

# PREFACE TO THE NEW GUIDE TO UNDERSTANDING BROKERING

The amount of information about brokering, how to do it and what the benefit and pitfalls are, is amazingly small, considering the rate of broker growth and number of broker successes and most glaring failures. Most that is written is pejorative in nature, disservices the reader and transportation in general. I have witnessed the growth of brokering from 79 Broker Licenses in 1981, to 24,000 Licenses in 2007; during the same period trucking Authorities have grown from approx 9,000 trucking companies, to over 370,000, with 100 new applicants daily. The trucking market is perfectly "fragmented" with no one player controlling more than 3% of the pricing. What is startling is the fact the CH Robinson, the largest brokers annual sales exceed that of Ryder, the company with the most trucking equipment. Everyone has heard about the sleaze factor in brokering, as well as the remarks about brokers not leaving a shadow, and the like. The reputation is earned because of how brokering is constituted and used to disserve America's public and motor carriers. Transportation brokering has, and always will be a part of Capitalism and America.

## PURPOSE

This "NEW Guide" is designed to assist shippers and newcomers to trucking and brokering, to understand the position, role and operation of the Licensed Property Broker, in the 21<sup>st</sup> Century and beyond. The author knows from experience that the largest impediment to transportation efficiencies and profits is the lack of market understanding in an industry turned upside-down by de-regulation. Every unprofitable carrier who has or is about to go out of business fails to spot market pricing the role of the "backhaul" and how that price is determined and most importantly understand how to truck for only "retail" freight, and avoid "wholesale" freight from brokers. Those who adapt and seek to be a market player, flourish. In fact, business opportunity for the carrier has never been better thanks to "fragmentation".

In any marketplace, if all of the players have the same information about who, what, and when to deal, you have no need for a broker. In the case of US surface transportation; we can describe the marketplace as the world. We know of the communication problems inherent in having vast amounts of information and a short period of time in which to use it. It is because of this "VASTNESS" of the transportation marketplace that the business needs between the many players cannot be communicated, even in today's Internet communication system. The fact is, you cannot be a successful trucker, without learning how to be a Broker, and open your own brokerage. Note that the 1000 largest for-hire motor carriers operate brokerages, of either the same name or a different one. The vastness of the marketplace and the diversity of needs, in fact, make the function of the broker vital.

All parties in transportation seek equal opportunity and access to information to achieve their goals. The most important paradigm to remember is **"IF YOU KNOW WHERE TOMORROWS TRUCK IS TODAY, LOADS WILL COME."** There have been many attempts operating on the opposite of this paradigm, "Coordinate Loads and trucks will come" and having spent at least \$100,000,000 people are still attempting the make the latter – work. There is no trucking equivalent to the function found in the Airline Reservation systems. This should be your starting place of understanding brokering. Look at the

tools available to get information, like Transcore.com, Internettruckstop.com, Getloaded.com, and Loadhome.com. The need for brokering is apparent. One can only conclude that the opportunities for new and better surface transportation efficiencies provided by brokering are limitless. It is equally clear that brokers are the only players equipped to bring efficiencies into the marketplace.

This "NEW Guide" is my second book proliferating information about brokering to assist the small shipper and small carrier and newcomers to the marketplace, to reap market benefits through Brokering. **This NEW Guide is separated into 2 parts: one for the carrier, the other for the shipper, and how they interact with a broker.** Brokering is a unique perspective being between the shipper and the carrier. The broker is positioned to vend equal amounts of happiness for the shipper and for the carrier. The broker's goal is secondary to that of the parties to a transaction, because his, the broker reward, occurs after the parties achieve happiness.

The broker's opinion and perspective is unique in surface transportation, thanks to deregulation. Correspondingly, this NEW Guide offers a perspective about the proper use of a broker to attain market goals of both parties. Both shippers and carriers can obtain better results from their broker relationships, with a fuller understanding of the information processes involved in the act of brokering.

Today, understanding brokering is made more difficult by the widespread practice of using brokering to achieve other transportation goals. Carriers constantly broker their excess freight to support their own tariffs, or to improve their own cash flow, at the expense of other carriers. The Broker's License is a standalone business, not related to the trucking operation, and is designed to occur without liability to the broker, much as a "travel agent" is not liable in a crash. The Government definition of brokering is to "arrange transportation for compensation", but brokering is used by those with 100% of the "strict" liability motor carrier standard, and thus creates liability where there is supposed to be none. In other words, brokering conduct creates liability, and most in the industry conduct brokering as one motor carrier to another, where both parties to this brokered transaction, share 100% liability. One Motor Carrier hiring another (Sub-hauler) share 100% of the liability both Public and Cargo, and a License is not required to because of the "strict" liability of motor carriage. The only function of the License is conducting brokering without liability, as a travel agent would sell a ticket for a flight. Trucking should operate as one business and the brokering segment for that trucking company should be a "stand alone" business separate and distinct from the motor carrier, its name, its MC number and different FEIN number, etc.

Lastly, the largest numbers of trucking companies fail to understand the relationship of supply to demand, on any given day, in any given geographic location, information that is readily available online in a few seconds. If a trucker accepts a \$1/mile freight rate from a broker without realizing that they have the last Air Ride Van in LA, that day, and could have had \$5/mile if they had asked, then they is the fool and the broker is NOT a bottom feeding-blood sucker as they are made out to be. It is precisely this lack of understanding by the trucker that makes brokering so profitable. Learn how to be an effective market player by taking the course Loadtraining.com or study at home with Loadschool.com.

**David G. Dwinell, Master Broker 2008**

# THE NEW GUIDE TO UNDERSTANDING BROKERING

## *“Your Key To More Profitable Transportation”*

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**The New Guide to Understanding Brokering will be featured on all MASTER BROKER Websites as a HOW TO for more effectively working the MASTER BROKER.** Shippers and Carriers can decide for themselves how much better a Master Broker is than the average broker.

# THE NEW GUIDE TO UNDERSTANDING BROKERING

## YOUR KEY TO MORE PROFITABLE TRANSPORTATION

The NEW Guide relates to the goals of Loadtraining, LLC, a franchisor - proliferating transportation brokerage through education and information programs. This dissertation should provide users of brokers, shippers, carriers and other brokers, with an in-depth explanation of the interaction of brokers and users in the typical aspects of transportation marketing. **Master Brokers should send this New Guide Book to their shipping and carrier clients as the “ground Rules” they live by.** More information about the workings of a brokerage and the approach that brokers take in their job will create better transportation. Maximum information benefits do not hinder any transportation activity. Surface transportation brokering is identical to air transportation brokering, in objective. The players are called “Property Brokers” and travel agents, respectively. The objective of the carrier, in both cases, is to receive assistance or representation in capacity utilization. The objective of the users of the broker is to receive the benefit of having more load selection choices in the case of the carrier (supply) and more price choices for the shipper transportation purchase.

The inevitability of brokering in transportation is not clearly understood. In any industry a market situation exists. The players in the industry need accurate and current information about both the buyer and seller, in order to more effectively purchase or sell. For those that have good information to compete more effectively there is even such a thing as having too much (insider) information. Transportation was recently de-regulated, creating an open marketing situation. The lack of information in real time for transportation players is unbelievable. Compare the time and capacity information available to a travel agent versus a property broker. It is easy to understand how such widespread credit abuses and marketing failures, can thrive in today's atmosphere of poor, incorrect, and insufficient information. Educational programs, such as loadtraining.com are a few of the many responses to transportation information inadequacies. This New Guide is a reference that will dispel the misconceptions and half-truths about property brokering. It is divided into separate sections for reference by shippers and carriers and their broker interaction. Perhaps when readers assume the perspective of the carrier or shipper, they can better understand broker's motivation, objectives, and techniques.

### ABOUT Loadtraining.com

Loadtraining.com is a unique approach to information providing accurate and current information to parties involved in transportation brokering. The company is dedicated to the proliferation of brokering throughout North

America, to better the marketplace, through public education and information dissemination.

**The New Guide to Understanding Brokering** is a document that can assist both shippers and carriers in understanding the concepts, methods, and objectives of brokering. It is one of the Loadtraining.com publications utilized to give broker customers the perspectives of the broker. Loadtraining, LLC is an Institution dedicated to training individuals and corporate personnel in the intricacies of brokering by franchising the training of individual, owner/operators, shipping traffic managers and Entrepreneurs. Subject emphasis is placed on proper management for the success and continuation of business. Loadtraining.com and Brokerofficetraining.com are licensed by the State of Arizona; Board of Private Post Secondary Education numbered V1062.

