Problems of Incoming Freight

No Quick Solutions to Damaged Freight Exist, But Knowing the Procedures and Rules For Claims Can Help Matters

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One of the biggest headaches you face as a wall and ceiling contractor is the problem of freight—whether it is incoming or outgoing. While there are no quick solutions to the problems encountered, two steps can be taken to mitigate monetary loss; a program should be instituted for the handling of goods and you should learn the basic “ifs” and “buts” of the Uniform Commercial Code (now law in all states except Louisiana) as it relates to rules determining when title and risk of loss pass from the seller to the buyer of the goods.

The first aspect of tightening freight receiving procedures is one meriting your immediate attention. Here are some steps to implement a plan:

1—An examination should be made of all cartons and containers for possible internal damage or loss. Are flaps open? Does it look like there has been tampering with evident signs of retaping or restrapping?

Your should assert your right to open the cartons and have the opportunity to examine contents to compare with the bill of lading. Should the deliveryman balk at this procedure you should either refuse to accept delivery or sign the receipt with the notation that you suspect a shortage and reserve the right to file a claim after complete verification of contents.

Without saying, the other obvious check is to verify the count of pieces actually received and compare your count with the number of cartons shown on the bill of lading.

You can weigh the packages on your own scale and mark the weight onto the shipping receipt. Missing merchandise will usually reduce the gross weight below the weight figure shown on the bill of lading.

2—Examining the shipment for visible damage should be another step taken. Are there puncture holes obviously made by prongs or hooks? Are box corners crushed?

Again assert the right to open the cartons to ascertain if the merchandise being delivered to you is damaged. The refusal of the deliveryman (don’t you seemingly find them short-tempered and uncooperative?) should be handled as heretofore outlined.

3—Where you are able to ascertain shortages or damages, be sure to...
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make proper notations on the delivery receipt that either you or an employee sign and ask the deliveryman to sign one copy with the notations to be kept for your records.

4—After accepting a shipment that appears not tampered with, or damaged, do not shunt them aside for opening at a much later date. All cartons should be opened and contents examined within a few days of receipt. Contents should be put into your inventory or put back into cartons and put into proper storage areas, after noting the contents on whatever inventory control records you maintain.

You’ll reap two benefits from this procedure—you’ll be able to file timely claims for damages or shortages and you have some protection against having an entire carton “mysteriously” disappear from your receiving area.

Procedure Spelled Out...

Most bill of lading forms, or vendors’ invoices spell out the procedure for filing claims. Follow the procedures and keep a copy of all correspondence to bolster your claim. And, it’s a good practice to keep the damaged merchandise in the original cartons received to allow the vendor or shipping company to inspect and verify your claim.

5—If the carrier does an actual inspection, carefully read the report before signing. If you take exception to the statements contained therein, either refuse to sign the report or note exceptions in spaces above your signature. Be careful not to sign away
your rights for credit for the value of missing or damaged merchandise.

What are your legal rights under the Uniform Commercial Code?

This raises the question of who has title and who bears the risk of loss. These are separate questions and under changes from previous law are governed by a different set of rules.

Ordinarily the vendor has the duty to deliver the goods to the consignee (purchaser) and title passes only when he performs this obligation. But the seller has no duty to move the goods unless he agrees to do so.

He can use the means of transportation that best suits his needs and when he makes actual delivery (and when using his own truck) title passes at the time of delivery. (with certain exceptions, later explained)

However, if he uses a common carrier, the following F.O.B. (“free on board”) rules control:

- If the terms concerning delivery specifies F.O.B. place of destination (in which case the seller bears the expense of shipment), title passes when the seller properly tenders goods at the destination by putting and holding conforming goods at the buyer’s disposition there.
- If the term concerning delivery specifies F.O.B. place of shipment (in which case the buyer bears the freight costs), title passes when the seller places the goods in the possession of the carrier.
- If the delivery terms are F.A.S. vessel (“free alongside”), title passes when the seller has delivered the goods alongside the vessel specified or on a dock designated and provided by the buyer.

There is a certain amount of danger in contracting for the purchase of merchandise on the basis of F.O.B. the seller’s place of business. Consider this actual case. A merchant located in Westport, Connecticut, ordered goods from a manufacturer in Los Angeles, California. The seller gave the goods to a common carrier and simultaneously mailed an invoice with the notation, F.O.B. Los Angeles.

When the connecting common carrier brought the goods to the premises of the buyer, the deliveryman attempted to make “sidewalk delivery.” The wife of the proprietor was alone and realizing that she could not physically carry the cartons into the premises, asked the deliveryman to bring the goods into the premises. He refused and she refused to accept delivery.

The truckman loaded the goods back onto the truck and departed.

The buyer notified the seller of the incident and asked that arrangements
be made with the shipper for delivery inside the premises. The seller argued that since the delivery was F.O.B. his premises, the sole responsibility for the cost of delivery, means of delivery, loss during delivery, etc. fell to the buyer.

