



16.6.2016

Herman Ljungberg
Attorney-at-law

Subcarrier's gross negligence in carrier's liability insurance – a Finnish or Swedish exception?



Caveats

- Focus only on the wordings of the gross negligence clauses
- The individual insurance contracts are much more complicated: references to other conditions, the insurance can be per vehicle or for the business etc
- No definitive conclusions



Differences between Swedish and Finnish Conditions

for Insurance of Carrier's Liability in Connection with Carriage of Goods by Road

- Swedish standard conditions (by Swedish Insurance Federation):
- The insurance does not cover liability resulting from [] gross negligence by the assured or by senior officers employed by the Assured within the company or at the site.
- CARRIER'S OWN GROSS NEGLIGENCE IS NOT COVERED
- BUT THE SUBCARRIER'S GROSS NEGLIGENCE IS COVERED



Differences between Swedish and Finnish Conditions

for Insurance of Carrier's Liability in Connection with Carriage of Goods by Road

- The Finnish ICA: The insurer is discharged from liability if the insured has caused the insured event through gross negligence
 - Insured = the company (board and managing director) but not the employees
 - Subcarrier's gross negligence would then be covered in carrier's insurance
- But the ICA is not mandatory in marine or cargo insurance taken out by businesses



Differences between Swedish and Finnish Conditions

for Insurance of Carrier's Liability in Connection with Carriage of Goods by Road

- Finnish standard conditions (some variations in wordings):
- The insurance does not cover loss [] through gross negligence by the Policyholder or a third party for whom the Policy holder is liable
- THE CARRIER'S OWN GROSS NEGLIGENCE IS NOT COVERED
- THE SUBCARRIER'S GROSS NEGLIGENCE IS NOT COVERED



Differences between Swedish and Finnish Conditions

for Insurance of Carrier's Liability in Connection with Carriage of Goods by Road

- In Finland it is the act: the gross negligence act is not covered
- In Sweden it is the person: the gross negligence act by the insured is not covered

If the subcarrier's gross negligence is covered

- The carrier's liability is unlimited but is the insurer's liability limited?
 - According to applicable conditions
 - When the insurer indemnifies, the insurer receives right to subrogate against the subcarrier
 - The subcarrier is
 - liable for the indemnified part (in relation to the insurer)
 - liable for the not limited part (in relation to the carrier)
 - The recovery in practice depends on the subcarrier's ability to compensate and the subcarrier's liability insurance



Why is the subcarrier's gross negligence not covered according to Finnish conditions?

- The Finnish conditions have not been renewed for a long time?
(some variations in wordings)
- Morally not acceptable to cover gross negligence?
- Costs?
- In line with other policies?



Why should the subcarrier's gross negligence be covered?

- The carrier cannot in fact influence the subcarrier's behaviour (only choose a proper subcarrier)?
- This is the insured risk?
- In practice, gross negligence is usually relevant only when it comes to breaking the limitation, which is rare?



Attorneys Ruoholahti Ltd.

THANK YOU!

Herman Ljungberg
Attorneys Ruoholahti Ltd.
Tammasaarenkatu 3
00180 Helsinki

P. +358 40 77 99 001

Fax. +358 9 694 0740

Email: herman.ljungberg@ruoholahtilaw.fi