## **INTRODUCTION - HISTORY OF TRANSPORTATION BROKERING**

Shippers and carriers have been exchanging money since time began. The NEW Guide is limited to the study of surface transportation in North America as defined by Section 8 of the Constitution of the United States of America. It regulates the flow of commerce between the Indian Tribes and the several states – The vaunted “Commerce Clause”, and its great body of law and precedent that has accumulated p about this clause. States are involved in regulation of transportation safety only. States may NOT interfere with federally regulated Commerce. The Clause became involved with the granting of transportation Authorities to Railroads. In 1887 the Act to Regulate Commerce was passed by Congress and the ICC was born. Early Railroad Charters contained provisions designed to protect and speed railroad development and service to the nation. Eventually, pressed by competitive pressures, railroads began to abuse their authority grants. A reaction to severe rate discrimination against farmers was made manifest in the form of a political force called the Granger Movement, and the “Progressive” movement led to the breakup of business combines. Laws such as the Sherman Anti-Trust Laws became the staple of regulation. Political remedy resulted in the modification of Railroad Charters to include Freight Rate regulation. The ICC has continued to promulgate an ever expanding body of regulations to govern interstate transportation, until its demise in 1996. The Hepburn Act and the Elkins Act are examples of turn-of-the century legislation that expanded but brought “uniformity” to transportation regulation. The Motor Carrier Act of 1936, a part of the New Deal, brought motor transportation within ICC jurisdiction and specifically covers highway protection, safety and economic regulation of goods and services. During the period between 1936 and 1981 brokering was restricted to a small theater of exempt commodities. Economic regulation made brokering unworkable since the concept required freight rate regulation amounting to price fixing. Brokering involves the use of a third party to assist a player in obtaining transportation in an open market, as far as rates are

concerned. In 1940, the Freight Forwarders Act was enacted. A distinction should be made between a Property Broker and a Freight Forwarder. The Broker does not have possession of nor declare an interest in the goods for which he finds transportation, whereas a Forwarder takes possession of freight having the same cargo liability as the receiving and delivering carrier. Finally, the Motor Carrier Acts of 1980 largely deregulated the price fixing and fuel surcharge regulation of surface and air transportation. Essentially, one type of Economic Authority Grant was deregulated, and all that remains is Common and Contract Authority, with Contract Authority being the least regulated of the two types. Stubbornly, the Common Carriers stick to their tariffs and heavily discount services even when the market supply and demand conditions could mean they could make more money. They are finding that the market profits belong to the nimble contract carriers who make their economic decisions at the dispatch level and don't rely on a "Rate Department" to slow shippers transportation purchasing. The days of Tariffs have gone but most Common Carriers do not want it to. The history of modern brokering began about 1980.

Property Brokering has been permitted by law, but not widely practiced. Brokering is the economic activity of spot marketing freight between players. Freight Rates are determined by an on the spot basis, then codified via verbal or written "agreements". Spot marketing freight is more common than ever, thanks to the Internet, and freight rates vary by 3000% depending on who you ask. Judging from the rate of growth and the total number of dollars changing hands, brokering accounts for as much as 40% of the trucking industry alone. The underrated deregulation benefit is the fuel efficiency factor. Brokers eliminate "deadhead miles" loading trucks that have no return load and would drive home empty inefficiently wasting fuel. The US surface transportation industry used to regularly log over 120,000,000,000, (yes, billion) deadhead miles annually. Brokering has changed this picture dramatically helping to maintain the world's lowest transportation costs and the 1980 Act altered National Transportation Policy. Information is the fuel of competition; the more you have the better transportation profits for all. Brokers use and provide fast and accurate market information while third party activity can only assist a shipper or carrier to become more competitive, it certainly assists motor carriers in balancing their dispatch. The New Guide includes information about brokers operation and motivation designed to make your transportation endeavors more productive and rewarding.

## INTRODUCTION II      **WHAT IS A BROKER?**

Not surprisingly, this question should be asked and answered more often. This Author has heard multiple definitions that range from, the owner of a truck, to a trucking company, to a shipper who uses backhaulers. For purposes of this discussion, **a broker is a third party to a transaction providing a service to one of the parties, that service they could do for themselves but choose not to.** The

broker usually accepts the credit of a shipper and has, in turn, his credit accepted by the carrier. In other words, he collects from the shipper and pays the carrier, less his commission. A motor carrier can hire (broker) their load to another motor carrier (sub-hauler) without a "Brokers License": both carriers however, share 100% of the "Strict" Liability that common law has levied for hundreds of year. The only function of the Broker's License is to convey to the licensee the ability to broker freight **WITHOUT** liability for public and cargo. The problem comes in when the **Truck Broker** (has Authority and a License) conduct brokering as one motor carrier to another, then tries to use the license to escape the liability their conduct created. The problem persists because there is virtually no training to show a person how to broker effectively and operate a separate and distinct trucking company operation. The average trucking company operates and conducts brokering as if the other trucking company is their "hired" sub-hauler. Loadtraining.com's mission is to teach transportation people how to truck and broker successfully, conducting operations of a trucker with 100% of the liability and conduct brokering without liability. In the last 21 years, Master Broker graduates of loadtraining.com have achieved a 1 in 2 brokering success rate vs. the Government's statistic of 1 in 19 making it into the third year of operation.

Brokering is a marketing tool. Brokers act as facilitators, middlemen, and matchmakers, the latter being the most common service. In his acting role, he is essentially getting a surface carrier, who is making his truck available through marketing, for a load marketed by a shipper. Most Brokers Licenses are issued to trucking companies. Others are issued to shippers and still others to Pure Brokers who are in the market for a commission, alone.

Truckers are interested in having representation in their remote market, and getting return or backhaul loads. Shippers are interested in the "backhauler" for ostensibly a cheaper purchasing choice. Brokers get these two interests together to satisfy the marketing needs of both as the difference in the outhaul freight rate and the backhaul rate- generally 50% lower.

Rates enjoyed will reflect supply and demand, not a tariff. Shippers benefit most often from pure brokers rates and services because they are not trying to maintain an artificial (outhaul) freight rate.

Carriers outbound rates are based on a market position of here is my rate take it or leave also called a tariff. The rate cannot change up or down to meet supply and demand. Motor carrier brokers tend to take as much as they can get for a commission leaving the rate lower than that for a comparable movement. The carrier may still attempt to trip lease even though the carrier hauling has similar Hauling Authority. This means that the trip lease load will have a commission approaching 30% of total revenue for the truck broker, as opposed to 7 to 15% for a pure broker. Shippers who use carrier - based brokers are also accepting the poorest form of credit, other carriers, and the actual hauling carrier frequently doesn't get paid. Pure brokers are not without fault in the rate department. They tend to double broker a great deal of freight from

carrier-based brokerages, driving rates downward artificially. Many carriers who use brokers sometimes find themselves in the predicament of having too much freight and not enough time to broker the load themselves. They simply call a nearby broker and offer the load, less their commission, for movement. They call the broker they know to be most effective in either inbound or outbound movement. Pure Brokers tend to form close relationships with other brokers who specialize in flat, van or refer freight. Double brokering means too many commissions and a convoluted credit trail.

The most important distinction that is seldom made in this business is that between a **TRUCK BROKER** and a **PROPERTY BROKER**. This **Guide** deals only with the market player's relationship to a property broker, NOT a truck broker. References to the word "**broker**" are references to the "**Property Broker**" throughout this document.

**Brokering is used by shippers** in an attempt to affect lower freight rates. **Brokering is used by trucking companies** to maintain higher rates and they are called in every truck stop in America "**TRUCK BROKERS**" a term that does not appear in LAW. Then there is the **PURE BROKER** in it for the commission alone. The latter is the only source of true market freight rates not tarnished by other corporate goals. The Pure Broker relationship is one that can be close enough to achieve true, unbiased market rates not related to a tariff, because the broker has no additional interest in the load, other than the commission. Brokers utilize information from and about carriers and shippers to assist each in making a market. Broker information resources -quantity and quality levels are usually far above those of the average shipper or carrier and is the measure of the *effective broker*.

