



Bodily injury or property damage (auto liability) coverage is the most important and is fairly straightforward. All motor carriers are required to procure auto liability insurance. Because of the MCS-90, BMC-91X endorsement, the insurance company is required to ultimately guarantee payment of a minimum of \$750,000 or \$1 million to the successful plaintiffs in auto accident cases.

Shippers and brokers can rely on the FMCSA website to prove that the policy is in effect. The one who hires a motor carrier is automatically insured under the standard coverage forms and can expect that the motor carrier and its insurer ultimately will handle cases which are under the applicable statutory minimum.

AUTO LIABILITY
01

TYPES OF INSURANCE THAT EVERY CARRIER NEEDS

Most shippers and brokers contractually require motor carriers to have four types of insurance: (1) Bodily injury or property damage (auto liability); (2) general liability; (3) cargo insurance; and (4) worker's compensation coverage.

Questions involving insurance coverage, waiver of subrogation, and indemnity are all interrelated issues which can quickly become complicated issues beyond the scope of this short article. Shippers, brokers and carriers alike need a thoughtful risk management program to assess their exposure to loss. Then working with insurance professionals they should ensure that the actual coverage they procure or require provides reasonable coverage and extends the benefits and costs of defense to them in the event of a claim.

General liability policies cover a motor carrier's liability for property damage and personal injury which does not involve a motor vehicle. It is the type of general business insurance most businesses procure to cover workplace accidents, slips and falls, and other instances which do not involve cars or trucks. In addition, there are typically provisions in general liability policies which can extend coverage to other liabilities assumed by the policyholder under contract which may extend coverage to non-auto claims that would not be covered under an auto policy.

Some small carriers do not typically purchase general liability insurance because they believe the auto policy covers the vast majority of their exposure (which is true). As a result, some shippers and brokers will waive the requirement for general liability insurance, but the typically low premium charged for this type of insurance is not a major impediment for small carriers to obtain this coverage as a complement to their auto liability policy.

GENERAL LIABILITY
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Cargo insurance is the most problematic coverage of the four types of insurance which shippers and brokers typically require. The FMCSA, which can log in and hold motor carriers accountable for every speeding ticket and roadside inspection, concluded it lacked the resources to maintain evidence of motor carriers' cargo insurance several years ago. Over the opposition of 29 petitioners, it abandoned the requirement that motor carriers post evidence of cargo insurance co-extensive with their legal liability. In doing so, it opined that the shipping public could read each carrier's policy as part of the credentialing process.

Doing this is an impossible task because all underwriters' policies are not equal and few provide coverage reasonably equivalent to the carrier's legal liability standard under the so-called Carmack Amendment, 49 U.S.C. 14706. In my view, many policies are simply substandard and can exclude the major causes of loss such as theft, wetness, dampness and moisture, and temperature damage.

Unfortunately, the only practical evidence of insurance which a broker or carrier can obtain is a so-called Acord Certificate of Insurance which has severe limitations. The Acord is simply evidence that a policy has been issued and contains a warning that the underlying governs, including all exclusions and endorsements may limit coverage. There is no way for a shipper or broker to rely upon an Acord certificate to believe that coverage actually exists or even that the unit assigned to make pickup is insured for cargo loss. Moreover, with respect to cargo insurance as well as other coverage, the agent who issues the certificate only agrees to endeavor to notify the certificate holder of any change in coverage.

The inability of shippers and brokers to obtain reasonable assurance of actual policy coverage and limitations often results in (1) contentious claims adjustments; (2) offsets against brokers when the carriers they hire are unable to adjust claims in a timely manner; and (3) small carrier insolvency when they are found liable for cargo loss for which they have no coverage.

CARGO
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WORKER'S
COMPENSATION

The fourth type of coverage typically required by

shippers and brokers is evidence of worker's compensation coverage.

Liability for worker's comp should stop with the carrier, but occasionally when a carrier lacks coverage its employee will assert "cut through" liability exists from the carrier's customer, arguing that the carrier was merely its subcontractor. This potential exposure is at the heart of shipper and broker requests for evidence of coverage, but the issue can become more complex than this with carriers who hire independent contractors for whom worker's compensation is not required under state law.

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