# Clearwater Spas Freight Policy

- 1) All spas are shipped "FOB Origin" or "FOB Woodinville", which means ownership of the goods is transferred at time of shipment, regardless of who's name the freight bill is listed under and/or who pays the freight invoice.
- All freight costs are billed by the freight company directly to the dealer and are paid to them directly. Delays in shipping due to this process is not the responsibility or fault of Clearwater.
- 3) THOROUGHLY inspect and verify ALL merchandise BEFORE signing BOL. If applicable, list all damages in detail, including potential concealed damage, on the BOL. Concealed damage is typically limited to 7 days to file a claim while a standard claim is allowed 90 days (these days vary by carrier). Take as many pictures as needed to support your claim.
- 4) All claims are to be filed by the dealer and all claims will be paid to the dealer.
- 5) Refusal of shipment for any reason does not alter the ownership status of the goods. Refusing shipment may or may not speed up the claim process and you may be held responsible for any additional shipping and/or storage costs that are incurred. Clearwater Spas will not be held responsible for any additional costs.
- 6) If a new spa is to be ordered due to freight damage, that order must follow the standard ordering process and the dealer's standard terms will apply. Clearwater Spas is not responsible for any discounts or any other exception given to the consumer by the dealer if their spa was damaged in transit.
- 7) Dealers are permitted to arrange their own freight but must be done so in a timely manner.

The following has been excerpted from <u>The Shippers Help Desk</u>, and edited to reflect the specifics of the relationship between Clearwater Spas, the carriers we use, and our dealers.

Damage is an unfortunate consequence of transporting goods. Carriers do a lot to prevent loss and damage from happening. Unfortunately, they also do a lot to keep from paying claims when damage occurs. If they don't pay it, it is because they have determined they are not at fault; such as a shipper not doing enough to prevent it from happening (e.g. packaging). While technically it is up to the carrier to prove it is not liable for loss, from a practical sense it is often up to the shipper to prove the carrier is liable.

Here are some tips and actions to follow in the event of damage or loss:

# **Report and Retain**

- Make sure the carrier knows the product has been damaged. And don't mess with the "evidence."
- Inspect Upon Arrival... and before signing
- Count and Inspect the goods thoroughly before signing the carrier's receipt. Open the cartons if necessary. Check the top and bottom, not just the sides. Mark down specifically the pieces lost or damaged on the delivery receipt
- Don't let a driver tell you otherwise!

#### **Report Concealed Loss or Damage**

- If you detect loss or damage after delivery, report it to the carrier immediately. Call first (the phone number is located on the BOL) noting the date and time, and with whom you spoke.
- Time limits vary by carrier (check their rules... usually found on their website). But understand the longer you wait the less your chances are to recover.
- Then follow-it up to them via email or another phone call.
- Then you notify the shipper

### Be Careful If You Refuse the Shipment

- This is important: **Do not refuse the product**. Just because you haven't taken possession of the product doesn't mean you don't own it. Clearwater ships *FOB Woodinville, WA*. FOB means *Free On Board*, and is the point of title/ownership transfer from Clearwater Spas (seller) to the Dealer (buyer). In any case, do not just ignore the situation. If you refuse the shipment, the carrier can charge storage, and if unclaimed they can sell it to cover those charges (and it is almost always for a fraction of the actual value).

### **Retain the Packaging Material**

- The carrier has a right to inspect the product. How a shipment is packaged may need to be a part of an inspection to help them determine their liability
- If you can, leave the product in the box/packaging just as it was when you detected the damage
- If you throw it away, you are inviting the carrier to deny liability
- If you can't retain the packaging, take numerous photographs and provide them to the carrier

#### **Retain the Product**

- The carrier has the right to the product in the event they accept liability and pay the claim for the full value of the product
- If the product is damaged to a total loss (absolutely no value to anyone... even the scrap man), get a written release from the carrier reflecting that decision
- Retain the product until the claim has been fully settled
- If the product is useable and you have a willing buyer, notify the carrier immediately and ask them to agree to the deal if you are going to get less than full value. If you don't do this, the carrier may be able to absolve itself from liability

#### File the Claim with the Carrier

- Claims must be filed in a timely manner
- Be diligent in your follow-up or the claim might not get paid

#### **Know the Carrier's Rules**

- It is very important to read the carrier's rules, which can generally be found on their website. If they don't post the rules on their website, ask them for a copy of their rules (aka "tariff")
- There are many important things within the tariff you will need to know, such as;
  - The procedures you are required to follow
  - Deadlines for reporting damage and filing claims
  - And most importantly, their maximum liability

#### **Determine the Appropriate Value to Claim**

- Generally, the maximum value that can be claimed is the value of the product, less any salvage value
- Carriers generally won't honor additional freight charges (such as expediting a new hot tub)
- Additionally, the claimant must take action to mitigate the carrier's liability. This means if the product has a dent in it, but it is otherwise functional you are not entitled to the full value of the product; even if it is of no further use to you. The best hope is for some sort of settlement that provides partial value. Your position can be bolstered by getting a repair estimate or two, or by getting a couple of purchase offer bids, in writing
- If the product involves a total loss (due to either loss or value), use the guideline that "the value of the product is equal to the last invoice in the chain of shipping". For example, as the dealer, you should use the Clearwater Spas invoice value
- Freight charges can be included in the claim value only if the product is purchased FOB shipping point just the way we do it at Clearwater Spas