The principle brokering tool is the carrier call-list information database. Brokers establish a loose and tenuous relationship with a large number of carriers. Their solicitation is, at worst a telemarketing cold-call, offering freight to the carrier that the broker suspects has equipment that needs loading. Carriers form close relationships with brokers in their areas of interest. When carriers are in need of marketing services, they call the broker to indicate they need loading. Carrier information is changing at an enormous rate, aggravated by telephone competition. Today brokers of all type utilize on line service to find trucks and loads, the best being Transcore.com, in the Author's opinion.

Brokers make their mark with both shippers and carriers with references for service and credit purposes. Their only stock in trade is their reputation amongst references. I obtain most of my new brokering customers by Referral. My reputation and integrity are my trademarks.

**THE PURPOSE OF THE NEW GUIDE IS TO ASSIST THOSE WHO USE BROKERS TO BETTER UNDERSTAND HOW A MASTER BROKER FUNCTIONS IN RELATION TO WHAT THEY HAVE EXPERIENCED IN THE PAST. THIS GUIDE IS DIVIDED INTO 2 SEGMENTS –**  
***The Shipper Segment – and the Carrier Segment-***

# SHIPPERS GUIDE for Working with Brokers

## **BROKER MARKETING TO SHIPPERS**

Brokerages tend to be small, one-man shops with perhaps, a bookkeeper/receptionist. The main reasons for this are (1) the type of service rendered is as a **PERSONAL SERVICE** and (2) service is slower when there are multiple Brokers on a switch board. Marketing by brokers tends to be cold-call solicitation through both mail and phone because brokers target the "availability" issue with shippers. Fragmentation in the marketplace is overwhelming shippers into making transportation purchasing decisions. Ostensibly, if the broker can provide a "backhauler" motor carrier there is a presumed savings because of a lower freight rate. The crux of the message is to enlist the aid of a broker in your shopping effort to find the **BEST trucking service for the least cost**, the paradigm of both traffic and purchasing manager. Brokers rightly claim that they have far more transportation choices than the shipper alone, because Brokering with "backhaulers" can reduce shipping costs by as much as 40%. Backhaulers can be book about 85% of the loads tendered, thanks to the internet. Brokers are effective in finding backhaulers for outbound freight about 85% of the time thanks to the Internet. Brokers nearest the destination of the shipper's loads are the most effective in reducing costs, because those brokers are more familiar on a daily basis about truckers who want to return home. Brokers move a mix of freight about 50 - 50 inbound vs. outbound. They will solicit both types for service. Their use of backhaulers could include local carriers. The inbound freight that has been shared with local carriers may be re-offered by the Broker to the same carriers. The efficiency achieved by placing inbound freight with a broker is that the broker shops more prospects until he finds the trailer nearest the load, thus cutting deadhead miles for the carrier. Two things result: cheaper rates and better service.

**Brokers use myriad techniques** to explain the effect of their service. The net effect should be that they want to get very close to the traffic manager, purchasing manager or warehouseman and their freight. The relationship they seek is as a transportation advisor and is close to that of a financial advisor or insurance agent. Shippers who opt for the close relationship and set up an administrative procedure to accommodate it have reaped enormous benefits corporately.

**Shippers should employ several techniques to assess the effectiveness of a Broker**, before shipping with him. Brokers have a reputation for paying motor carriers and you need to assess their carrier paying reliability. Tests that you would employ are those used to evaluate a consultant, or financial advisor. Essentially, criteria such as length of time in business, references of satisfied

shippers, and references of motor carriers paid on time. Additionally, the range of the Broker's services should be ascertained: truck, rail, air freight, ship, customs, etc., as these are essential in the Broker's presentation. It is pointless to ask the questions that you would use on a freight salesman – "What areas do you service?" Brokers serve the world and they can't afford to "specialize" in equipment. We are training the Master Broker to be effective with every type of equipment. Most Brokers will say they service 50 states, not all will say "the world." **To debrief a Broker**, ask questions such as: "What is your length of time in business?" "What are the names and numbers of three carriers you have worked with recently?" and "What are your experiences in transportation?" All in all, if the individual is heavily experienced and you have a positive feeling about the presentation, you have a good Broker prospect. You will want to know who will be operationally working the load, if not the person to whom you have been speaking.

**Brokers are not normally insured for cargo or any transportation public liability.** Remember, Brokers are travel agents of freight and strive to conduct themselves without creating liability. The author has been Brokering Freight for nearly 30 years and has never had insurance. He has experienced less than one millionth of a percent of loss of revenue in those years. Master Brokers are instructed on **Voluntary Claims Resolution** and will act as the mediator in a claim or dispute between his clients (shipper and carrier – like Judge Judi).

**Asking the Broker if he has cargo insurance or trucks can assist in** determining what type of Broker is making the sales presentation; Truck Broker vs. Property Broker. Remember, the Truck Broker will not give you the best rates, as they are using Brokering to support their trucking operation (which is to maintain the highest rate structure possible). Most shippers have been solicited by both, and the one destroys the freight rate efficacy of the other. Truck Brokers take possession of freight and hire other motor carriers or supply owner/operators to haul these loads. Property Brokers find Authorized motor carriers only and cannot hire an owner/operator, because Licensed Brokering is not a MODE of transportation as defined by Law. Working with a Property Broker and a pure Broker at that will yield true savings, working with TRUCK BROKERS means they are trying to pass on the liability to other carriers and will use their Brokering License to escape liability for the other motor carrier's loss.

## **BROKER SHIPPER SALES ACTIVITY**

Telemarketing is the preferred method for contact by a Broker. In this contact, a Broker will want to know what the principle freight lanes, in and out for the company, are; the frequency of shipment; the mix of truck load (TL) vs. LTL (less than truckload), whether or not another Broker is presently used or, if they are shippers first Broker contact, the type of freight involved and the equipment that can be used; special requirements of pick-up and delivery. The Brokers often follow-up a sales call with a written quote for freight movements in

and out of the plant. Some Brokers will request a personal visit to discuss their capabilities, which is a complete waste of your time. The author has maintained shipper relationships of over 25 years without ever having physically met the shipper. There is a distinct difference between a freight salesman and a Broker. A freight salesman is selling the service of company with trucks and defined lanes of interest, with specialties in type of equipment offered. A Broker serves all lanes with the 7 basic pieces of equipment common to Brokering: Vans, Flats, Refers, and styles or variations such as Flats - with - Sides, Curtain and/or air ride - Vans. Pertinent questions about the activities of a proffering Broker and assurances and the like are:

### **SHIPPER TESTS FOR A BROKER**

These are the tests a shipper should require of the Broker proffering services. **At a minimum, the shipper should qualify the Broker past carrier payment record. Demand of every Broker who appears**, the credit references they send to the carrier for their perusal and approval – Check each reference using the standard outlined in the Manual; parts 9 &10, **PLUS**; look at their transportation academic achievements. Most Brokers haven't bothered to attain some form of academic study of the Trade of Transportation Brokering, AND THIS IS THE MEASURE OF THE COMMITMENT to your safety and paying the motor carrier on time.

#### **1. What steps does the Broker take to assure me that only Authorized and Insured Carriers are tendered?** -a must for your loads,

(Google: Puckrein v ATI Transport, where the shipper was held liable in a wrongful death car- truck accident after loading an incompetent carrier)

#### **2. What process does the Broker use to make sure a Freight Movement contract is created and delivered before or shortly after consignment?** (WRITTEN Contract by FAX or Internet is a must). If Contract you want to see it. (Note: Written Contracts are NOT REQUIRED by Public Law 104-88) (See Loadtraing.com Syllabus)

**3. What are your terms in paying carriers** (should be 30 days from carrier bill or less). The original Bill of Lading is not required to pay a Broker or a motor carrier. Motor Carriers are not required to give up their Original Bill of Lading to anyone even after payment; all parties working with carrier should find a copy or any Proof of Delivery (Consignee's Signature) satisfactory.

**4. Will you assist in prosecution of just claims against carriers?** (The answer to this should be yes and could also be against the shipper if they are wrong as well). Brokers who say they have no insurance are not disqualified (Remember: Brokers are uninsured travel agents) Those Brokers who proffer insurance are in fact

**Truck Brokers**, exactly the wrong Broker to provide REAL MARKET RATES, but only their trucking company Tariff rates. (See Schramm v Foster lawsuit where Broker proffered insurance coverage in the event of a claim.)

