

Research on the Liability Legal Determination of the Liability Insurance of Shipping Logistics

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Abstract: *With the rapid development of shipping logistics industry, its liability risk presents diversification, complexity and uncertainty. The traditional single logistics link insurance is difficult to cover the whole process of liability risk. This paper first analyzes the relationship between the liability of the shipping logistics operator and the liability of insurance compensation, and points out that the liability of insurance compensation is based on the liability of the operator, but the two are independent in law. This paper probes into the determination methods of the insurance compensation liability from different angles such as the determination of the actual loss, the calculation method agreed in the logistics contract, and the determination of the effective judgment document, etc., and points out the disputes and legal difficulties existing in the practice. This paper discusses the path to improve the scope of liability of China's shipping logistics liability insurance from the legal and practical levels, proposes to clarify the nature and scope of the insurable liability of liability insurance, emphasizes the importance of symbiosis and competition between mutual insurance and commercial insurance for the development of the insurance industry, actively promotes the Shanghai international shipping center to play a driving role in the development of the insurance industry, and advocates shipping self-insurance companies as an innovative model to help break the bottleneck of development, reasonably expand the scope of liability, and provide necessary business and technical support and policy support for this purpose. We should determine the connotation and tendency of the legal system from the value dimensions of freedom, equality, justice, order, and efficiency to promote the sustainable development of the shipping logistics industry.*

Keywords: *Shipping Logistics, Liability Insurance, Liability for Compensation, Legal Determination, Liability Risk, Insurance Compensation*

1. Introduction

At present, the risk response and management mechanism of shipping logistics industry is facing severe impact and challenges. The liability risk of shipping logistics operators presents significant uncertainty, and it is difficult to achieve effective identification and prevention. Shipping logistics activities are different from the traditional single logistics business, freight forwarding or warehousing, which covers transportation, warehousing, processing, packaging, handling, loading and unloading, distribution, information processing and even logistics program design, and its logistics supply chain has diversity. At the same time, the shipping logistics operator concludes a shipping logistics contract with the entrusting party, which is responsible for fulfilling the logistics obligations as the entrusted party and assuming responsibility for the whole process of shipping logistics. However, the shipping logistics process includes the above links, and there are differences in the probability of cargo loss, damage or delay, the degree of loss, causality, applicable law and liability determination in different links. In addition, it is inevitable to cause third-party casualties, property damage and environmental pollution accidents in the process of shipping logistics activities. These factors lead to the liability risk of shipping logistics operators engaged in shipping logistics activities showing multiple, complex and uncertain characteristics, and the loss caused by liability risk is more difficult to predict and estimate than other logistics activities [1]. In order to realize the effective dispersion of the liability risk of the shipping logistics operator, the existing carrier liability insurance, freight forwarder liability insurance or port operator liability insurance in practice can only solve the liability risk of a single logistics link, but cannot deal with the overall liability risk of the whole process of shipping logistics, which inevitably leads to

the overlap or blank of the underwriting risk. Shipping logistics liability insurance must meet the actual needs of shipping logistics operators for liability risk diversification, and overcome the legal difficulties or constraints, so as to achieve the sustainable development of shipping logistics industry.

2. Determination of Liability for Compensation of Shipping Logistics Liability Insurance

2.1 Relationship between Liability and Compensation

Liability insurance is parasitic to tort law, and only after the establishment of tort liability, can liability insurance be applied. The subject matter of shipping liability insurance (the liability of shipping logistics operators) determines that there is a close relationship between the insurance liability and the liability of shipping logistics operators. On the one hand, insurance compensation makes up for the damage, so that the liability of the shipping logistics operator can be liquidated, and the interests of the shipping logistics operator and the victim can be protected; on the other hand, the insurance compensation liability takes the occurrence of the liability of the shipping logistics operator as the condition and the liability of the shipping logistics operator as the limit [2].

