



UNPACKING WAREHOUSE LEGAL LIABILITY

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ON YOUR TEAM.

OVERVIEW

Historically, warehouse legal liability (WHLL) has been a complicated line with many gray areas and multiple interpretations of its coverages. Over the course of the recent soft market, WHLL strayed away from its original intent. With the re-emergence of a healthier market environment, it can go back to its roots: to cover the legal responsibility of an individual or organization providing warehousing and handling services. In one sense, it is the non-transit (or static) relative of cargo legal liability, but in another sense, it is a totally different animal.

WAREHOUSE LEGAL LIABILITY COVERAGE AGREEMENT

Like most insurance policies, WHLL has certain triggers that activate coverage in an event - the most important of which is physical loss or damage. This can cause confusion, as WHLL appears to have the same coverage trigger as a first-party property coverage, even though WHLL is a casualty coverage. The key difference is that WHLL is only triggered when the insured, as a warehouse operator or bailee, is **liable** for the physical loss or damage. A standard property policy will respond as long as there is loss or damage and the policy does not otherwise exclude the loss. In short, because a warehouse operator has a responsibility to keep stored property out of harm's way, failure to do so might result in being legally liable to the property owner. To make matters more confusing, some carriers previously used actual first-party coverages as warehouse legal liability (warehouse all risk), muddying the waters as to how a WHLL policy responds to a loss.

HOW LEGALLY LIABLE IS THE INSURED?

The legal responsibility of a warehouse operator will vary depending on a few factors. To begin with, warehouse operators have a relatively lenient standard of care under the law, meaning that they are only required to show that they took reasonable actions to preserve or protect the property in their care. By contrast, motor carriers have some of the most stringent standards of care and are fully liable for goods in their care, custody and control. In other words, if loss or damage occurs to property in the warehouse operator's care, custody or control, the warehouse operator may not necessarily be liable for the loss or damage. A true WHLL policy will respond according to the insured's liability under the law.

The primary driver of an insured's liability as a warehouse operator - and therefore the primary driver of exposure under a WHLL policy - is the warehouse receipt, storage contract or service agreement. This can make things confusing for insurance professionals and insurance buyers alike because a warehouse legal Liability policy **responds** to what an insured is liable for, and the contract **determines** what the insured is liable for. As such, the terms of the storage contract can limit or expand the losses the WHLL policy responds to.

As an example, we have Warehouse A, which uses a contract that states the insured will not be liable for loss or damage to goods stored unless caused by the warehouse's negligence, and further losses will be limited to \$0.50/lb (based on the weight of the goods).

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Warehouse B has the **exact same WHLL policy coverage** but uses a contract issued by the owner of the goods, which states that the warehouse is responsible for all loss or damage, regardless of cause, while in the warehouse's care, custody and control. Furthermore, there is no limitation to the amount that Warehouse B can be liable to the owner of the goods. Both warehouses suffer the same fire loss that damages \$1,000,000 in goods.

Under the contract with Warehouse A, the warehouse is only liable if the insured didn't exercise reasonable care in preventing the fire, so it's likely the owner of the goods would have to prove the insured knew of an unsafe fire condition and didn't rectify the problem. And if that's proven, then the \$1,000,000 loss is limited to \$0.50/lb. Assuming 500 tons of goods, the WHLL policy only has to respond for \$500,000.

In contrast, Warehouse B is liable for **all** losses. So just like an all-risks property policy, the WHLL policy must respond to the fire loss regardless of whether the warehouse was actually negligent or not, and furthermore the WHLL policy must respond for the full \$1,000,000 of the claim.

Further confounding things, while a contract can increase an insured's liability, that doesn't always mean the WHLL will respond to that increased liability. Continuing with our Warehouse B example, we previously established the warehouse is liable for all losses, which technically would include CAT events like flooding, windstorm and earthquake. Normally, warehouse operators are not liable for Force Majeure events because such events are outside of their control. If the WHLL policy excludes CAT perils, then this creates an uninsured exposure because the warehouse operator is liable to the owner of the goods for damage arising out of CAT events, but the WHLL policy will not cover those losses. There are two ways to address such a situation: 1) obtain first-party coverage with CAT perils, or 2) negotiate the "liable for all losses" wording out of the contract. The latter is the preferable option because it transfers risk back to the owner of the goods. Most warehouse contracts state that the insured is only responsible for failure to exercise such care as a reasonably careful person would exercise.

Additionally, contracts identify, among other things, a warehouse operator's legal responsibility for a certain monetary value.

Warehouse receipt

A warehouse receipt is a document presented by the warehouse when accepting goods for storage from an individual or organization. This receipt is the same as a Bill of Lading and is legally binding and represents contractual obligations. Underwriters prefer a warehouse receipt instead of a contract because it usually states that the legal responsibility of the warehouse will either be the value of the merchandise multiplied by a certain amount of money per pound (usually between \$0.15 and \$3) or five to 10 times the monthly storing charges – whichever is lowest. Take, for example, a \$50,000 box of microchips that weighs five pounds. If the warehouse operator's limitation of liability is \$0.50/lb, then he is only liable for \$2.50 for the box of microchips.

Contracts

This is where things get complicated. On many occasions the owner of the goods may request the insured to sign a contract for his services. This contract stipulates limits of liability and amount payable in case of a loss. However, contractual liability and legal liability are not one in the same. Legal liability is based on tort law, while contractual liability is based on acceptance of additional responsibilities beyond those for which an insured normally would be liable.

Most policies require the underwriter to approve and schedule contractual liability at inception and to approve any other contract while the policy is in force. When an insured takes on additional responsibilities beyond those that are reasonable, the product moves away from its primary purpose, and additional underwriting considerations shall be made.

At [AmWINS Specialty Logistics Underwriters](#), we get requests from our insured partners to review such contracts and to recommend changes for renegotiation because our clients feel they should not be responsible for events outside of their control. We are eager to offer our expertise and input on optimal contractual terms to protect our clients and ensure that risk of loss is not unduly in the favor of the other party.

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Also, it bears repeating that under U.S. law warehouse operators are not responsible for CAT events such as earthquake and windstorms because these events are outside of human control. Rather, a warehouse operator's responsibility is driven by their actions and those of their organization.

In closing, remember that the fine print of storage contracts can make a big difference in the insured's level of responsibility and that warehouse receipts can help fairly calculate contractual risk. Warehouse legal liability is a complicated animal, so working with an expert in the space who can anticipate its twists and turns is likely to be time well spent.

ABOUT THE AUTHORS

This article was written by AmWINS Specialty Logistics Underwriters Executive Vice President Alex Rosas and Vice President Noah Klein.

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