**5. How do you calculate your rates and will you tell me what your commission is?** Remember, Licensed **Property Broker records are PUBLIC RECORDS**, and the shipper is entitled to see what the Broker is paying the motor carrier (see 49 CFR 370 et seq “Records to be kept by Broker”) - (See Fig 2 in the Manual).

**6. Do you have trucks and publish a tariff?** If yes, you are being propositioned by a **Truck Broker** and are not reaping the benefit of true market freight rates. The rates proffered will be Trucking Company rates and that trucking company is taking possession of the shipper’s freight, and Brokering to another. (Note in Puckrein case, the carrier (ATI) was contracted to take possession of freight and provide Authorized and Insured Carriers if not their own and failed to do so.

**7. Will you allow your dispatch to broker out to a carrier who in turn Brokers my freight to another carrier?** (If yes - turn him away because you are dealing with a **Double Broker**, and your freight could easily disappear. Visit Loadtraining.com Training Syllabus and view Author’s Brokering experience with Enron).

**8. Do you have Contingent Cargo Liability Insurance** in the event of Carrier insurance default, cancellation, or non-payment? (Remember, Brokers can provide Contingent Cargo Insurance, but most of the time the Brokers send their own Motor Carrier Cargo Insurance as proof of Insurance and the shipper is not covered by motor carrier’s insurance when that carrier Brokers the load to another carrier using a Broker’s License. (Note: Subrogation is an issue covered in the Master Broker training lecture. Google: Schramm v Foster, where Broker advertised their insurance coverage but was trying to wiggle out of the liability in a car/truck accident. The MD Judge required that the Insurance fact to be put in front of a Jury – but Broker paid loss instead)

**Measure the Broker** – Working with a Broker who is not financially stable (check their credit references) can expose the shipper to all types of hidden liabilities. We have mentioned Puckrein and the Broker who is party to a “Negligent Hire”. The shipper may have to pay the actual hauling motor carrier after paying the Broker for the same load. Paying a Broker for freight cargos does not relieve the shipper of the obligation to pay those whose names appear on the Bill of Lading as the actual hauler. (Remember, the Bill of Lading (BOL) is a Contract between the creator (Consignor) and the motor carrier. Licensed Brokers names **MUST NOT** appear on a BOL. Truck Broker will want their name on the BOL as they are in fact in possession of the freight and may Broker it to another motor carrier without a License, but they are always liable in the event of a loss, and their Insurance must **PAY** in the event of a loss.

## RATE DEVELOPMENT WITH A BROKER

All shippers, and their traffic and/or purchasing managers, use **a LEAST COST ROUTING GUIDE (LCRG)** to establish a phone calling list for motor carriage purchase, ranking carriers who have proffered to haul their freight. The list is a ranking from the least expensive to the most expensive purchase. When shippers need to purchase transportation they start at the top by calling the cheapest carrier about “availability” for hauling and if not available calling the next carrier in line.

**Brokers should not be included in the LCRG – they are not carriers remember! Shippers should call the Broker BEFORE they resort to their LCRG**, and get a “market rate” - **COMPARE Market to the LCRG** previously obtained. **Master Brokers** have previously created or will **create** a spot market analysis called the “**Rate Matrix**”. From the Matrix, they can quote current market freight rate (See Fig nine in the Brokerage Operations Manual - the second Text Book of Loadtraining.com). Master Brokers generally have a dutch auction website, where shippers can post their load on-line, for a freight rate they choose, and get a bid from a carrier, via the Broker, for that load. Motor Carriers provide rates from the position “**Here is my Freight Rate – Take it or Leave it**” Broker say “**What do you want to pay**” like a travel agent would. **Brokers will respond better to a request for a rate versus what the shipper wants to pay.** Brokers are trained to ask for and receive “Exclusivity” on their work. Shipper who says “here is your rate-take it or leave it” is holding an Auction amongst Broker and generally does not give “exclusivity” to the Broker. In other words, Brokers who are told here is the rate and the first truck that shows gets the load will generally **NOT WORK on your load. Remember Brokering is a “personal” service, and shippers must extend to the Broker more “countenance” (trust) to a Broker than they would in an “arms Length” carrier transaction.** This is the principle reason the fortune 1000 motor carriers have a “Brokerage” (90% of all Brokers Licenses are held by Authorized motor carriers.)

## QUOTATION PROCESS

**Three things are required from a shipper to create a quote - Origin City State and Zip Code, Destination City State and Zip Code, and a complete Load Description.** Broker quotes are created using a Benchmark Rate (See Brokerage Operations Manual) for the geographic lane plus accessorial charges and plus their commission. The value of amenities are dictated by the customary carrier charges; examples such as \$50 to \$100/extra stop, \$150 to \$250 dollars for driver assist, \$.15/mile more for refrigerated service. Brokers usually quote verbally within a few minutes of a Freight Rate request. Master Brokers will follow this with an email or written letter to formally cement their relationship to a shipper. Written Contracts with Brokers should be avoided (if you are going to play the market – written contracts dull this process). If a Broker is to provide repeat

contract service over and over for the same load and sometimes the same motor carrier, written contracts can serve using a simple 1 page letter.

**Pure Brokers are creatures of an open market.** They quote rates based on supply and demand alone. High demand/low supply forces higher rates (A “Sellers” market); High supply/low demand means lower rates (A “Buyers” Market). **Indemnification Agreements (IA)** are a recent phenomenon in the Broker/shipper relationship. The Author has provided expert testimony on validity and usage of these types of Agreements to Lawyers, Judges and Juries. **First of all** IA's are completely enforceable, **Secondly;** they are almost always a part of a Motor Carrier to Motor Carrier type of Brokering (Truck Broker- each party share 100% of the Liability), **Thirdly;** they are not a good idea in a shipper/Pure Broker relationship. **IA's defeat the purpose of Pure Brokering** and the cost of an IA to a Broker, is always factored into the Freight Rates being quoted and then paid by the shipper i.e. **HIGHER AND FIXED FREIGHT RATES. Most Brokers are zero asset based corporation physically and fiscally unable to indemnify anyone.** No Broker in their right mind would provide a personal guarantee. Brokers are a shipper's collaborator, not their agent; they quote the market by interviewing backhaulers and adding their commission. Brokers are often confused with motor carriers because both quote Freight Rates.

**Shippers test for a Broker should be employed before working with a Broker.**

Quotes from a Broker are always estimates of what price they think they can find a truck for, however most Brokers especially NON Master Brokers, shoot from the hip, without doing any real market truck interviews. Master Brokers are taught to interview as many as three different backhaulers, average those rates, add their commission, and quote that rate to shipper. Master Brokers may modify that rate as market conditions dictate – increased supply means lowering that rate.

**A Broker rate quote should be viewed as a market estimate ONLY.**

Brokers value movement based on their ability to supply equipment. Accessorial charges and amenity examples are trailer spotting, driver assist on loading or unloading, pallet exchange, freeze protect, refrigeration service, and others. Rates plus amenities affect the Broker's ability to supply trucks.

When a Broker is delivering his Market Rate Estimate, it is an educated guess based on the current condition. Delivering this estimate, they will routinely ask 3 questions:

- 1. How is the freight Rate?** – You should immediately be able to compare the Brokers educated guess Freight Rate to the lowest Freight Rate on an LCRG.
- 2. With a positive response, they will follow with the question, When can I move this Freight?** Shipper should answer honestly why the quote was requested, and with a positive response,
- 3. How long do I have to provide a truck?** At this point the shipper should negotiate with the Broker for a period of time for the Broker to do his job. (In the Manual referred to as “Notification Time”). *Note: if you were purchasing*

trucking, the dispatcher would have committed or not committed to provide a truck after the first 2 questions alone. 2 things are important here for the shipper, extending Notification Time. **A)** The period of time should be of sufficient length to allow for a thorough market search, but short enough to allow the shipper time to seek and purchase other transportation alternatives should the Broker fail in obtaining the right truck for the agreed price. (Nothing de-markets a Broker faster with a shipper, than the Broker who calls at 4 PM on Friday afternoon announcing they failed to find a truck. **B)** Notification Time when given to a Broker should be exclusively to that Broker. (How many different yard signs sit in front of a house for sale?) Brokers will actually quit the shipper relationship if the shipper "auctions his freight" to many Brokers – The first truck to show gets the load is a very real way for a shipper to end up **without** a meaningful carrier relationship.