The liability of shipping logistics liability insurance is parasitic on the liability of shipping logistics operators, and it is difficult to determine the liability of shipping logistics operators, so it is difficult to determine the liability of insurers. Compared with the rapid development of shipping logistics industry, the laws, regulations and regulatory mechanisms of shipping logistics are relatively lagging behind. There is no uniform logistics law in the shipping logistics industry, and each link of logistics is applicable to each link of the law; the supervision of shipping logistics belongs to different organs and units, and the supervision is not perfect; there is no complete industry norm within the shipping logistics industry. The operation of some logistics enterprises is not standardized, the transaction relies on the hidden rules of the industry, and the management of logistics activities is chaotic. There are some problems in shipping logistics business, such as non-standard document operation, sub-entrustment, cooperative joint transportation and so on, which make it difficult to find out the cause of loss, the link of loss and the size of loss, thus causing disputes.

2.2 Distinction between Liability and Compensation

From the perspective of legal relationship, there are two legal relationships in shipping logistics liability insurance, one is the relationship of liability insurance contract between the insurer and the logistics operator, and the other is the relationship of damages between the logistics operator and the third party, which are independent of each other and are called separation principle in theory. The principle of separation is based on the theory of relativity of debt, and the relationship of a debt is valid only between the parties [3]. The two should be strictly distinguished in the formal meaning and substantive meaning, the formal meaning should be determined in their respective proceedings, and the substantive meaning of the establishment of tort liability is not affected by the insurance contract relationship. From the perspective of German practice, the relationship between tort liability and liability insurance is bluntly expressed as the principle of irrelevance, that is, the existence of insurance has nothing to do with the determination of tort liability, and tort and liability insurance belong to different legal fields. The validity of insurance contract is only between the insurer and the insured, and the liability for compensation is between the victim and the logistics operator. Therefore, the liability of the shipping logistics operator is not equal to the liability of the insurer. The insurer is the ultimate liability undertaker, and the insurance liability is closely related to whether the shipping logistics operator bears the liability and the size of the liability. Under the "separation principle", the insurer cannot participate in the litigation between the third party and the insured, and the insurer will inevitably dispute the legality of the liability and the rationality of the amount of compensation afterwards. The establishment and size of the liability of shipping logistics operators are also the main focus of disputes over shipping logistics liability insurance.

3. Insurance Liability Based on Different Models

3.1 Determine Insurance Compensation Liability Based on Actual Losses

The shipping logistics liability insurance contract does not specify how to determine the size of the loss after the occurrence of cargo damage. Therefore, in the case of inconsistent legal provisions and no clear agreement in the contract, the size of the loss caused by the shipping logistics operator has become a major controversial issue. There are two ways to determine the actual loss of goods in judicial practice: one is to identify and evaluate the cause and size of the loss of goods by the insurance assessment agency; Second, the actual value of the goods is proved by the invoice and sales contract of the goods. After a cargo damage accident occurs, the logistics entrusting party shall issue a notice of compensation, a letter of claim, a notice of compensation and an invoice to the logistics operator to require the logistics operator to compensate for the loss. In the case of logistics liability insurance disputes, the logistics operator shall issue corresponding invoices, sales contracts and compensation certificates to prove the loss of goods and the liability of the logistics operator.

The judge accepted the insured's invoice to prove the value of the goods. The actual loss of goods will have a number of assessment reports, the results of each report are different, the court considers the actual situation comprehensively. After the occurrence of a cargo damage accident, the insurer will entrust a qualified insurance assessment institution to appraise the cargo damage. The insured is not satisfied with the results of the assessment report or will entrust a qualified assessment institution to appraise the loss after the occurrence of the insurance accident. If both parties do not recognize the assessment report of the other party, there may also be a judicial appraisal entrusted by the court. Therefore, there may be three appraisal reports in one case, and the standards and results of each appraisal report are different. The insurer entrusted a loss-assessing company to assess the value of the goods, but the insured did not recognize the loss-assessing report and unilaterally entrusted a loss-assessing company to assess the value of the goods. During the court hearing, the insured applied to the court to entrust an appraisal agency to assess the value and residual value of the goods, and the parties to the insurance contract did not reach an agreement on the above three loss-assessing reports. When determining this issue, we can consider the factors such as the length of time between the assessment time of multiple reports and the accident, the pricing basis and the cost of litigation, and choose the report that can objectively reflect the situation of cargo damage as the main basis to determine the amount of compensation.

