



BEST PRACTICES IN CARRIER SELECTION

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Transportation intermediaries, especially those operating within the United States, face significant and numerous exposures from normal business activities they are involved in on a daily basis. In recent years, domestic transportation has been an area in which third party liability claims have escalated and transportation intermediaries are being held liable for bodily injury claims due to their actions and/or inactions.

This guide seeks to outline the best practices for customs brokers, property brokers, freight forwarders, NVOCCs and even direct shippers to use in the selection of a motor carrier to execute a domestic freight movement. The views expressed here are that of an insurance professional and should not be construed as professional legal advice.

Best Practice Defined

A best practice is a method or technique that has consistently shown results superior to those achieved with other means, and is used as a benchmark. A best practice is not static; a best practice is constantly evolving to match the needs of the business. What is a best practice today may not be a best practice tomorrow. As businesses and society evolve, best practices must constantly change to match evolutions in technology and society in general.

A Troubled Landscape

There has been a definitive shift in liability exposures experienced by property brokers, freight forwarders and direct shippers over the last few years. For example, a domestic load involving serious injury or death used to be settled within the limits of a trucker's auto policy. Additionally, a lawsuit may have followed against the carrier resulting in a judgment for the injured party. However, recent landmark settlements have involved not only the carrier but the transportation intermediary, customs broker and the shipper as well. Many of these cases have successfully obtained judgments in excess of \$5,000,000 from the intermediaries involved.

A Call To Action

The following are some best practices that have been suggested by underwriters when choosing a carrier. These guidelines are not all inclusive and similar to a carrier rating, they may change at any time. As you begin your own process assessment, understand that documenting and charting procedures and practices is a time consuming yet vital process which is often ignored.

Many companies currently follow proper procedures and practices yet they fail to consistently document them. No procedure or practice or combination thereof can be viewed as an absolute solution to the current decisions being rendered by the courts. Alternatively, by taking no action you will certainly increase the possibility of a negative outcome.

This approach is not meant to be a scare tactic, but rather to convey a sense of urgency about the need to protect your business and to preserve your access to essential insurance.

A Comprehensive Strategy

The following tools are an essential part of a comprehensive carrier selection strategy. They are recommended as a means to help safeguard your client, the public and your company.

- Carrier contract
- A documented process
- Insurance
- Possible use of a third party that monitors carrier information
- Working knowledge of the Federal Motor Carrier Safety Association (FMCSA) website including the SAFER System (Safety and Fitness Electronic Records)

Contract Essentials

A carrier contract is a legal means of outlining the terms and conditions under which each party is to act. We loosely refer to this as a carrier contract, however, such a contract can be between you and a trucker or you and a property broker. The contract should include provisions for minimum safety ratings, insurance requirements, fitness of equipment, double brokering restrictions, licensing and permits, payment terms and more.

The contract may be the basis by which all legal aspects of a domestic transportation arrangement are determined. It may also serve as your first and most important line of defense if you are involved in a truck liability claim. Carrier contracts should be executed by an authorized person from each party and be designed by a qualified transportation attorney.

Transportation intermediaries routinely limit liability to customers based on industry terms and conditions. A similar practice should also be considered to protect against exposures created by your carrier.

The Selection Process

Stay the Course

Selection is an area where your expertise and knowledge relative to your specific business will determine the carriers you choose to use. Be aware that you need to approach this process from the standpoint that it is only valid when you can demonstrate evidence that it is in force on a continuous basis. It is recommended that you establish specific benchmarks for carriers and do not deviate from them.

Studies show when a process is documented you can:

- Increase productivity (25% or more)
- Reduce training time (as much as 80%)
- Increase quality
- Reduce or eliminate redundancy

It is also recommended your process include a check and balance of information as it relates to information you request from the client and what information is available from the FMCSA and possibly a third party vendor who monitors insurance and safety ratings of a carrier.

Verify the Carrier's Authority

- Send them your standard new vendor information request including a request for a copy of their authority, safety rating and insurance.
- Obtain an executed copy of your carrier contract that speaks to liability issues being transferred to the carrier, signed by an officer of the company (carrier).
- Use the FMCSA website to verify the information provided by the carrier.
- Verify the carrier's status; ACTIVE, PENDING, etc.
- Run a fraud check/DUNS report and beware of multiple carriers having the same address or phone numbers.
- If you employ a third party provider of carrier information verify their report versus the carrier submission.

Verify Carrier's Safety Rating

Review Safersys.org

- Vehicle inspection and crash report
- If above average (over 75) beware
- Check for fatalities

Upon reviewing the carrier safety rating, develop an internal policy to determine if they meet established benchmarks.

Recommended Actions

Satisfactory Rating

Develop what tolerance level you have for the age of a Satisfactory Safety Rating. At what point is a safety rating too old to use? One month? One year?

Not Rated

Ask the carrier why they are not rated and if they asked for a compliance review. A new carrier is required by the Department of Transportation to complete a new entrant audit.

Conditional

Does the carrier have a plan to improve their rating to Satisfactory? Have they submitted a request to be re-audited? If so, ask for a copy of the request and their most recent compliance review.

Unsatisfactory

This rating should be a clear signal to find an alternative carrier.

Carrier Insurance

- Ensure that you are not tendering cargo that is listed as an excluded commodity on their Motor Truck Cargo policy
- Verify the information on the FMCSA website <http://www.safersys.org> Licensing and Insurance
- Typical Insurance Limits
 - \$100,000 Motor Truck Cargo (minimum) beware of high deductibles, commodity sub-limits and restriction
 - \$1,000,000 Auto Liability (minimum). Confirm the form that the policy is written on Scheduled Autos, Any Auto, Hire and Non-owned and confirm that the load is traveling on a company owned truck
 - \$1,000,000 General Liability (minimum)
 - \$500,000 Workers Compensation
 - \$1,000,000 Umbrella as excess to Auto and General Liability

Third Party Compliance Companies

The process of selecting a carrier will vary based on individual risk management objectives and available resources to achieve them. For some companies, a third party service provider may be considered a valuable resource for monitoring carrier insurance and safety ratings.

Conclusion

Your future sustainability and success depends heavily on how serious you regard the threat of third party liability claims. Do nothing and the results could be dire based on the outcome of prior lawsuits that led to bankruptcy for intermediaries and their principals. Instead, be proactive and document the carrier selection process and establish a first line of defense in the event you are drawn into a lawsuit. Seek the advice of a transportation attorney to assist in determining proper licensure, construct and maintain carrier contracts and review shipper contracts.

The impact of these best practices may not be immediately evident. Nevertheless, over time using them will help you to maintain affordable insurance costs, aid in customer and carrier retention and minimize the financial exposure of your shareholders.

About the author:

David Pasco joined Roanoke Trade in the Chicago office in 2010 with expertise in domestic freight forwarders and property brokers. He is responsible for business development and account management in Michigan, Indiana, Iowa, Missouri, Kansas and Minnesota specializing in all lines of insurance sales including cargo insurance, errors & omissions, property/casualty and bonds for transportation specialists. David's efforts at Roanoke Trade are supported by a top-notch service and claims team.

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