**Master Brokers will send a formal Freight Rate commitment letter** to the shipper, outlining the Freight Rate and the amenities that created the Rate. It is their way of showing the shipper that they are professional and trustworthy.

## ORDER PROCESSES

**The Information a Broker requires at an order is the specific Name Address Phone number and Contact person of both the Consignor and Consignee** (Note: the Load Description cannot change at this point, because the quote given is predicated on the original Load Description, **Bill To** information, (person signing the Credit Application) and the pertinent Dates for **Pick Up and Delivery**.

**Getting credit established with a Broker.** If this is the first time you are working with this Broker, the average Broker will send over a credit application (see Manual for sample credit application). Shipper will generally offer a "boilerplate" credit application document. Broker will still want the shipper to complete the Broker's form which may clearly state that the Shipper will pay the Broker's collection costs, should that be necessary after required "Notification". **Master Broker** will actually send the Shipper a Formal Letter stating the amount of credit extended, to protect both parties in the event of a misunderstanding.

**When to order a truck from a Broker** is one of the most misunderstood aspects of Brokering by shippers. **The time to call a Broker is before the shipper would call carriers listed on the LCRG.** Brokers are not trucking companies, they are travel agents. If the shipper calls a carrier, he will get a commitment for pick-up. If the same shipper calls the Broker he gets a commitment to find the lowest rate, and then the Broker calls back to get commitment for service.

### • **Remember the difference between the truck Broker and property Broker?**

Many shippers cannot make the distinction and go about business thinking they are saving money. There is a real difference in rates because the **truck Broker** is not concerned with saving the shipper money but just the opposite, supporting their trucking company Tariff and getting as much money as the

market will bear. **The Pure Broker is the only Broker interested and devoted to saving your money.**

- **Remember**, Calling the Broker after exhausting the carriers listed in the LCRG is counterproductive and will usually result in a higher than normal Broker freight rate.

Brokers will quickly tire of the shippers who send Brokers out to look for a truck, when one is found then begin negotiating a rate. The Author has actually told shippers to throw away his phone number if that shipper has adopted the "find a truck then we will talk money". **(Remember, the Broker is not the Agent of the Shipper, and is not the Agent for the carrier, the Broker is an Agent for the Contract alone.)**

**Brokers categorize shippers into four (4) basic types**, for the purpose of determining how much of their time and effort (especially phone costs) they will put in on the order given and the sales approach to adopt.

**1. The shipper who has never worked with a Broker** (rare these days) The Brokers message is an educational one, emphasizing the nature of how a Broker functions in relation to shipper's previous transportation purchasing methods. The Master Broker points out the perils of working with untrained Brokers, who will not protect them from the perils of Puckrein or the embarrassment of having to pay Broker and then pay carrier (unpaid by Broker) also.

**2. The shipper who has worked with a Broker but will no longer work with Brokers.** The Brokers message is to give this Broker one more try. Master Brokers are a complete step above the ordinary uneducated Broker, and can explain how they function in relation to the shipper's previous bad experiences delivered by the incompetent Broker. Note: *This type of shipper probably worked with a bad Broker, who didn't pay the motor carrier for his work and the shipper ended up getting billed by the actual carrier's direct and had to pay for that transportation twice-* See treatise on **Bills of Lading** found in the Syllabus of *Loadtraining.com*.

**3. The shipper that works with many Brokers simultaneously.** The Brokers message here can only be about the Master Brokers level of academic achievement - better than the average Broker no matter how experienced they are. (Remember Non Master Brokers are probably Brokering incorrectly and are in all probability- Truck Brokers. The shipper who doesn't understand the difference is jeopardized. Most shippers have more than one Broker relationship (they only need one Master Broker). Shipper never put all of their transportation needs into the hands of a Broker. They will have a mix of Brokers, Forwarders, Trucking Companies both In and out, and local cartage.

**4. The Shipper who hasn't read this booklet and Auctions freight to whoever shows up and does not distinguish between a carrier and Broker.** Shippers desperate to drive down prices using any available method, will Fax their loads to dozens of Brokers who are also desperate for any commission. The quality of this shipper's transportation purchasing process is poor, exposing themselves to the worst abuses possible such as carrier non-payment and having to double

pay for the same move, let alone the liabilities outlined in Puckrein and Schramm cases. This shipper is the Brokers worst nightmare and Master Broker are taught to shun this type of shipper. **(Remember, if Master Brokers can't get exclusivity on a load from a shipper they will ignore them)**. The Author recounts several instances where during time of equipment shortage, these shippers have called him even after he told them to throw away his phone number, desperate for trucks at any price. The number 4 shipper is invariably the worst credit and slowest pay for a Broker.

## **BROKER NEGOTIATIONS**

Good Brokers are excellent negotiators. Any activity that utilizes verbal contracts in a short period of time with complex details is an artistry to watch. The most amazing spectacle to watch is a trader on the floor of the Commodity Exchange in Chicago, IL. One cannot possibly discern progress because of the cacophony; yet, great sums of money and commodities are changing hands in that din. (This is no longer the case as the Traders now use Joy Sticks.) Property Brokers do similar transactions for buyers and sellers of transportation.

The Broker negotiates from multiple positions as the circumstance dictates.

- **Broker negotiates** for time to do his job **(Notification Time)**
- **Broker Arbitrates** – in a neutral position - with motor carriers to achieve a booking for the shippers load on to carrier's equipment.
- **Broker Re-Negotiates** changes in a booking before consignment occurs from a position of trying to preserve the original 2 players in the deal.
- **Broker Enforces** the contract after BOL consignment occurs. Broker who is not liable mediates claims by either party. The Broker is an "Agent" for the original Contract, investigates circumstances, fixes the blame, assesses damages, and prosecutes the claim for the injured party against the injuring party to the Contract. (See Standard Claim form and Treatise on "Voluntary Claims Resolution –Process in the Syllabus of Loadtraining.com)

**Broker position in a claim:** (It's Immutable – if they are not liable then their only logical role is mediation, like Judge Judi). "I am Not Liable, but I am obligated to adjudicate this claim to its logical conclusion. (Voluntary Claims Resolution occurs 95% of all claims – no lawyers or courts involved).

**The above is not to say that Brokers are not liable for their screw ups. Let's look at the Brokers position in the Contract negotiated.** First and foremost, the Broker creates a Contract between a shipper and motor carrier through themselves as a Third Party. (Remember, the Travel Agent, his liability extends to writing the ticket - period). Remember, the shipper's goals: (wants to pay nothing to move the load, and the carrier's position (wants \$10/mile and the shipper to steer the tractor) – The Broker is neither an Agent for the shipper nor the Carrier but the Agent for their Contract only.

Non Master Brokers usually think that they are the Agent for the shipper and they create a contract between themselves and the motor carrier. Thus the NON Master Broker is in fact liable for cargo loss and in most instances for public Liability – *again ; why would a Broker sign up for 100% of the liability for a 15% commission.* **Brokers are liable when they insert themselves into a Contract on behalf of either party.** An example: when a Broker takes it upon himself to substitute a reefer for a van specifically order. If the truck deadheads 200 miles to get the load and is turned away because the shipper wanted a Van the Broker should pay for the deadhead mileage and the TRUCK ORDER-NOT USED. Or another example: the shipper that wants the truck to do a voluntary Re-consignment and the Broker tries to change the terms of the Contract to fit.

**The Elkins Act of 1903** Precedent of litigation of this Act has lead to the doctrine adopted by most motor carriers. In order for a Claim to be processed, the Freight must be paid in full FIRST and the claim filed as a separate and distinct issue before the LAW. Shipper cannot withhold payment of a lawful freight bill in the event of a claim. Shipper may recover freight charges if Claim is settled for the shipper.

The issue of Broker nonpayment to a carrier in the event of Claim is a grey area (Remember – the Broker is considered the shipper - he pays carrier's freight bill - by Law – see synopsis of the Negotiated Rates Acts of 1993 in Manual of Loadtraining.com.) In other words, Brokers shipper pays Broker, and Broker withholds payment until settlement of a claim. Brokers in their role of Judge Judi have taken sides as they are required to do and may withhold payment until a carrier admits their cause of the loss, when Judge Judi finds the carrier culpable.