#### **Pay the Freight Invoice**

- Most carriers will not pay a claim until the freight charges are paid. This is an important and necessary step because it means you have paid for the service, but not received it

## **Know the Carrier's Maximum Value**

- Virtually all carriers have a maximum liability. It is outlined in their rules ("tariffs"), or in some other contract for transportation
- For LTL shipments moving under terms of the NMFC (includes most LTL carriers) some values are determined by the freight class. For Truckload carriers it is usually a maximum per truckload
- Just because you declare a value, you aren't necessarily entitled to that value if it is lost or damage; only the amount of the loss

#### Follow the Carrier's Filing Procedures

 Each carrier has their own policies on what constitutes a claim. Understand that a claim is a legal demand for payment because the carrier has failed to perform its obligation as outlined in the contract for carriage (usually the Bill of Lading)

- You are taking legal action, and in addition to the carrier's rules, there are laws and legal precedents that determine liability, and the extent of liability
- Generally, the claim is filed using a claim form. The carrier should be able to provide you with one. However, you are not necessarily required to use their form. Most larger LTL and parcel carriers have tools on their website that allow you to file the claim online. It is to your advantage to use their forms or online tools because it covers all the information they require
- If you want to use your own form, it must convey enough information for the investigator to know who is filing the claim against whom, why, and for how much. The following information is critical to a successful claim;
  - Copy of the original bill-of lading
  - Copy of the signed delivery receipt
  - Copy of any inspection forms
  - Any other supporting documents/photos that might help your case

# **Submit the Claim Timely**

- The claim can be submitted by fax or email, but should ideally be sent via certified mail (to prove they received it)
- Keep a copy of the claim and supporting documents for yourself
- Mail the claim to the address stated in the carrier's rules tariff or website
- If you are filing using the carrier's web tools, you don't necessarily need to mail it (check their rules), but be sure to keep copies for yourself of the on-line receipt
- The amount of time you have to file a claim varies by carrier, but usually it is about nine (9) months

#### Follow-Up and Follow Through

- Keep track of the claim date; and then follow-up
- Be prepared to wait. Be prepared to prove. Be prepared to be flexible. The claims process does not move quickly. It can sometimes take years to get a claim settled. By law, a carrier has a legal obligation to acknowledge a claim within 30 days. From there it depends upon the complexity of the claim; and the carrier's policy towards investigation and settlement
- Most open-and-shut cases are fully settled within 60 days. Others can take much, much longer, and some additional information
- A total loss of product while in transit is generally considered an open and shut case. If you have a concealed damage it can take months. Assume that the carrier will decline the claim stating that the clear delivery receipt is proof that they fulfilled their obligation. While legally they might not be, from a practical standpoint it then becomes your obligation that the loss could not have happened anytime except while in transit
- If the claim involves damage (concealed or noted), the carrier may decline liability because of inadequate packaging. If they do, the burden falls on the claimant to prove the damage did not occur as a result of inadequate packaging. The carrier has the upper hand in these situations, because there are very specific rules regarding what is deemed to be adequate packaging
- If you have a damage involving a Full Truckload and you loaded it, the carrier will likely decline liability based upon the rules that it is the shipper's responsibility to properly load the truck

- If the loss or damage is due to a natural disaster or similar event, (such as high winds or a snowstorm), the carrier will likely decline it based upon "act of God"
- If the loss or damage occurred by the action of the government (e.g. product damaged during a customs inspection) the carrier will likely decline the claim for government action

#### Be Sure to Follow Up

As you can see there are many reasons why a carrier will decline a claim. Most of the time the delays are due to requests for more information such as providing substantiating evidence. In any case if they do request more information, don't expect them to ask twice. The burden is on you to follow up. The best thing you can do is check on the claim every few weeks (following the first 30 days after you have filed it). And if they are requesting more information, get it to them immediately.

#### **Determining Whether to Settle and for How Much**

That is a big question, with no easy answer. If the carrier refuses to accept anything less than full liability for your claim, make sure you understand what they are basing this on. If they refer to a rule, go back and review and see where they might be misunderstanding (or you might be misunderstanding).

If they are offering a partial settlement, you don't have to accept their offer. But consider their offer against the extent to which they might be liable and the value of your time, and the potential cost for legal litigation. A settlement can go back and forth several times and drag out for several months; maybe even years.

The process around freight claims can appear daunting. We do all we can to use proven carriers, package our products well, and load them in such a way as to avoid freight damage. However, as we all know, damage still can – and does – occur.

It is our hope this information will give you some insight into how best to file a claim should that become necessary. Please feel free to contact our Customer Service Department with questions about this process. We are here to assist in any way we can.