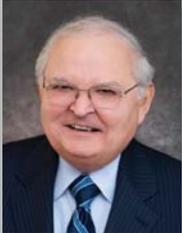


Article

Negligent Hiring of Truckers:

An Area of Increasing Concern to Customhouse Brokers, Forwarders, NVOCCs, Property Brokers and Even Shippers



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This article first appeared in *Quick Caller* Newsletter, September 2012.

There is a disturbing trend of property damage, personal injury and wrongful death lawsuits and court decisions in the United States relating to negligent hiring of motor carriers which will have a distinct impact on customhouse brokers, air/ocean forwarders, 3PLs and property brokers, or any entity or person that arranges motor carriage on behalf of its shipper customers. In fact, New Jersey and Maryland cases have found shippers themselves culpable of negligent hiring of independent contractors that did not check whether the motor carrier was properly registered, had the right insurance and was properly licensed.

Negligent hiring is basically the legal concept of an employer/independent contractor failing to recognize an apparent risk related to an individual or entity retained for their services, in this case to perform motor carriage. The case which caught everyone's attention a few years back was an Illinois decision involving a wrongful death action where the company, notwithstanding that it was a property broker, allowed its name to be used on the bill of lading and advertised a logistics partnership with the motor carriers it retained. This company's contribution to the settlement was reportedly \$4.25 million. Other cases have followed in this vein.

The first line of defense for intermediaries is to clearly establish themselves as Federal Motor Carrier Safety Administration (FMCSA) Property Brokers and to distinguish themselves from motor carriers. In fact, this is a requirement which the FMCSA is now enforcing for entities that arrange motor carriage. This status clearly distinguishes that company from a carrier and if it establishes other Best Practices, it can avoid the negligent hiring disaster described here.

While the property broker does not carry out the duties of a carrier in the transport, they choose which entity to contract and are generally expected to exercise a minimum level of care in selecting a trucking company. The following are minimum (not exhaustive) good practices to implement to minimize the risk of negligent hiring:

- Check the FMCSA license and insurance section to insure that the motor carrier is registered in an "Active" status, and identify its insurance and license authority and history

of same. See: http://li-public.fmcsa.dot.gov/LIVIEW/pkg_carrquery.prc_carrlist. This site can be entered with the MC No., or Name and state of operations.

- The size of the fleet, numbers of drivers, safety ratings, type of cargo authorized, FMCSA inspection history, safety rating and other pertinent information can be obtained at <http://safer.fmcsa.dot.gov/CompanySnapshot.aspx>. SAFER is the Safety and Fitness Electronic Records kept by the FMCSA. While much of the data collected by the SAFER System is not made public, the overall ratings are and can easily be checked by a company deciding on which motor carrier to hire.
- Develop and implement minimum qualification standards to be utilized for the selection of authorized and competent motor carriers.
- Software electronic systems are commercially available, which provide instant and more comprehensive information on motor carriers, to insure that qualification standards and policies of the property broker are implemented.
- The motor carriers utilized for arranging motor carriage should be routinely and regularly checked to insure updated information is being utilized. Logs should be maintained to demonstrate that staff is trained in these reviews and that the reviews were done systematically.
- Utilize written agreements with the motor carriers and/or shippers that carefully delineate the property broker role. Take care in promotional and contractual materials that you are not holding out as a carrier, or as a partner with a carrier, and avoid terms such as "agent," "sub-contractor," or other terms that give the impression that you are in a joint venture with a motor carrier. ■

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