A word of caution about shippers who withhold freight bill payment for the resolution of a claim: It is ILLEGAL! – ELKINS Act prohibits the withholding of freight bill payment for a claim. The two issues - freight bill and claim, are separate and distinct. Shippers are liable for damages in Federal Court for a violation of this Act. **It's one thing to hold payment as a matter of equity, it is quite another to be indicted for a violation of Federal Law.**

Brokers will attempt resolution of a claim the moment it is discovered, with the driver present. The Broker will ask the carrier driver and receiving clerk to post the BOL's, as much as possible, as to the conditions leading to the claim. Broker should supply the name and phone number of the insurance agent of the carrier to the shipper. The Broker will ask for statements from the consignor and consignee (if not the shipper) and driver. Cooperation and willingness to resolve the issue, by all parties, will have an impact on the proper resolution of the issue.

**Broker as an Insurance Certificate holder** Brokers who require motor carriers to list themselves as an Additionally Insured on a Certificate of Insurance (Accord) are incompetent. No carrier worth their salt would provide a Broker an Acord Form listing Broker as “additionally insured”. **Licensed Brokers are not a mode of transportation and are not authorized to declare an interest in a cargo.** (Truck Brokers always want to be listed as an “Additionally Insured” because

they are “in possession” of the cargo – (Remember, they also share 100% of the liability.)

Master Brokers require motor carriers to list them as a “Certificate Holder” for notification of cancellation purposes only, without any implied liability. **As a shipper, working with a Broker, you may require the actual motor carrier making the haul for the Broker to list YOU as the “additionally insured”** for the cargo only, and your own interest in your cargo will take precedent over that of the Broker and the carrier cargo interests.

## CONTRACTS AND BILLING

**First you must understand that a written Contract between the Broker and the Motor Carrier and/or the Broker and the Shipper are NOT REQUIRED by LAW.**

Most Brokers use what has come to be known as the “**Continuing Contract**”, the initial one time contract, from which all subsequent “**Rate Confirmations**” spring. Note: the Continuing Contract (created by an offspring of a Teamster no doubt) is not a “Contract” in the legal sense, because it lacks provisions for “**Rate**” or “**Time of Service**”- both of which are required elements in a contract. These elements are found in the Rate Confirmation, hence you can say with some certainty that the Rate Confirmation is an “**addendum**” to a Continuing Contract. Written Contracts for service between the Broker and the Motor Carrier should be between the shipper and the carrier thru the Broker. Most Brokers don’t understand their relationships to the parties and create Continuing Contracts between themselves and the motor carrier, w/o reference to the shipper, thus creating the first step toward accepting Cargo Liability. As a shipper, you can request that a copy of it be presented with the bill for payment. (Remember, you as a shipper are entitled to see the Rate Confirmation sent to a carrier on your behalf by a Broker (**see Records to Be Kept by Brokers fig 2 in the Manual**)). Most shippers do not make that request and it should not affect rates or services. FAX machines now make compliance a lot easier. Receiving a copy of the contract will eliminate the possibility of double billing – one from the Broker and one from the actual hauling carrier.

Broker contract with a shipper is more often verbal (enforceable) but can be in writing. Master Brokers are instructed to send a formal letter outlining every quote, which is considered “written Contract”. (Remember, Truck Brokers may send a list of freight rates in support of their tariff and not quote you real “Market Rates”, which may be as much as 60% below Tariff Rates. Brokers are not legally entitled, per se, to create a “Tariff” although getting a copy of the Broker Rate Confirmation from the Broker in advance of the Consignment will help eliminate misunderstandings and claims.

**Shippers should always get the name of the actual hauling carrier** from the Broker in advance of consignment and install that name and MC number at the top of the Bill of Lading. Remember, Brokers are not modes of transportation and therefore CAN NOT APPEAR on the Bill of Lading (BOL). Only the Carriers

Name is to appear at the top of the BOL. (Note Brokers may ask you to install their names in the body of the BOL and this is ok, eg "send Freight Bills to: Mr. Broker". Loading a motor carrier's tractor which has a different name on the door than the carriers name extended by Broker indicates that the hauling Motor Carrier has "Double Brokered" the load (see Enron case in loadtraining.com Syllabus). **NEVER load a double Brokered truck**, because if that carrier disappears with your freight, the originating Broker won't have a clue where it went and the actual hauling carrier's insurance won't pay for a "Brokered" load. The Author has actually seen loads by other Brokers given to his student trucks that have been triple and quadruple Brokered. Remember, double Brokering is "willful misrepresentation"; as if things were slow in my Brokerage and I put an AD in the local paper offering brain surgery, I would be willfully misrepresenting myself (Fraud).

**Carriers Billing (invoice for service)** should reflect the understanding or written contract created. At the very least it should have the Quotation information and the carriers name installed on every invoice. Remember, if you collect the Broker Rate Confirmation, you can record payment and retain Confirmation as a record for Rate tracking purposes. Consider paying the Broker earlier than your usual carrier practices because they are on a very small income basis (15% commission is average). Taking him out to 30 and beyond will result in higher freight rates, as the Broker will probably have to put in the cost of financing the loads he does for you.

**Back Billing (being billed by the carrier on a Brokered load)** has become an increasing prevalent practice, as a result of carrier market fragmentation, most of the time it is inadvertent. Shipper should endeavor to call the Broker to resolve this conundrum. You can simply return the bill to the carrier with notice to send to Broker. Remember that if you are also the Consignor as well as the shipper, when you create a BOL, this is a separate Contract with the motor carrier and they can actually bill you and you must pay, in the event the Broker fails to pay the motor carrier. Also you, the shipper, can restrict this practice through completing section 7 in the BOL for every collect load- see below.

**Force Billing (Broker billing without POD "Proof of Delivery")** Brokers maintain a positive cash flow and will invoice without POD which is ok. If you need a POD for your files, Broker will be happy to provide a BOL or Delivery receipt copy later, but age Brokers invoice from the day of delivery not receipt of POD. Remember, if you are the shipper who is the consignee, you know the disposition of the cargo and whether there is a claim. Master Brokers force bill every shipper who is also the Consignee.

**Section 7 on the BOL** – Consignor signs or initials Section 7, they are limiting their exposure to being billed by the carrier in the event the Broker fails to pay them, or in any circumstance where the carrier fails to get paid. Shipper should sign section 7 on every COLLECT SHIPMENT they send out of their location. Without a signature, the consignor is required to pay the motor carriers lawful freight bill.

Paying a Broker and then that Broker fails to pay the carrier is not a defense for not paying the carrier's lawful bill. That is why it is critical that every shipper check out the Broker's past payment history to motor carriers.

## **BACK SOLICITATION**

Back solicitation is quite simply the act of solicitation by the carrier or the shipper, one with the other, to remove the Broker from future transportation transactions between them. If it serves the carrier's or shipper's purpose to back solicit, there is nothing a Broker can do about it. The Broker brings two divergent but matched parties together. If it serves the shipper/carrier purpose to be together without a Broker present, then it is legal. As a shipper it may cost you your Broker personal relationship by doing so. A suggested solution is Fig 1 in the Manual "Commission Sales Agreement". Dedicated service or extraordinary load requirements are better handled carrier direct. The problem arises when the Broker finds out that back solicitation has produced a relationship without his input. The Broker tends not to work with either the shipper or carrier again. Rate quotes generally go up artificially to compensate for the broken bonds of trust. Carrier finds his entire dispatch devoid of other freight offers from the Broker. The best solution to the problem is to invite the Broker into the negotiation for service between the two parties, with the understanding.

## **SHIPPER GUIDE SUMMATION** New Guide to Understanding Brokering

The purpose of the Guide is to assist the readers in their transportation programs. Looking at a Broker from the perspective of the users is one way to educate and lay the ground rules for a shipper or a carrier in their relationship to the Broker. Getting 10 people together to agree on what a Broker is and how to deal with them is almost impossible. The Author's teaching experience inspired the production of this Guide. The format and content illuminates those aspects of brokering technique that will assist the users in getting the most from the Broker relationships. Certainly there are some things that may assist the education process that are not included in this guide. The primary message to the readers is one about the motivational make-up of a Broker. As you may have understood from the shipper's portion, the Broker is first motivated by developing a close collaborative relationship with the shipper. There is no comparison of the relationship of a carrier salesperson and a Broker to the traffic or purchasing manager as the carrier's relationship is an "Arms Length" one. On one hand, the salesperson has service equipment and routes to sell, on the other, the Broker services all types of equipment routes and modes of transportation. The Broker sells his integrity and, above all, his unique perspective of the transportation market place. The sales person's rates and price tags are known and understood; yet the Broker has no rates or price tags and advises after shopping many alternatives. The shipper is free to take or ignore the advice

but one thing is certain - the shipper is more informed after the advice than before. With thousands of new carriers and intermodal combinations, the traffic management function has become more and more complex, with less market information available for making profitable decisions. Brokers are a window of information, a window that has no axe to grind, or tariff to support.