3.2 Determine Insurance Compensation Liability Based on Calculation Method

There are two different views on whether the insurer's liability can be based on the logistics operator's liability determined by the loss calculation method stipulated in the logistics contract. It supports the view that the insurance liability can be calculated according to the agreed method in the logistics contract, and holds that the basis for determining the loss of logistics liability insurance should be the insured's liability for compensation under the contract of carriage, and should not be based on the cost price of goods. It does not support the view that the insurance liability should be determined by the calculation method agreed in the logistics contract, that is, the liability insurance should be determined according to the statutory liability rather than agreed liability of the insured and the third party. According to the principle of privity of contract, the agreement of both parties in the calculation of loss in logistics contract is only valid between the parties to the contract, and has no effect on the third party outside the logistics contract. Liability calculated according to the contract includes expected profits and indirect losses, and liability insurance does not cover indirect losses, which violates the principle of compensation for losses.

On the premise of not violating laws or administrative regulations, the parties to a logistics contract may agree on the calculation method of damages or the specific amount of compensation in the logistics contract, and may also agree on the exemption or limitation of liability to be waived. These agreements may be inconsistent with the actual loss, even if the liability exceeds the actual loss, it is also the disposition of the rights, which conforms to the principle of freedom of contract. However, for the liability insurer, according to the principle of relativity of contract, the agreement in the logistics contract cannot have effect on the liability insurer. As the ultimate subject of liability, the liability insurer should also protect its right to know while undertaking the obligation of compensation, that is, the liability insurer has full right to know the cause of the loss, the size of the amount of compensation and the way of calculation. If the liability insurer assumes the liability for compensation beyond the actual loss, it will

undoubtedly violate the principle of filling up the loss, which may lead to moral hazard, malicious fraud through fictitious contracts and high liability for breach of contract.

3.3 Determine Insurance Liability Based on Effective Judgment Documents

The facts determined by the effective judgment only have high probative force, which can be overturned by contrary evidence, and cannot determine the outcome of subsequent cases. The validity of the facts determined by the effective judgment varies according to the parties, the object of action and the claim. When the parties are different, if the facts determined by the effective judgment are disputed, the court may directly determine them unless there is evidence to the contrary. The facts determined by the effective judgment have the proof effect equivalent to the content of documentary evidence, and the court re-determines the disputed facts according to the circumstances of the case. Logistics contract disputes and shipping logistics liability insurance contract disputes are completely different in litigants, litigation objects and claims, but the determination of the liability of logistics operators in logistics contract disputes affects the determination of the insurer's liability for compensation, and the facts determined by the effective judgment can only be used as evidence. The insurer should have the substantive right of defense for the amount of cargo loss and the liability of the shipping logistics operator, and should not bear the adverse consequences because of the negligence of the shipping logistics operator in defense.

When the liability insurer questions the size of the liability determined by the effective judgment and requests the court to re-examine the liability of the insured, the court shall re-examine it. On the one hand, the liability of the logistics operator to the logistics principal is not equal to the liability of the insurer to the insured. Logistics contract disputes are based on the legal relationship of logistics contract, while shipping logistics liability insurance contract disputes are based on the legal relationship of shipping logistics liability insurance contract, and they are different in litigation subject, litigation object and litigation request. The underwriter does not deny the insured that already the judgment of become effective maintains to be opposite of the scope of liability for compensation of a third party and amount, however the agreement of both sides in the contract of become effective of the basis, requirement insured proves the insurance responsibility that the underwriter ought to assume too insured lawfully [4]. Re-examination will not affect the res judicata of logistics contract disputes. On the other hand, from the perspective of good faith and moral hazard prevention, the court should re-examine the insured's liability determined by the effective judgment. The subject matter of shipping logistics liability insurance is the liability for compensation that the shipping logistics operator should bear according to law. Although the insurance liability is different from the liability of the logistics operator, the liability of liability insurance is based on the liability of the insured, and the liability of the insured affects the liability of the insurer.

