakage, normal wastage, or the action of insects and rodents;
- e) insufficiency or inadequacy of marks or numbers on the packages;
- f) transport of live animals. "

Experience has shown that the transport of certain types of goods carries with it an increased risk, especially of theft. Therefore, **unless otherwise agreed**, carrier liability and related costs are excluded from the insurance coverage in the following cases: transport of cars, tobacco, cigarettes, alcoholic beverages, tires, damage to goods incurred as a result of failure of the cooling device, the temperature difference, defrost of refrigerated or frozen goods in trucks, oversize transport, transport of museum and art objects, numismatic and philatelic collections, antiques and other things. Carrier liability and related costs in the case of transport of postal items, cash money, securities, precious metals, gems, precious stones, furniture (migration service), live animals and already damaged items, are also excluded from the insurance coverage and **cannot be additionally agreed**.

4. THE SUB-LIMIT OF COVERAGE AND DETERMINATION OF DAMAGE COMPENSATION

Compensation for total or partial loss or damage to the goods shall be calculated according to its value at the time and place of its takeover. Goods owners and carriers often believe that, if the damage occurs, the full invoiced value of the goods will be refunded, but in reality this is not necessarily the case. The reason for this derives from Article 23 of the CMR Convention [3], according to which "compensation cannot exceed 8,33 SDR (Special Drawing Right) per kilogram of gross weight." In this way the **sub-limit of coverage** is defined, which always applies to the calculation of damage compensation. The value of SDR unit is calculated daily by the International Monetary Fund, and it represents the average of the four currencies of the strongest exporters in the last five years, as today are the US dollar, euro, Japanese yen and British pound. Nowadays 8,33 SDR/kg is equivalent to approximately 10 EUR/kg gross weight of the damaged or lost goods. Only in the case of declaration of higher value goods or contracting of special interest for the delivery, the compensation may exceed specified sub-limit, as referred to Articles 24 and 26 of the Convention [4]. Table 1 provides examples that show the way in which the compensation is determined according to the agreed limit of coverage, the market value of the goods in shipment and sub-limits of coverage.

Limit of coverage is indicated in the insurance policy and represents the total maximum obligation of the insurer per each and every loss and aggregate for insurance period, **per vehicle**. What does that mean in practice? Suppose that the coverage limit of 300.000 EUR is contracted, and the damage of 100.000 EUR occurred: until the expiration date of the policy, for

any subsequent damage that may occur, the compensation of maximum 200.000 EUR can be paid. Likewise, all 300.000 EUR could be paid for the first damage occurred, but after the exhaustion of the sum insured, the insurance contract shall terminate.

Table 1. Determining the amount of compensation

	Example 1	Example 2	Example 3
Limit of coverage agreed	50.000 EUR	50.000 EUR	50.000 EUR
Type of goods	raspberries	computers	aluminum windows
Amount (t)	10,00	1,00 (500 pieces)	6,00 (300 pieces)
The market value of goods in the point of consignment	15.000,00 EUR	45.000,00 EUR	70.000,00 EUR
8,33 SDR/kg	10 EUR/kg	10 EUR/kg	10 EUR/kg
Max obligation for the insurer (8,33 SDR/kg)	100.000,00 EUR	10.000,00 EUR	60.000,00 EUR
Compensation	15.000,00 EUR	10.000,00 EUR	50.000,00 EUR

Some insurers apply an aggregate coverage limit, which is the total maximum obligation of the insurer per each and every loss and aggregate for insurance period **for all vehicles**. Example: one insurance policy covers 5 vehicles and limit of coverage contracted is 200.000 EUR; the theft of goods worth 150.000 EUR from one of the vehicles occurs; for this vehicle, as well as for the other 4, for all possible damages or losses that would occur prior to the expiry of the insurance policy, there is still a total of 50.000 EUR.

All of the above relates to the liability of carrier in case of total or partial physical loss or damage to the goods. In case of delay in delivery, the insurer's obligation is the proven actual damage, maximum to the invoiced freight charges and it cannot be paid simultaneously with the compensation for damage or loss of goods.

5. EXPERIENCES AND DIFFERENCES PRESENT ON THE MARKET

Chapter 3 indicated the importance of distinguishing coverages offered by different insurers on the market. Statistical analysis conducted in WSO in 2015 showed that 30% of the damages in road transport do not occur as a consequence of some of the three risks: traffic accident, fire or theft. Damages caused by overturning of pallets in the cargo area due to heavy breaking are very common and are recoverable only if the insurance coverage is completely in accordance with CMR Convention. One of the interesting examples is the damage caused when a driver dropped his cell phone in the cargo hold tanker, which was transporting milk. The total damage was declared, but it would not have been payable if the complete coverage according to the CMR Convention had not been agreed, since it did not occur due to traffic accident, fire nor theft. Another interesting example is the case when a tanker, after carrying raspberries, was not properly cleaned and afterwards it carried milk. Upon the arrival to the place of unloading, it was found that the content was contaminated and total damage was also declared. It should also be noted that definition of traffic accident refers to collision with one or more known vehicles. In case when a car transporter skidded off the road (which was not the result of a collision) and on this occasion 10 new vehicles were damaged, the damage was compensated due to the fact that coverage according to the CMR Convention was agreed. Therefore, it is important for carriers to be well informed about the coverage offered by the insurer.

