



IS THE AVIATION INSURANCE MARKET READY FOR A COVID-19 VACCINE?

As the development of the COVID-19 (C-19) vaccine gathers speed, the transportation and logistics industry will need to turn its attention to how the product can be safely and efficiently distributed. Recent figures from the International Air Transport Association (IATA) suggest that the equivalent of 8,000 Boeing 747s will be needed in order to deliver the billions of doses required to vaccinate the global population.

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While the aviation industry is already putting plans in place for the vaccine's distribution, the insurance industry must now get to grips with the unique risks that may be created by the aviation sector undertaking one of the greatest logistics operations in human history.

Pharma - a problematic cargo

The pharmaceutical industry relies on air transport for its speed, reliability and efficiency in delivering high-value, time-sensitive, temperature-controlled cargo. Air carriers, freight forwarders, ground handlers and airports are faced with many challenges due to the complex processes and specialised (or lack of) equipment needed, the insufficient knowledge (or expertise) of individual stakeholders, and inadequate infrastructure.

Pre-C-19 the bulk of the world's pharmaceutical products were carried by a handful of large and experienced carriers with specialist pharma services at purpose-built cargo hubs. Given the scale of the operation to move the vaccine, almost the entirety of the global fleet will be involved in some capacity meaning carriers and ground handlers will be utilised who do not have experience in handling temperature-sensitive shipments. The vaccine will likely need to be

carried at between 2 and 8°C but there are significant doubts relating to the robustness of the temperature-controlled logistics supply chain and whether it will be able to handle the number of temperature-sensitive shipments necessary.

What are the legal and insurance issues?

Under the Montreal Convention 1999 (MC99) – which governs a carrier's liability for international carriage - damage to cargo is limited to 22 Special Drawing Rights (“SDRs”) (approx. USD30) per kilogram. The specific concern in relation to pharmaceutical products is that they are lightweight but high in value. This means that a shipment of vaccines can often have a very high actual value, yet the limit of liability under MC99 is very low in monetary terms. This is to the carriers' (and equally insurers') benefit in most circumstances. While the pricing of the C-19 vaccine is still to be determined, the current figures quoted suggest that the limits of liability that may be applicable to a C-19 vaccine shipment are likely to be significantly lower than the actual value.

For high value shipments, the shipper or consignee (often known as the “cargo interests”) usually has to

accept the limit of liability and bear the financial risk itself, which it will generally offset by purchasing its own insurance. A lesser-used option available under MC99 (Article 22.3) enables cargo interests to request that the airline accept a Special Declaration of Value (SDV) (i.e. a higher limit of liability). If the airline chooses to accept the SDV (it is not obliged to but may do so for an additional charge) this will have the effect of increasing or completely removing the limit of liability for that shipment. The airline would then be required to pay up to the full invoice value of the shipment to the cargo interests if subsequently found liable for damage to the cargo to which the SDV attaches.

Accepting an SDV may be commercially expedient for the carrier, but the decision must be taken in conjunction with insurers because a typical airline insurance policy may not cover third party claims which are more than the airline is legally liable to pay under the relevant laws (i.e. arguably no more than the MC99 limit of liability). This position can be altered either under the airline policy itself by way of a specific provision, or it can be overcome if the airline notifies its insurers of the material change in risk (i.e. the SDV), usually before carriage begins. The latter option



is often only done on an ad-hoc, shipment-by-shipment basis, and for particularly special and or sensitive pieces of cargo. One-off notifications in the context of the C-19 vaccine would pose a significant burden on the airline, its insurance broker and their insurers. General 'umbrella' type notifications (i.e. covering multiple shipments or a class/type of cargo) are rarely given by airlines and even more rarely accepted by the insurance market.

Insurers of ground handlers, cargo terminal operators and airports may also wish to consider carefully reviewing the contractual arrangements that those entities have in place with airlines (and with each other) to assess whether uplifted liability provisions exist which may, unbeknownst to insurers, cause their Insureds to be liable to the airline or the cargo interests for the full cargo value. In the event that the distribution of the C-19 vaccine results in an increase in claims, insurers could be left with significant exposures.

A review of the terms agreed between the parties in relation to the claims protocol in the event of delay, loss or destruction of a shipment should also be considered. Adopting an approach which places a significant evidential burden on would-be claimants should, in theory, provide some comfort to airlines and its insurers.

Changing risk profile for the insurance market?

While some governments are likely to step in to underwrite the risks inherent in carrying the vaccine, many governments – whose budgets are already stretched due to C-19 bailouts – may not be able to extend this luxury to the airline community. It is also likely that certain private entities and companies will purchase the vaccine in order to vaccinate their employees prior to the rest of the general population and will not, therefore, be provided with any form of government support or security.

Insurers and brokers may wish to review existing insurance provisions under airline All Risks policies to ensure that the airline is afforded sufficient protection in circumstances where high valued shipments are being carried, noting the possible exposure to SDVs.

In order to cater for the new and unique exposures posed by a global vaccine shipment operation, the insurance market may need to consider how they respond, whether through amendments to existing coverage, or the introduction of new insurance products entirely. We have seen this in the aftermath of many other major events over the last few decades which demonstrated the insurance community's ability

to adapt to the ever-changing risk profile of the aviation industry (i.e. TRIA, AVN52).

HFW will be hosting a number of interactive webinars and panellist discussions to consider the issues for the aviation and logistics sector arising out of the global vaccine shipment operation. If you are interested in attending or participating in these sessions, please contact the authors of this briefing:



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