4. Scope Optimization of Shipping Logistics Liability Insurance

4.1 Reasonable Expansion of the Liability Scope

The objective demand of shipping logistics liability insurance is mainly concentrated in the field of tort liability, which is basically not clear in other fields. Therefore, the expansion of the objective demand for liability insurance in the future should focus on the former. Furthermore, joint and several tort liability and compensation liability for mental damage are insurable to varying degrees, and future legislation should be clarified according to specific circumstances. Among the four forms of joint and several tort liability, joint danger and separate tort without intentional contact are more common, while the two forms of joint and several tort liability, instigation, and assistance (including joint implementation) and joint danger, mainly involve the prevention of moral hazard, which cannot be included in the scope of liability first. About intentional infringement, logistics liability insurance is not included in the scope of liability because there is no realistic requirement for it. About mental damage compensation, it has been recognized by law and market in compulsory traffic insurance. In shipping logistics liability insurance, its insurability should be gradually clarified according to the development of relevant tort legal system, and it can be included in the scope of protection, such as in the form of additional insurance. We should be cautious about the insurability of punitive damages and should not expand it at will. In addition, through the comparison of Chinese and foreign logistics liability insurance clauses, we can see that foreign clauses generally include indirect losses in the scope of insurance, while domestic clauses include indirect losses in the exemption of liability. Insurance companies may choose specific indirect loss

insurance only in specific types of liability insurance based on their own living environment, in order to reduce the burden of insurance companies. Among them is the domestic insurer's consideration of their own interests, but compared with foreign logistics liability insurance clauses, the competitiveness of insurance is undoubtedly greatly reduced, and domestic insurers should consider the possibility of indirect losses being covered.

4.2 Business Technology Support for the Expansion of the Responsibility Scope

As for exclusions, we can learn from the common practice of foreign logistics liability insurance clauses. Taking 2023 wordings as an example, compared with the exemption of the four separate insurance clauses in the PICC, 2023 wordings exist as a whole, in which there will be general exclusions relative to the whole, and then specify the situations that cannot be insured under this liability in each liability. The cargo damage and loss liability clause in the PICC clause will list the risks of insurance liability and liability exemption respectively, while in most foreign logistics clauses including 2023 words, the risks are only listed in the exclusion part, that is, except these risks are not covered, other risks are covered. Due to the complexity of the shipping logistics industry, it is obvious that the insurer cannot exhaust all the risks of cargo damage and difference. Once the civil compensation disputes caused by cargo damage and difference are caused by reasons other than listed risks, it is inevitable that the practice of foreign logistics liability insurance clauses is worth learning from domestic insurers. Compared with the traditional single insurance policy, COSCO's comprehensive insurance clauses used in the exploration of shipping logistics liability insurance highlighted its advantages in this field. The adoption of comprehensive insurance clauses or policies can not only solve the possible cross and gap in the underwriting of single liability policies, but also avoid the situation that single liability policies cannot be applied to multimodal transport in shipping logistics. Completed a complete liability insurance plan without the help of professional agents. The existence of insurance brokers, on the one hand, solves the problem of information asymmetry in the insurance market. On the other hand, insurance brokers can provide the insured with professional consulting services on insurance products, can provide the insured with risk assessment, design insurance schemes, help them handle insurance procedures, and can also assist in insurance claims. These have brought more convenience to the insured.

