Q I am a freight forwarder providing a service in which I deliver ISO tanks to my customer, who fills them with hazardous liquids and gas. Once the tanks are filled, I arrange to have them transported from my customer’s facility to their destination, usually at a foreign country. I recently read an article about a case involving a tank filled with argon gas that had been delivered to a port for ocean shipment. Argon is a dangerous gas that is odorless and colorless. While the tank was at the port, it developed a leak. As a result, three dock workers were overcome by the fumes and died. I am concerned that I might one day face a case like this one. What should I do?

A Tragic as this case may be, unfortunate reality is that situations like this are becoming more commonplace. A recent case posed a similar situation, although with consequences that were not as tragic. In that case, an operator arranged to have a tank filled with ammonia gas delivered to Panama. While it sat at the port, the valve on the tank sprang a leak, and a port worker was overcome by the fumes. While the dock worker’s illness in that incident was not fatal, his exposure to the ammonia was sufficiently severe as to require him to get treatment at a local hospital.

Because of the severity of these cases, they raise fundamental questions about the handling and storage of dangerous substances. Guidelines exist that require the handling of these cargoes by qualified personnel, and owners are required to inspect their tank containers on a periodic basis. In spite of this, however, accidents are often attributed to a failure of one of these two factors. The greater your involvement in handling these goods, the greater your risk of exposure will be.

Complications arise when you perform the transportation services for one or more segments of the shipment, while relying on third parties to provide others. Although your responsibility is related to the extent of your involvement in handling the material, you should bear in mind that the extent to which you are responsible for the acts of third parties will also impact on your liability. The protections you have reserved to yourself when choosing those providers will therefore be significant. In a recent case, a ship operator leased a chassis from a leasing company and arranged with a trucker for the transportation of a tank container containing a corrosive colorant. During the transit, the unit became involved in a road accident and the corrosive material leaked onto the road, creating a dangerous condition. In a vicarious liability jurisdiction, the steamship line would be held equally responsible with the trucker for injuries resulting from the road accident, even though he did not actually handle the unit.

Forwarders who have no involvement in the actual handling or transportation of the goods are nevertheless often accused of breaching their professional responsibility by failing in their duty to hire qualified third party providers. If you own tanks and make them available for use by your customers, you must ensure that you comply with mandatory maintenance and testing guidelines for your equipment. If you lease your tanks from third parties or transport goods in tanks that are owned by your customer you must ensure that you receive the proper indemnification from the party who is responsible for the maintenance of the equipment.

If you arrange with third party providers to transport a unit, you must ensure that they are duly qualified to perform their services, and you must receive an indemnification from them for any accident arising out of their services. In every case, you must satisfy yourself that both your shipper and your service providers are properly insured for their operations. There are complex national, international and modal regulations concerning appropriate marking and documentation for carriage of dangerous goods. Obviously, everyone in the supply chain has to comply with these.

Finally, if you do become involved in an accident, you should notify your insurer immediately. Your insurer will arrange to have the situation assessed by a qualified surveyor. While you may be powerless to prevent a claimant from taking you to court, a properly documented transaction will help you in your defense.

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