Let the Broker do his job. Do not over-shop Brokers and accept the advice you like, sift the information you have, winnow out what you cannot use and make an informed decision. Ask the Broker to get more information about remote markets for drop shipments and inventory adjustments. Change administrative procedures corporately to permit the Broker a closer relationship to company transportation decisions and freight movement programs. Ask for advice but don't sign contracts. Keep the Broker relationship open with both purchasing and shipping personnel before you begin your LCRG process, consult a Broker and learn what market conditions prevail.

Above all, prepare to compare prices on a spot basis, if you have neither the time nor the inclination, trust your freight to a Broker and spot audit his performance by shopping prices without his knowledge. When the Broker's price is higher than a recent quote, ask the Broker to move your load at a new lower price. If no response, ask other Brokers. Move your freight at the new lower rate, but tell the Broker that you are moving it cheaper. You do not even have to tell him who is cheaper if the Broker is not assisting your company in staying close to the market for your freight. Develop Broker relationships in the local market area for inbound lowest rates and relationships near the destination of frequent moves to get the lowest outbound rates. Seek relationships with Brokers who consider your outbound freight an inbound move from their particular patterns. Counter offer where practical and be good natured about the negotiation process. If your trust is not met and you are let down, spell out your criteria for an understanding to the Broker and give him one last chance. Strike 2, he is out, is a good rule of thumb. You get what you pay for.

# CARRIERS GUIDE

**Caveat: Brokering can occur legally without a Property Broker License** from one motor carrier to another. There are no regulations governing this relationship; however, both carriers share the 100% "strict" **Liability** as defined in Common Law at least since 1601 in Southcote v Bennet 4 Coke 83b, Cro. Eliz 815. (Common Carrier distinguished from Common Laborer and Court held Carrier to a higher level of liability) The only function of the Broker License is to "arrange transportation for compensation" without liability – like a travel agent.

Most motor carriers don't understand this divergence and try to use the License to escape liability. Remember, Brokers conduct determines their liability in the event of a loss. To learn to conduct brokering without creating liability while operating a trucking company, forwarder, or traffic management – attend a Loadtraining.com HANDS ON Class or Home Study Loadschool.com.

## **BROKER SALES/MARKETING TO CARRIER - CARRIER SALES/MARKETING TO BROKER**

Brokers exist for one reason the market is too large for shippers and carriers to find each other in a crowded marketplace, in 24 hours. There is no airline reservation system equivalent in the trucking industry, coordinating trucks to loads. Yet, when it is built, it will coordinate trucks so loads and brokers with loads will come. (See dissertation in Syllabus Loadtraining.com where all previous attempts failed because systems were built around the opposite of the paradigm.) Carriers who don't conduct Sales Programs are confined to working with brokers. Carriers who have active sales force and confine themselves to specific geographic areas, like the "dumb bell" outlined by loadtraining.com (one of the free downloads at loadtraining.com "**Guide to higher paying freight**") generally are successful in finding shippers and avoid brokers. Most carriers don't understand that to go from one place to another, and then another, never seeing the same place twice in a year is a road to ruin. The Carrier is going from one "wholesale" Freight Rate to another. (Wholesales Freight Rate is a Retail Freight Rate less a broker's commission). This is profitless freight movement, as you are paying your sales department (the Broker) all of your profit. Carriers should be selling to shippers direct and avoid brokers at all costs. Essentially carriers only market to brokers when they can't or won't undertake their own sales program. In other words Brokers are looking for carriers who don't conduct their own sales campaigns, because that's where their money comes from. It is not that you serve Syracuse NY but that you can do it using your own brokerage with air, sea, and surface, with a backhauler, for various prices. Carriers who are Brokers then sell far more geographic coverage than an ordinary carrier confined to a dumbbell with 10 trucks or less. This is the only option left to the small motor carrier, become a broker or perish, because you have only a few trucks.

There is an administrative challenge for transporters to integrate trucking with brokering and various new services and differentiate capabilities from those of competition. The sales approaches to shippers about brokering and trucking is the equivalent of oil and water. This management challenge, generated by competition, affects every carrier, particularly the small ones. Brokerage development and education assist carriers in correctly equipping themselves for competition. Carriers must confront the difficulty in integrating brokering into their operations. Brokers are technically acting as a shipper for a carrier. The first order of business for a carrier in understanding brokers is that they are not competition. They are a marketing opportunity for trucks. Using travel agents as an example of a parallel transportation relationship, we can see that travel agents act in the role of a super marketing broker for airline seat capacity. The difficulty with this picture is that some carriers have lost freight to brokering programs. The same carrier hates the local broker who competes for some out-bound freight but loves the same broker when he provides a load home. This is the perception problem between carriers and brokers. **Brokers are essentially an extension of the carrier's usual sales and marketing programs.** The question becomes one of getting the most from brokers through proper negotiations and multiple load choices. As previously indicated, the difference between a Property Broker and a Truck Broker are defined by the term "in possession" of freight. Property Brokers are never in possession, or declare an interest in, a cargo, while Truck Broker usually takes possession of cargo as a carrier and then brokers to another motor carrier with or without a license. Carriers should ask the load providing broker, "Do you have Authority and a License? If so you will see the difference in how they convey the load to you the carrier. Most untrained Brokers have their name installed by shipper on the BOL as the "carrier". That means in the event of a claim, the broker and you the actual hauling carrier will share 100% responsibility for the loss. If the broker says no they are not in possession, look to the Continuing Contract you signed for that Broker, as carrier, and make sure the broker doesn't ace you out of your own cargo and payment interests, and that of your insurer, in the cargo. This wrong brokering conduct alone creates liability for the Truck Broker in the exchange and is a misuse of the License. Broker's conduct usually creates liability because they take possession of the freight as a motor carrier in the first place (see Brokerage Operations Manual; appendix part 4, for DOT's opinion about brokers not being liable except by their conduct).

Truck Brokers deal primarily with power unit operators whom they hire to move the freight they possess. Their sales effort includes substantial activity to recruit truck owners or drivers for a lease load, these are "lessors" or generically **Owner Operators** (No Authority so they must lease on with those that do have Authority. Property brokers have no power to contract with a power unit, except if the power unit has its own FMCSA Authority and insurance. They have less control and need greater range. The Property Broker does not have anything to sell; they are strictly a market opportunity. Property Brokers deal, in large part,

with drivers (owner/operators). One represents himself to a shipper as a trucking company, the other as a broker. It is important that carriers and their dispatchers should become adept at telling the difference between the two, during negotiation. Brokers seek trucking services on a spot basis. They negotiate for contracts as well, but primarily spot market freight. The result is that brokers seek, from advertising to carriers and telemarketing, shipping qualification in the eyes of the carrier is dispatch. Several methods of initial sales contact, other than cold calling from the phone, are worth mentioning. Direct mailing takes the form of a Property Broker sending letters to carriers who frequently empty in the location of the broker's outbound freight. The crux of broker's sales messages are – lets be friends, call me first when you are in my area and extend me credit. The difference in commission (cost to a carrier) between a Property Broker and Truck Broker is 15% vs. 25 - 30% (some trip lease) respectively. Brokers will almost never physically call on a carrier, unless there is a specific reason or special service required. When brokers call, they are essentially a shipper in terms of questions fielded and negotiation intent. Smart carriers will treat them so.