Logistics liability insurance can adopt a series of financial methods to control operational risks in claims and internal management [5]. Foreign insurance markets have gradually formed reinsurance, insurance securitization (considered as a supplement to reinsurance), insurance investment, co-insurance, and professional self-insurance. Reinsurance refers to the transfer of all or part of the liability of an insured company to another insurance company in the insurance market in order to disperse operational risks. Reinsurance is a traditional way to spread risks, which has been widely used in life and property insurance. In terms of policyholders, whether individuals, organizations, or social groups, they must use insurance to transfer various risks. Insurance companies should also transfer operational risks while taking risks. Generally speaking, in foreign countries, insurance companies that underwrite public facilities will find reinsurance companies in advance. According to the standard of the insurance cost that decides beforehand and insurance gold, reinsurance can be divided for scale and blame scale two kinds. Proportional reinsurance is a form of reinsurance agreed upon in advance by the original insurer and the reinsurer. Non-proportional reinsurance is to determine the amount of reinsurance based on the compensation obtained by the original insurer. Since the 1970s, non-proportional reinsurance has been used more and more widely in China, and has gradually replaced proportional reinsurance. Under normal circumstances, the non-proportional reinsurance contract will set a maximum limit on the amount of reinsurance. The original underwriter may, depending on the risk, choose to re-underwrite. Both the initial premium and the reinsurance premium are ex ante protective measures against risk events, and they flow in a smooth order from the insured to the reinsurer in the order between the insured and the insurer. Graded indemnification for reinsurance is initiated only when the insured event occurs. At other times, the money was accumulated as a technical reserve.

In summary, controlling the risks in shipping logistics liability insurance through reinsurance, insurance securitization and other methods can help reduce operational risks and provide more complete protection for insurance companies and insured parties.

4.3 Policy Support for the Expansion of the Responsibility Scope

In the field of shipping logistics, compulsory liability insurance, as a safeguard system, has solved the risk problem of personal injury accidents in the process of shipping logistics. In the process of

shipping logistics, because it involves environmental pollution, the liability insurance of shipping enterprises is particularly important in the process of shipping. Therefore, in the process of establishing environmental compulsory liability insurance system in China, it is necessary to define the eligible subject of logistics operators. In this regard, we should not only clarify the policy, but also make detailed provisions in the contract terms from the insurer's own point of view. Therefore, when the coverage of shipping logistics liability insurance and compulsory liability insurance are concurrent, the insurance clause shall specify the insurance conditions of compulsory liability insurance and state in the policy that if compulsory liability insurance is insured, the policy shall not be liable for compensation. The implementation of this system not only provides a policy guarantee to expand the scope of compensation, but also provides a clear compensation clause, which is conducive to building a sounder liability insurance system and improving the environmental risk management ability of China's shipping logistics industry. Therefore, the introduction of compulsory liability insurance for environmental pollution will expand the liability scope of shipping logistics liability insurance, strengthen its protection of environmental pollution risks, and promote shipping logistics operators to take active responsibility and active prevention in environmental protection. In terms of policy, it should be based on the actual situation of shipping logistics operators to formulate a compulsory liability insurance policy with a certain pertinence, and under what circumstances the shipping logistics operators must be regulated accordingly, and supervision should be strengthened to ensure that the liability insurance can be effectively implemented and the insurance liability confirmed. At the same time, insurance companies should gradually improve the coverage of liability insurance and introduce more compulsory liability insurance to enhance the protection capacity of liability insurance and improve the efficiency of insurance claims, so as to provide more comprehensive and perfect protection for shipping logistics operators.

The development of insurance business requires insurers to improve their risk control and actuarial level to ensure their capital safety and sustainable development. In addition, insurance companies should also strengthen cooperation with relevant organizations and professionals to obtain the latest risk information and market dynamics, and continuously optimize products and services to enhance customer satisfaction and loyalty. In order to promote the development of shipping logistics liability insurance, we must have policy support, regulatory norms and the joint efforts of insurance companies, so that it can better match the changes of international and domestic markets and the needs of development, so as to provide more comprehensive and higher quality insurance services for shipping logistics operators, and make positive contributions to the sustainable development of the insurance industry and the growth of the national economy.

5. Conclusion

In view of the current situation and prospect of shipping logistics business, it is necessary to promote and improve shipping logistics liability insurance in order to effectively disperse the liability risk of shipping logistics operators, protect the interests of the injured third party, achieve corrective justice and distributive justice, and promote the stability and sustainable development of shipping logistics market order. There are significant differences between shipping logistics liability insurance and cargo insurance in the subject matter of insurance, the certainty of underwriting risk, the insured and the target, and they play different roles in risk diversification.

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