Different insurers have different ways of treating damage arising as a result of theft. According to WSO Terms and Conditions, carrier loses the right to limit his liability and is obligated to

indemnify the insurer to the full amount of compensation paid to the injured party, if the damage caused by partial theft or theft of the whole vehicle with goods occurs in the following way:

- if the vehicle at the time of theft occurrence was not parked in an organized, arranged and lighted parking lot;
- if the vehicle during transport of the excise goods (tobacco, cigarettes, alcoholic beverages, tires) at the time of theft occurrence was not parked in the parking lot with 24-hour security service;
- if, in the case of theft of the entire vehicle with the goods, insured fails to submit to the insurer for review and verification all the original keys of the vehicle.

Thus, if the carrier has taken all actions in order to reduce the risk of theft to a minimum, but the theft still occurs, the damage will be compensated. However, some insurers in their terms and conditions treat this in the opposite way: if the carrier has taken all measures to prevent or reduce the risk of theft, it is considered there is no carrier's responsibility for the damage occurred, and therefore damage is not payable. This interpretation is unfavorable for the carrier who performs his activities in an honest way.

The carrier loses the right to exclude or limit his liability stemming from Article 23 of the Convention and is obligated to pay damages to the full amount of the invoiced value of the goods, according to the Article 29 "if the damage was caused by his willful misconduct or by such default on his part as, in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to willful misconduct". What causes large differences in court practices of different countries, is the interpretation of Article 29 of the Convention. The primary reason for this are the basis on which courts of law define carrier's behavior as negligence of a certain degree. Due to the very wording of Article 29 which involves national law, it is clear that there are many problems in finding unique and harmonious interpretation of the Convention in a wide range of signatory countries. The key is the difference between terms "willful misconduct" and "negligence". From the comparative analysis of the case law in Europe conducted by the author Nikoleta Radionov Radenković in her study "Loss of the right to limitation of liability of the road carrier with reference to court practice" [5], it is clear that there is an agreement for gross negligence to be considered as negligence to such degree that can and should be equated to intention, i.e. willful misconduct. However, courts of law differ in ease of declaring certain carrier's behavior as grossly negligent. German and Austrian courts are leaders in very rigorous trial and impose very high standards of attention to carriers, while the practice of Benelux countries is much more lenient to carriers, who lose their right to exclusion or limitation of their liability in very rare cases.

Equalization of gross negligence with intention led to a large number of judgments in favor of the owner of the goods, whereas carrier lost his right to exclude or limit his liability. Some examples are [5]:

- transport of valuable goods to Poland during which the driver slept in a truck in a lighted parking lot;
- leaving the truck unattended for one hour at a rest stop along the highway in Italy;
- transport of goods on which there is a very high risk of theft through Italy with only one driver, regardless of the fact that this part of the road has no safe resting/parking lots.

In rare cases of theft courts have decided that there is no lack of attention of the carrier, so he reserved the right to limit his liability, and some of these cases are as follows [5]:

- theft during the night in Italy near the very frequent and very lit gas station;
- theft of computer printers in the Netherlands, which were being transported in a fully closed and secured container, while the driver slept in the vehicle;

- theft from vehicle in the customs office parking lot in Sofia (Bulgaria), while the driver slept in a vehicle within which the goods were locked and secured.

Another contentious situation is the case of delayed delivery. The definition of risk in this case is entirely taken from the Article 19 of the CMR Convention [6], which, simply said, means that delay occurs if the carrier fails to deliver the goods within a period which is considered adequate for a particular relation. The damage would be compensated only if the delay is carrier's responsibility, but delays due to congestion at border crossings, acts of government authorities and similar, carrier cannot be held responsible. Below are few examples, vividly explaining the above:

- a) The vehicle had a breakdown after loading, for which it was kept in service all day, and this caused a delay in arrival to the place of unloading. Due to a malfunction in the vehicle itself, the damage is payable and the carrier is responsible for it.
- b) Three shipments, one of which is subject to phytosanitary control, are being transported from the EU for three different recipients in Serbia. The inspector noted that the documentation for the shipment is incorrect and required to submit appropriate. Responsibility for this failure falls on the consignor, and due to delivery of proper documentation the vehicle was kept at the border crossing for two days, resulting in delivery delay of all three shipments. In this case there is no carrier's responsibility.
- c) The shipment is being delivered from Serbia to the country in the EU, whereby scheduled unloading day is Thursday. Upon arrival of the vehicle to the place of unloading, the breakdown of the unloading machinery occurred and caused delay in unloading. For this reason the vehicle arrived too late in the loading dock for the next shipment. The carrier is not responsible for the failure of the reloading machinery that caused the delay, so damage is not payable.

CONCLUSION

The most important element of carrier liability insurance is the width of insurance coverage, because the experience has shown that a large number of claims occur due to other risks, apart from traffic accident, fire and theft. In addition, the sub-limit of coverage is a factor of which many carriers are not aware, although it has great influence on the amount of the damage compensation. It is recommended for carriers to be well introduced to the terms and conditions of the particular insurer and to develop awareness of differences in the interpretation of CMR Convention.

REFERENCES

- [1] CMR Convention, Article 1, point 1
- [2] CMR Convention, Article 17, points 1 and 2
- [3] CMR Convention, Article 23, point 3
- [4] CMR Convention, Articles 24 and 26
- [5] Radionov Radenković N. (2005) "Loss of the right to limitation of liability of the road carrier with reference to court practice", Zagreb
- [6] CMR Convention, Article 19