



Shippers in the Crosshairs

Shippers

SHIPPER LIABILITY: The Reality of Current Liability Exposure and How to Reduce It for Your Company

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The Old Rule

Shippers are not liable for the negligence of the independent contractors they hire, including motor carriers.





But the Rule is Eroding Quickly

- Courts are now treating Shippers who hire their own motor carrier more like **Brokers**.
 - **Brokers** may be responsible for a motor carrier's negligence when they hire a motor carrier without researching the qualifications of the motor carrier
 - **In same way, shippers** can be responsible for motor carrier accidents—and **usually the really, really catastrophic accidents.**





But why the Shipper?

- **DEEP POCKETS & CREATIVE TRIAL LAWYERS!**
- Usually, the accident is catastrophic and the motor carrier is “judgment proof” or:
 - **Under-insured,**
 - **Or declares bankruptcy,**
 - **Or just closes up shop and disappears.**
- **When the motor carrier has no money, the shipper could be left to foot the bill for catastrophic accidents.**





What's the Shipper's Risk Exposure

- **A sloppy, fly-by-night motor carrier can make costly mistakes in areas that can directly hurt the Shipper:**
 - **Cargo Securement & Placement**
 - Loss of Cargo in transit can cause disastrous consequences
 - **Freight Classification & Identification**
 - Can cause mishandling & damaging important cargo
 - **Accurate Freight Weight**
 - Can lead to load shifting and loss of cargo or damage to cargo and overweight citations.





What's the Shipper's Risk Exposure

- **Even under the Carmack Amendment, there are times when a Shipper will bear the cost for loss of cargo:**
 - Act or default of shipper;
 - Improperly packaged or wrongly described cargo.
 - An act of God;
 - Hurricane, tornado, freak East Texas blizzards.
 - The public enemy;
 - Violent acts of forces hostile to the U.S.





What's the Shipper's Risk Exposure

- **Even under the Carmack Amendment, there are times when a Shipper will bear the cost for loss of cargo:**
 - The "public authority"; or
 - Quarantined shipment.
 - The inherent vice of the commodity.
 - Any existing disease, decay or other inherent nature that causes the cargo to deteriorate over time: fruits, vegetables, cheese, tobacco etc.





What's the Shipper's Risk Exposure

- In these cases, when the motor carrier “disappears,” the shipper might have to foot the bill for:
 - Damage to its own cargo & other property
 - Damage to the property of third parties
 - Damage to the Government's roadway
 - Injury & death to persons





Hypothetical Example 1

- Acme Co., a Tyler manufacturer, hires Fly-By-Night Trucking, a little one-man motor carrier operation, to haul Acme's widgets from Acme's manufacturing factory to the distributor's warehouse.
- **Acme knows** that Fly-By-Night's **trucks are old and in bad condition** and that Fly-By-Night **habitually employs inexperienced and inattentive drivers**. But Fly-By-Night is cheap, and so Acme is saving \$\$\$ with Fly-By-Night.
- Mrs. Jones is hit by a truck carrying Acme's widgets and driven by one of Fly-By-Night's employees. Acme may be liable for the injury to Mrs. Jones.





Hypothetical Example 2

- Acme Co. could also be liable **if it simply fails to research and qualify Fly-By-Night as a competent motor carrier.**
 - Acme Co. might not even know about Fly-By-Night's unsafe trucks and unqualified drivers!
 - If one of Fly-By-Night's drivers hits Mrs. Jones, Acme Co. can't escape liability by claiming that it didn't know that Fly-By-Night had a terrible safety record as a motor carrier!





Real Life Examples.

- **Stone v. Pinkerton Farms**

- Motor Carrier slammed into a truck driven by Mr. Stone. Mr. Stone suffered severe, debilitating injuries.
- Mr. Stone sued the Motor Carrier, but the Motor Carrier declared bankruptcy and all charges against him were dismissed.
- So, Mr. Stone sued the Shipper, Pinkerton Farms.
- Pinkerton Farms hired a Motor Carrier who was a bad apple:
 - 6 speeding tickets.
 - No liability insurance coverage
 - No motor carrier operating authority from the Feds or the State
- Court held: No liability for the Shipper!
- **BUT, the Law began changing after this decision.**

Stone v. Pinkerton Farms, Inc., 741 F.2d 941, 942-943 (7th Cir. Ind. 1984)





Real Life Examples.

- Puckrein v. ATI Transp.
 - BFI contracted with World Carting to pick up trash. World Carting assigned/brokered the loads to ATI Transport
 - ATI Transport was a bad apple.
 - One of ATI's trucks killed two people and seriously injured others.
 - The ATI truck was:
 - **Unregistered**
 - **Uninsured**
 - **And had "seriously defective brakes"**
 - **Court's Ruling:** BFI, the Shipper, was liable for the accident because it hired an "incompetent" motor carrier.
 - BFI had a **duty to verify the minimum qualifications** for the motor carrier.



Puckrein v. ATI Transp., Inc., 897 A.2d 1034 (N.J. 2006)



Real Life Examples.

- Sperl v. Robinson
 - CH Robinson hired DragonFly Express to haul a load of CHR's potatoes to a CHR warehouse
 - While en route, DragonFly's Driver slammed into several vehicles —killing 2 and severely injuring others.
 - CHR controlled the method of payment and paid DragonFly's Driver driver directly after a successful delivery.
 - Driver was dispatched by CHR, not by DragonFly.
 - CHR provided the materials for delivery.
 - Jury held that DragonFly's driver was an **agent** of CHR and popped CHR with...
 - a \$23.7 million verdict!
 - **UPHELD ON APPEAL.**





Protect your Company.

- Best Practices to Avoid Liability
 - Establish procedures to ensure that only pre-approved motor carriers are used:
 - Satisfactory Rating by the FMCSA
 - SafeStat score of 70 or less
 - Always keep a copy of MC's Certificate of Insurance on file
 - make sure that it's not expired!
 - Do not allow the motor carrier to sub-contract or broker the loads without express permission and then only to another pre-approved motor carrier!





Protect your Company.

- Best Practices to Avoid Liability
 - Keep a Copy of Motor Carrier's Safety procedures/manual on file
 - Use a Motor Carrier been in business at least 3 years
 - Ask the Motor Carrier for references
 - Credit Check on the Motor Carrier shows payment of obligations
 - Don't pay the driver directly—because if you do, it looks like he's your employee or agent!





Questions

The best advice?

Do business with a reliable, reputable shipper.





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