

KNOWLEDGE IN TRANSIT



We often get queries about the carriers load insurance implications for subcontractors. A subcontractor is any party engaged by a principal to conduct services on their behalf. This is quite common in the transport industry where carrier A (who may not have a vehicle available to do the delivery) may give the cargo to carrier B who undertakes the actual transport of the cargo to its final destination. Often there may be three or more carriers involved particularly for long haul transits between the east and west coasts of Australia.

Queries relate both to when the named insured is the subcontractor carting cargo on behalf of other carriers and when the named insured is the principal who engages subcontractors to carry on their behalf.

DO SUBCONTRACTORS NEED THEIR OWN INSURANCE OR ARE THEY COVERED BY THE PRINCIPAL'S POLICY?

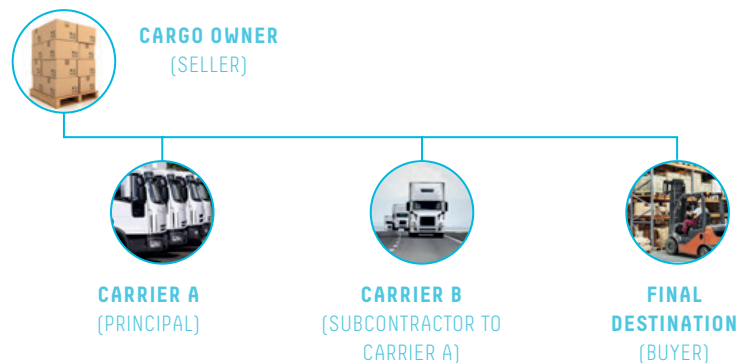
As most carriers load policies will have a condition that only named insureds are covered under the policy subcontractors should think twice before thinking they can rely upon their principal's policy.

Noting the subcontractor as an 'interested party' in the schedule is not the same as an insured party. It is debatable as to exactly what, if any, policy entitlement someone named as an 'interested party' has.

Relying on the principal's policy for protection could leave the subcontractor at a disadvantage as they are essentially dealing with another party's insurer. Also the risk exists that the subcontractor could carry for an uninsured principal or that the cover provided by the principal's insurance is lacking, both of which leave the subcontractor exposed.

We always recommend that subcontractors insure their own liabilities rather than relying on insurance that their principals may or may not have.

Note: Where an insured subcontractor is acting on behalf of a principal some carriers load policies in the market only provide a limited cover or no cover at all unless agreed.



IS THE PRINCIPAL COVERED FOR THE ACTIONS OF THEIR SUBCONTRACTORS?

Yes - the general policy position is that the principal carrier is insured for the actions of their subcontractors. If the subcontractor causes damage the cargo owner will, in the first instance, claim against the principal carrier as that is who they have contracted with. The principal carrier's load insurer will either meet the claim and seek recovery from the subcontractor or will try to have the subcontractor's insurer meet the claim.



PRINCIPALS WHO DEDUCT ADMINISTRATION FEES

Some transport companies deduct an 'administration fee' from subcontractors' income in exchange for a hold harmless agreement. Under these arrangements subcontractors are not pursued if they have caused loss or damage to the cargo they are carrying. These administration fees can be quite high and potentially cost the subcontractor far more than if they had arranged their own carriers load insurance. Although called an 'administration fee' principals offering these hold harmless agreements run the risk that they may be deemed to be arranging or dealing in insurance which they are not permitted to do unless they are an authorised representative of an insurer or broker licensee.

MY CLIENT SUBCONTRACTS – DO I NEED TO INCLUDE THE AMOUNTS THEY PAY SUBCONTRACTORS IN THEIR DECLARATION OF REVENUE?

All marine insurers will require that the insured carrier declares the total revenue derived from their transport activities (gross freight earnings) without deduction for amounts paid to subcontractors.

Often it is argued that the subcontractor has their own insurance and therefore no claim will fall on the principal so premiums should be discounted. In actual fact there is no guarantee that the subcontractor holds their own carriers load policy or if they have a policy that it will respond to the claim. A good example is that the subcontractor may only hold insurance for basic events (fire, flood, collision, overturning and theft). If a claim occurs as a result of an uninsured event, e.g. loading and unloading or rainwater damage, then the subcontractor's policy won't respond. In this case the principal is the contracting party with the cargo owner and the principal will be liable for the claim irrespective of whether or not a recovery can be made against the subcontractor's insurance policy.

A SUBCONTRACTOR HAS CAUSED DAMAGE, WHY AREN'T THEY PAYING THE CLAIM?

If a principal contracts using consignment notes or other standard trading conditions it is common for those conditions to both limit liability (often to zero) and to afford that same protection to subcontractors through the use of a "Himalaya Clause". This clause allows subcontractors of the principal carrier to rely on the consignment note or standard trading conditions if the carrier's customer claims on them directly. If the subcontractor actually damages the goods, the customer cannot sue the subcontractor because they have no contract with the customer.

As the subcontractor's 'customer' is the principal carrier the subcontractor may not necessarily wish to make a claim under their policy if they do not have a strong relationship with them. In this case it will be up to the principal carrier to meet the claim under their own policy leaving it to their insurers to attempt recovery against the subcontractor.