NEWSLETTER 2

GOODS IN TRANSIT INSURANCE COVER IN RELATION TO STC'S / CONTRACTS AND INCOTERMS

We, as Goods in Transit Insurers, would like to point out the concerns in relation to the various contracts which our Insured's (Transporters) currently have with their clients and the incoterms which they are utilizing.

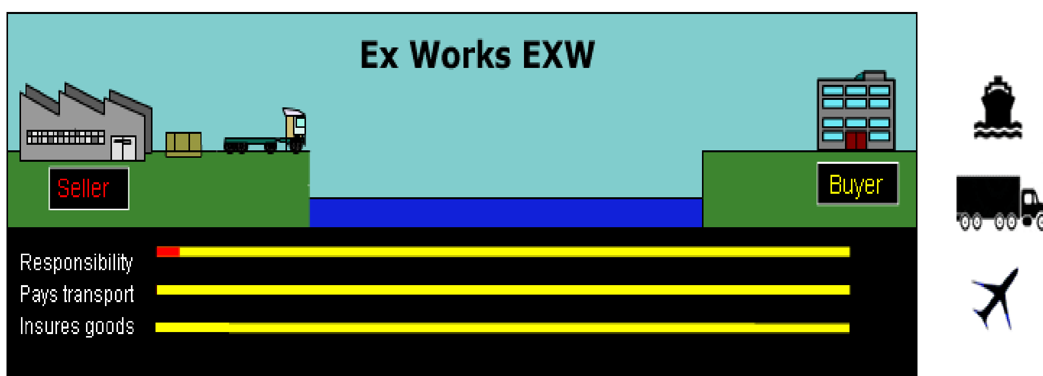
One of the principles of insurance is "Insurable Interest". Insurable interest is an essential requirement for issuing (and claiming on) a Goods in Transit insurance policy. People / entities not subject to a financial loss in the goods do not have an insurable interest and therefore cannot insure third parties' goods.

The consequential transition from risk to responsibility to liability to indemnity to insurance must form the basis of any insurance contract.

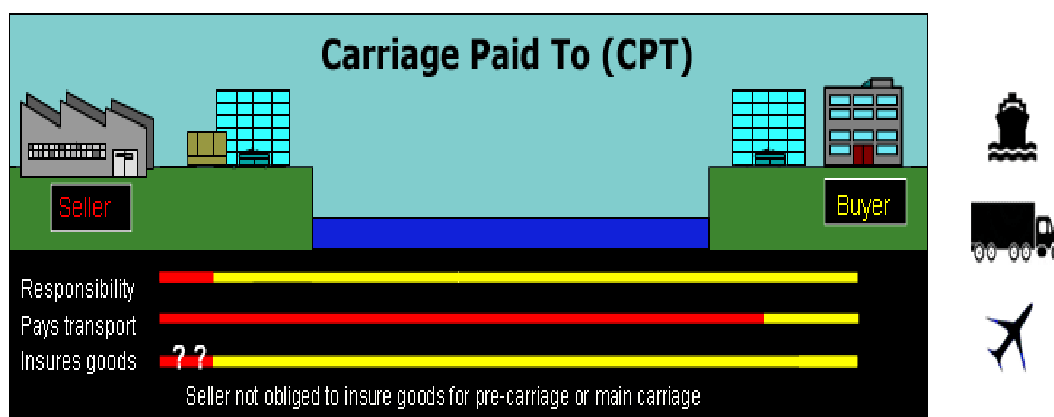
When a consignee and consignor agree a specific incoterm or certain limits of liability /contracts for a sending, they are binding themselves to the terms of those agreements which are recognized and understood internationally. Unfortunately, many transporters are not privy to the consignee / consignor's contract / incoterm agreements, and it is only at claim stage that these are brought to everyone's (Including Insurer's) attention.

Apart from many other terms and conditions, the incoterm used states which party in the sale agreement is responsible for what, and where risk will transfer from one party to the other. Insurance will follow the risk and responsibility of the Insured. By law, Incoterms don't have to be used, however when they are used, the buyer and seller are bound by them. In our opinion, and to avoid legal disputes, we recommend that Incoterms are used in any international sale agreement.

There are currently 10 Incoterms and we won't go into all of them, however the 2 that are often used, will be explained.



As you will see from the picture above, the seller is only responsible to make the goods available at their warehouse and after that the buyer holds all responsibility. Therefore, the Buyer could never claim for loss and/or damage to the goods from the Seller as the Buyer holds all the risk and the responsibility from the time the goods leave the Sellers warehouse. There is no obligation on the buyer to insure the load, however if they choose to arrange their own insurance, the insurance would only cover the leg which they are responsible for. ie: in this case it would be from the time the goods leave the sellers warehouse – the entire road leg until delivered to the final sellers' destination.



As you will see from the picture above, the seller is only responsible to load the goods onto the carrying vehicle. Although the seller is arranging the transport and paying the freight costs, once loaded onto the carrying vehicle, the buyer holds all risks and responsibility from that point. Therefore, the buyer could never claim for loss and/or damage to the load, from the Seller as the Buyer holds all the risk and the responsibility. The seller's only responsibility is the loading of the goods onto the vehicle. If the Seller insured this risk, it would only cover the loading onto the vehicle and not the Goods in Transit Insurance thereafter.

There is no obligation on the buyer to insure the load, however if they chose to arrange their own insurance, the insurance would only cover the leg which they are responsible for. ie: from the time the goods are loaded onto the vehicle and the goods in transit insurance thereafter.

In many cases, Transporters have various contracts in place with various sellers or other transporters or transport brokers, whereby they are being held responsible for <u>any</u> loss and/or damage to loads carried by them or their sub-contractors.

Due to the above incoterms being used, once the goods are loaded onto the transporter's vehicle (or their Subbie) vehicles, or any other incoterm whereby there is no risk or responsibility on behalf of the seller - who is appointing the Transporter, the transporter in-turn holds no responsibility either. Insurable interest cannot start half way.

The only way the Transporter (in these scenarios) can be held responsible is under delict, through a claim from the buyer. In this instance, the buyer will be bound by the Transporters Standard Trading Conditions, and they would have to prove fault / negligence on behalf of the Transporter. This claim can either come from the Buyers Insurance Company (under Subrogation) or from the buyer themselves (if not insured). The transporter would need to have a Carriers Liability Policy (Separate to their GIT Policy) which Insurers would use to defend the transporter against any fault / negligence claims.

Our recommendation is that transporters meet with their clients (The Sellers) to ascertain where risk and responsibility lies. If it is the intention that the Sellers are responsible and in turn the transporter must insure the goods, the Sellers incoterms / agreements with their clients need to be amended to reflect the responsibilities of the parties. My recommendation would be CIP (Carriage and insurance paid to (Named place of destination)) or any other incoterm where the Seller bears the risk and responsibility.

The transporter still needs to be made responsible for any loss and/or damage (in writing) by the Seller, thereby transferring the insurable interest from the Seller to the transporter and therefore enabling the transporter to take out the Goods in Transit Insurance Policy to cover the goods.

In the case where no Incoterm is used, and there are also no contracts/ agreements in place, the Transporters Standard Trading Conditions will apply. As the goods do not belong to the Transporter, he has no liability to the goods and therefore cannot insure them.

Transporters who do not trade on Standard Trading conditions will find themselves battling to defend themselves if the matter goes to court – it will come down to “he said – she said”.