

Study on the Effective Methods of Legal Issues of Third Party Logistics Indemnity in China

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Abstract: The comprehensive characteristics of logistics industry have made it become one of the industries with high operational risks among modern industry. Logistics enterprises must constantly improve their own relevant management system aiming at the greater risks in logistic industry, make full use of comprehensive means such as insurance, reduce or avoid risks as well as promote the logistics industry to meet the requirements of the times, thus providing better service for customers. By analyzing the concept of third-party logistics and the existing legal situation, this paper dissects the legal problems of third-party indemnity in logistics and puts forward an effective way to solve the legal problems of third-party logistics indemnity.

1. Introduction

Logistics industry, a combination of transportation, storage, loading and unloading, handling, packaging, distribution processing, dispatching and information processing according to actual needs, thrives rapidly with the rise of e-commerce while generating a series of problems. Its comprehensive characteristics lead to higher operational risk in market operation than other industries.[1] There are many problems in the development of logistics industry such as disorderly competition, waste of resources, decentralization of laws and regulations of logistics, the lack of uniform logistics law and so on. [2] As a third party, the disputes of logistics enterprises are complex. Some problems like liability for damage and risk-taking make logistics enterprises often suffer huge economic losses. Therefore, the standardization of laws and regulations are urgently necessary for logistics industry.

2. Legal Status of Third Party Logistics in China

2.1. Lack of uniform laws and regulations and poor coordination among departments

Third party logistics covers a wide range of fields, including transportation, warehousing, handling, dispatching and many other aspects, which requires many departments to get involved in.[3] However, the existing incomplete laws are unable to meet the actual demands. Therefore, China's third-party logistics are often subject to various regulations.[4] Nowadays, the laws and regulations on operability of China's logistics industry are made and enacted by various ministries and local governments with no unified standard, inferior level and poor operability. [5] There are various modes of transport of logistics, including roads, railways, aviation and waterways. Since different modes of transport are in the charge of different departments, there are no unified laws and regulations among departments and their conflicts are hard to mediate. All these lead to many problems in specific logistics activities.

2.2. Unreasonable resource allocation and poor scale efficiency

There are neither unified logistics law nor agreed thinking and solution model for courts or arbitration institutions to deal with disputes. In addition, the legal status of the third-party logistics parties is uncertain, and the rights and responsibilities of the third-party logistics enterprises are also not clear. In terms of legal nature, most of the third-party logistics in China are still warehousing, transportation and other contractual relationships. The value-added logistics services still remaining

in principal-contract relationship limits the development of third-party logistics, increases logistics costs and reduces the efficiency of logistics operations. For instance, the operator of multimodal transport who is responsible for the whole transportation should be obliged to bear the corresponding responsibility.[6] It is known that if the loss of goods occurs in a certain section of the transport, then the responsibility of the multimodal transport operator should be applicable to the relevant laws and regulations in this section, which has become a consensus in countries with developed third-party logistics. But it is difficult to ascertain the responsibility after the accident due to the poor informatization level of China's third-party logistics.

2.3. Greater risks and low credibility

The liability cannot be determined for the nature of contracts signed by third party logistics enterprises and customers is unclear. For example, the freight transport contract does not make a clear distinction between the loss of tangible goods and intangible goods during transportation. In addition, during loading and unloading, irregular operation causes increase in tangible loss, the overall cost and risks while the responsibilities of shippers and carriers are not clearly divided. Currently, the usual treatment for this problem is that after the goods are delivered to the carrier, they should be liable for all the damage as long as the goods damage are not caused by the cargo owner, which highly damages the interests of the carrier, reduces their enthusiasm and the shipper's legitimate rights and interests are not guaranteed. All these are not conducive to the healthy and long-term development of logistics enterprises. Besides, it is quite unfair for logistics enterprises to take responsibility for goods damage caused by irresistible factors or third-party infringement.

3. Legal issues of third-party indemnity

3.1. Third-party indemnity risks

The first is logistics contract risk. If all links of logistics involve contracts, the risk of breach of contract will arise. There are risks of default between logistics suppliers and demanders and in contracts between logistics enterprises and service demanders, logistics enterprises and logistics collaboration subcontractors.

The second is goods damage or loss risk. The loss and damage of goods may occur in transportation, storage, loading and unloading, handling and distribution. The causes can roughly attribute to subjective and objective reasons, the former mainly refers to the damage caused by theft in the process of loading, unloading and transporting goods and storage, the latter are natural disasters and other force majeure or fire, transportation damage.

The third is risk of not delivery on time which may caused by objective reasons like force majeure, leading to customer claims disputes and logistics companies also need to bear relevant responsibilities.

The fourth is the liability for breach of contract stipulated in contract and the risk of wrong dispatch or delivery. As a third party besides the supplier and the demander, the delivery from Logistics Company must be timely and accurate, and no misdelivery or omission should occur. Otherwise, the logistics company will be liable for breach of contract.

3.2 The legal issues of third party indemnity

At present, China's insurance and logistics risks are not compatible. Insurance companies only underwrite part of logistics links, such as property insurance and cargo transportation insurance, but not cover the whole process of logistics. Many logistics risks can only be borne by logistics enterprises themselves. Modern logistics includes transportation, warehousing, packaging, storage, handling and other links, each link has contracts. Besides that, there are no relevant laws and regulations but only Contract Law concerned with gathering and dredging ports, space booking and loading, customs declaration and inspection, issuance and delivery of relevant documents. While the Contract Law only provides principled provisions on transport contracts, storage contracts and warehousing contracts but no specific regulation on packaging or handling, leading to the logistics

market lack supervision management and seriously hindering the development of the logistics industry.