In an action to recover the value of the goods (the merchandise was “lost” while in possession of the common carrier) the court ruled that the title to the goods, and the right of possession, passed to the buyer at Los Angeles, the F.O.B. point. Upon delivery to the common carrier by the seller at the F.O.B. point, the goods thereafter were at defendant’s sole risk. The court, (280 F. Supp. 550) in commenting on the sections of the law involved stated: “Thus, an F.O.B. term must be read to indicate the point at which delivery is to be made unless there is specific agreement otherwise and therefore it will normally determine risk of loss.” Ninth Street East, Ltd. v Harrison 259 A.2d 772(Conn.) 1968.

Mr. Harrison was obligated to pay for goods he never received, plus court costs, and legal fees. Yes, he did have a claim against the common carrier, but he would face a costly lawsuit and might or might not collect.

If the contract of purchase requires that you have the responsibility to pick-up the goods, or otherwise arrange for their delivery, the following rules apply:

• When documents of title covering the goods (such as bills of lading or warehouse receipts) are required to be delivered to the buyer, title passes at the time of such delivery. If no documents of title are to be delivered and the goods are specifically identified, title passes at the time of the contract.
• If the specific goods are not identified at the time of the contract and no documents are involved, title passes when the seller tenders conforming goods to the buyer at the seller’s place of business.

In many instances sales contracts provide for the buyer being able to return the goods to the seller within a stipulated time. Thus where goods are purchased for the primary purpose of use or consumption, a “sale on approval” exists and title in such case passes only when the buyer indicates his approval.

Where a seller stipulates on his bill that title vests in him until the goods are paid for, he is only attempting to have a security interest to guarantee payment.

Agreement Determines . . .

If goods are lost or destroyed, the terms of an express agreement will govern as to who bears the risk of loss. Usually, when neither party to the contract has breached the sales contract, risk of loss of the goods is on the party in possession (or constructive possession through a third party).
Section 2-509 of the Uniform Commercial Code says: “The underlying theory of this rule is that a merchant who is to make physical delivery at his own place continues meanwhile to control the goods and can be expected to insure his interest in them. The buyer on the other hand has no control of the goods and it is extremely unlikely that he will carry insurance on goods not yet in his possession.”

When there is a breach of sales contract, the one who performs the breach bears the risk of loss of the goods (i.e., buyer refuses to accept delivery of valid order without valid cause). But, the guilty party has to only pay the amount of loss suffered by the innocent party not covered by insurance.

The special rule of sales on approval (i.e., consignment merchandise) is that loss to the buyer does not take effect until and unless he has approved the goods. In a sale or return, the risk of loss will pass to the buyer under the general principles governing it, until a return of the goods is reasonably made by him.

Understanding your responsibilities to inspect goods and knowing your legal position is a big step forward. But, how do you actually file a claim?

You should file immediately on a claim form purchased from a commercial stationery store or on one obtained from a common carrier. File with complete details and attach all pertinent documents.

Nine Months . . .

You have nine months time after date of delivery to file for damaged or missing merchandise, and where goods were lost in transit, within nine months of a reasonable date for assumed delivery.

The Interstate Commerce Commission has a rule requiring claims to be acknowledged within 30 days of receipt. Within 120 days of receipt of a claim they must pay, decline to pay, or make an offer in compromise. If the carrier can’t do this within 120 days, it must make notification of such fact and give the reason for the delay within 60-day intervals.

Of course many carriers refuse to make settlements and as if by design, automatically deny all claims for concealed damage, on the basis that their own investigators place the blame elsewhere.

Your recourse when you and the vendor are not at fault is to bring an action at law for recovery of loss. You can use the services of a small claims court (if one exists in your community) and sue within prescribed limits. Most carriers are incorporated and they cannot merely send a representative to defend the action, they must hire an attorney-at-law.

Sometimes just the threat of paying legal fees and losing the services of employees to testify, will cause the carrier to offer a settlement. And, most carriers are aware of the fact that small claims judges (or other hearing officers) are usually receptive to the claims of local small businessmen. Once you receive an offer you can ask for more—the first offer is usually a “bargaining offer” and the person making it is aware that you will want more. At this point you have to weigh the merits of your case, decide if it is worthwhile going to court, and also having to hire an attorney if you are incorporated.

Small claims courts throughout the country have different rules and different dollar limits for bringing suit. Generally speaking, you bring suit by finding a small claims court in your city, pay a filing fee for the court to serve the summons. You’ll be advised of the date for the trial and if no settlement is made before the date, get ready to appear.

You can save yourself a lot of grief if you make 100 per cent sure that the court to which you’ve gone has jurisdiction over the firm you are suing. And, make sure you use the exact name of the defendant—an error in the name can cause the suit to be dismissed because of that defect.

When appearing for trial, bring along all supporting evidence, including witnesses (a subpoena is obtainable without charge in most courts), and be prepared to present your case in an orderly fashion, leaving your temper and emotions at home. In other words, be business-like.

Of course you can lessen the hassle of ever having to appear in court if you follow the steps outlined in the beginning of this article and also make sure you deal with reliable suppliers who will be willing to handle justifiable claims. Your suppliers want to merit your goodwill and continue to keep you as a customer and will usually handle claims for shortages and/or damaged goods in a fair manner.