

# 2021 Keller Logistics Summit

**Dealing With Carriers and Brokers: Best Practices**

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### Dealing With Carriers and Brokers: Best Practices

- A. What are the legal and operational risks that shippers face today in dealing with transportation providers?
1. Liability for M.C. accidents – nuclear verdicts
  2. Liability for freight charges to carriers not paid by brokers
  3. Inability to collect damage and loss claims
  4. Service protection
  5. Inadequate insurance requirements
  6. Failure of due diligence
  7. Careless contracting

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- B. Best practices to reduce risk, costs and disappointment  
#1 Rule = contracts matter  
#2-10 Rules = contracts matter!  
Even if you use brokers or 3PL's be careful of contracts!

#### Motor Carriers

1. Motor Carrier accident exposure
  - new environment
  - theory of delegated due diligence – what it means and what it requires

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vetting of brokers and carriers

contract language

continued due diligence

#### Vetting Requirements:

1. FMCSA authority/DOT rating
2. Pacer review
3. Incorporated entities only/status verification
4. Insurance review
5. CSA/BASIC scores - ?
  - you can use a service for 1, 4, and 5, but be careful – is it current?  
(e.g., Freight Guard/Carrier 411.com = 1, 4, and 5)

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#### Contract Requirements:

indemnity clauses

FMCSA authority/DOT rating acknowledgments

insurance requirements

\* Quarterly financials and right to audit

#### 2. Motor Carrier liability for cargo loss and damage claims:

- Consequential, indirect and special damages – what are they and who pays for them?
- What is Carmack and how does it work?

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- contract must specify – Carmack waiver
- cargo insurance and limits
- handling of claims
- right of set-off issues
- shipper load and count and carrier responsibility – the load shifting dilemma!
- special instructions
- limits on damage loss claims – NMFC and other contractual carrier limits – when do they apply?
- motor carrier insurance coverage – how much is enough?

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3. Liability for unpaid carrier charges by brokers.
  - How do these claims arise?
  - How can you protect against them on pre-paid shipments (broker paid by you)?
    - Section 7 Bill of Lading no recourse
    - NMFC (NMFTA) revised bills of lading  
NMFC – 100-AP
    - contract language in broker contract
    - contract language in broker/carrier contract
    - rate confirmation contracts
    - careful selection of brokers

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#### 4. Selecting Brokers

- Due Diligence -
  - FMCSA/beware of “freight dispatchers!”
  - Pacer
  - Ansonia@ansoniacreditdata.com (855-267-6642)
  - D & B if listed
  - monitoring
  - experience and time in business key
  - beware of discount promises – cheap is usually not better



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- Contracts/with broker and broker/carrier contracts
  - indemnity
  - no recourse language
  - damage and loss liability of carriers - specify
  - carrier due diligence requirements of selection (including corporations)
  - insurance requirements
  - monitoring
  - rates

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Remember: You can delegate your duty of due diligence to brokers IF you

- 1) Make sure the broker is viable
- 2) Enter into a written contract that requires the broker to only use carriers that meet minimum requirements:
  - FMCSA authority
  - DOT satisfactory rating
  - active insurance at good limits
  - indemnity for negligence
  - driver training and DOT safety compliance
  - incorporated motor carriers only
  - right of set for cargo claims
  - claims procedures
  - accident and delay reporting

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Key Rule: Always carefully review all broker and carrier contracts and bills of lading.

#### C. Miscellaneous Issues:

- demurrage
- intermodal arrangements
- exclusivity avoidance (especially with brokers and 3PL's)
- confidentiality
- jurisdiction and venue
- salvage issues
- owner/operators and driver I.D.
- broker non-competes

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QUESTIONS?