4. Effective methods on the improvement of law of third party indemnity

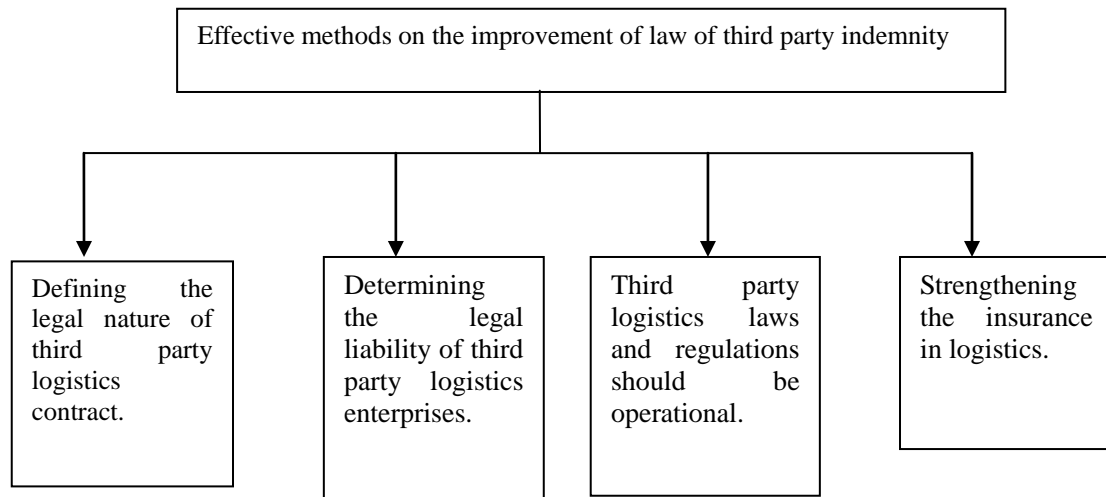


Fig.1.Effective methods on the improvement of law of third party indemnity

4.1. Defining the legal nature of third party logistics contract.

At present, most of the third-party logistics contracts in China are transportation and warehousing contracts, which are all agency-based. If the third party logistics contract is interpreted as the entrustment contract relationship, the cargo owner should bear the risk in case of damage and loss of goods caused by non-carrier reasons (except exemption). The carrier's insurance belongs to the principal-agent of insurance for the cargo owner, so the consequences of the insurance act should be directly attributed to the cargo owner and the loss of the insurance deductibles should also be borne by the cargo owner.

4.2. Determining the legal liability of third party logistics enterprises.

Modern logistics offer comprehensive services integrating transporting, storage, packaging, loading and unloading, handling and distribution, which also has the mixed status of inventory, shipper, principal and agent. At present, the Contract Law, Maritime Law and other international conventions and practices applicable to the logistics industry are not mandatory. When signing the third-party logistics contract, logistics enterprises should communicate well with customers and set the limit of liability for compensation under various losses so as to avoid unlimited liability for compensation in the future

4.3. Third party logistics laws and regulations should be operational.

If the law clearly stipulates that fixed specialized equipment must be used for goods specializing in operation to better implement laws and regulations. The legislative experience of western developed countries should be learned in logistics legislation, such as "Motor Carrier Regulatory Reform and Modernization Act" and "Airport Aviation Corridor Improvement Act" in United States, to combine transportation, distribution, transit, storage, distribution, sales and other links. It is necessary to establish a convenient, safe, transparent and low-cost national logistics system as well as establish efficient market competition and indispensable infrastructure environment to provide legal protection.

4.4. Strengthening the insurance in logistics

Insurance is an important guarantee for resolving various disputes in Logistics. Logistics enterprises may, according to their own risk situation, attach theft liability insurance, non-delivery liability insurance, refrigerated cargo liability insurance, miscarriage loss insurance, circulation

processing and packaging liability insurance. Insured commercial insurance is the most commonly used means to avoid risks for market participants in modern trade. Logistics enterprises can effectively make up for the losses caused by risks after insurance and recover from the insurance companies after compensating the injured parties so as to improve the ability of third-party logistics enterprises to resist risks

5. Conclusion

Competition in the third-party logistics market in China is quite fierce. Large international logistics enterprises seize market share by providing high-end services, many middle and low-end logistics enterprises disrupt the market order by vicious competition means like malicious price reduction. Hence, it is indispensable for the third-party logistics enterprises to cultivate their core competitiveness if they want to have a good and orderly develop in the logistics market. The rapid development of logistics industry is inseparable from good policies, perfect logistics laws and norms, orderly modern logistics market. Therefore, it is imperative to formulate and improve China's logistics laws and regulations, increase their level effectiveness and binding force and enhance their operability in order to adapt to the rapid development of the logistics industry. At the same time, promoting the optimal allocation of resources, adjusting the economic structure and improving the quality and efficiency of economic operation are of great theoretical and practical significance for promoting the transformation of China's economic transformation as well as the mode of economic growth.

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