**The “TRUCK BROKER” is a motor carrier with Authority and a Property Brokers License.** This is the most common broker type. This trucking company is usually unable to conduct brokering without liability, mainly because they tend to dispatch broker loads as they would dispatch their own driver. Brokering is sufficiently different to require complete change in Dispatch. E.g.: Dispatcher for their own drivers will make their drivers appointments, but broker should never be involved in appointments, they dispatch dispatchers and that broker should let the dispatch of the actual carrier make and keep their own appointments. In other words Brokers create liability where there is none. E.g.: If the carrier is on time, but the consignee is closed, the broker's correct position is to adopt the carrier as the injured party in the contract, and represent, as the carrier's agent, the carriers need for compensation for Detention and Demurrage against the shipper (who may or may not be the Consignee). Most brokers haven't a clue that this should be their position, thinking that they are always the “agent” of the shipper, an incorrect position to adopt. (See the “Negotiations” portion of the Loadtraining.com Syllabus.) Another e.g.: Brokers who require drivers to “CALL IN BEFORE 9 AM or Pay a FINE” is actually controlling the drivers “actions” and is liable for the drivers conduct should that driver slam on the brakes at 8:59 AM pull off the road to make their call on time. Isn't it more intelligent for the Broker to make their own “Check Call” and inquire about status, thus not controlling the driver's action, or is it that brokers are lazy or mistakenly adopt motor carrier operations practices because they don't know any better.

### **Double Brokering Freight**

Motor Carrier to Motor Carrier is not double brokering. Brokering a load from a license Property Broker to a motor carrier, who in turn brokers it again w/o the original broker's knowledge, to another motor carrier is **willful misrepresentation** (fraud). **Double-brokering is** the act of a broker who is unable to effectively market their own freight. It is an unnecessary waste of carriage

dollars, if available market information were accessed. In general, the DOUBLE BROKERING act creates a tenuous credit trail at best and an absolute nightmare for the consignor - shipper, if a claim or non-payment occurs. The actual hauling carrier and shipper suffer from this illegal practice. Not only is the carrier unable to adequately assess the credit risk for payment purposes but the prospect for On Time payment is not good. Shipper is at risk for an uninsured load. This widespread practice accounts for the brokers' poor reputation.

If Brokers would obey the Law and tell the carrier what his commission is (and the shipper as well), then the broker with the load and the one with the truck could split a known commission which is effective CO-BROKERING and perfectly LEGAL. The fact that brokers think they don't have to tell the actual hauling carrier what the commission is breeds double brokering. Remember, it is the Truck Broker that can send their Authority as a Motor Carrier to a Broker, then in turn broker it again to another carrier, this time send the other carrier their broker's license. **Truck Broker is the double brokering culprit**, because they have the means to misrepresent themselves. (See Enron event that happened to the Author three days before Enron Bankruptcy in the Syllabus of loadtraining.com) The Pure broker on the other hand does not possess the means to misrepresent themselves.

The most numerous Broker type is the **Truck Broker**. The principle (owners) of this type of brokerage uses the marketing versatility of a brokerage to balance dispatch between their equipment and that of other authorized and insured motor carrier. If your company has accepted freight from a truck broker, several things need to be known about that company. How solvent is the carrier? Does that brokerage operate separately from the truck operation? If not, are the brokerage receivables pledged at the bank as collateral for the trucking operation? If so, 90% of the credit acceptance is used to finance the trucking company and is at excessive risk. 90% of bankers don't understand that a majority of broker receivables belong to someone else and go ahead and loan to a broker on co-mingled receipts (carrier and broker). Bankers should never loan funds when receivables are mixed. (Look what happened in the Worldpoint case in Loadtraining.com Syllabus where a bankruptcy judge found in favor of the motor carriers (the truckers as "Unsecured Creditors") and left the secured creditor, the banker out in the cold, and distributing broker's assets to carriers.) The Bank is suing the carriers to collect. Companies for Carriage and brokerage should be financially separate companies - with no co-mingling of funds. Incidentally the largest numbers of broker bankruptcies are Truck Brokers (especially those that have the same name). Broker's poor reputations are built around this management failure. Carriers credit happens to be highly leveraged and the riskiest of all brokerage types (The means of Production are rolling down the highways at great risk). The banker, not seeing co-mingled funds and not recognizing the broker's fiduciary responsibility, lends more than he should. Old lending ratios which measure the cash availability of commingled companies, makes the carrier company look more viable than it is. The FMCSA/DOT won't

create regulation to stop Double Brokering (they don't know what it is). They are even less willing to provide "penalties" for brokers who abscond with carriers funds. All it would take would be 1 sentence in the regulations invoking State police powers that dictate Escrow or Fiduciary policies and provide Penalties. At the very least Congress and especially Rep Oberstar of MN (in charge of the House Transportation Committee on and off for the last 40 years) should outlaw "double brokering", lord knows he has enough time to act.

The next most common type of broker is the **Shipper/ Broker** which is defined as any broker developed by a manufacturer or planter or picker. In reality, this type of broker does not meet the definition requirements of a Property Broker and is not a broker in the sense that he is an independent third party. Licenses are issued to anyone applying, regardless. The brokerage, in this case, uses its License as a mechanism to affect freight rates downward in an open market place (This works fine until capacity dries up). The shipper/broker simply wants to find trucks and spot market freight on a load-by-load basis, at lower freight rates that they could get if they placed the freight for loading as John Doe manufacturing, warehouse, distributor, and so on, with Contract Carriers. A Commodity broker, who perhaps, owns the produce in the field or at least has direct liability for the picking and delivering the produce and wants his own purchase of transportation, will take control of this process as a Licensed Broker. It is safer for such companies to advertise and contract for freight movement directly with the carrier in an "Arms Length" transaction, because these types of brokers could be conducting brokering operations and controlling the "Drivers Actions" thus creating liability for the produce company. (The Author has provided "testimony" in several cases where the shipper created liability by adopting brokering practices as part of the traffic management process. In one instance shipper had installed the "Driver call or pay a fine" on the shipper's BOL and made deductions from carriers settlement without first offering salvage.)

The last type of broker is the **Pure Broker**. The pure broker is a third party, whose only interests are making a market between; providing equal amounts of happiness to both parties, Carrier and Shipper. The pure broker should not create a tariff or control rates any more than a Real Estate Broker controls or set the prices of houses. This type of broker is the "Travel Agent" delivering real market rates to shippers and paying the carrier the rates they settle for. In other words, this type of broker uses the License as it was intended, and not to prop up or support some other corporate activity. This is the broker who does not take possession of freight from consignment or interest-in basis. Pure broker is unlike the Truck Broker, who is, in fact, a trucking company or agent. This broker is not in business as a shipper or a trucker but merely as a matchmaker - facilitator who reacts to market conditions and provides services across the spectrum, internationally and around the corner, for a commission. **Alas, Pure Brokers are the only REAL brokers in the marketplace** as all of the other types use brokering to impact their main corporate goal, trucking or shipping.

The purpose of the detailed definition is obviated by the fact that each type requires different accreditation, qualification, and negotiation process. Pure Brokers bring only real market rates. Most trucking managers do not know the differences and suffer the consequences. Ask any trucking company executive to extend credit to another trucking company and the response is universally negative. The negative reputation brokers carry is essentially a lack of understanding by surface users themselves. Carrier's poor credit imparts a negative image of brokers. **Bankers should NEVER loan money to Pure Brokers**, as their receivables are already assigned in their Surety Bond. For brokers to attempt to borrow and pledge their receivables is Fraud. If you are a carrier accepting a load from a Pure Broker, and they have a loan at a local bank in the credit information you are investigating before loading, you are extending credit to an over extended broker, and you will never be able to collect from broker's Surety Bond as it is owned by the banker (double collateralized assets).

**Reverse Brokering** Brokers form close working relationships with some carriers and when a periodic excess of carrier freight occurs, he may ask the broker to move it for him. The broker then is in the position of being creditor and debtor of the carrier. Generally, the carrier won't pay the broker's bill until the carrier is himself paid. This same carrier expects brokers to pay within 30 days on the debt, but does not reciprocate with identical credit policies. Carriers should be prepared to reciprocate on an equal basis. If the carrier continues the practice, the broker feels obliged to make more in a commission than usual to cover his extra financial burden. Brokers will not advertise for this service, because the level of trust and interface is higher than can be promoted. Carriers who do this breach the faith their shippers have placed in them, let alone the ICC (Secretary) regulations. It will be extremely important for line personnel, especially dispatchers, to recognize the difference in those who call, properly qualify the credit and manage movement. The secret to effectively recognizing the correct party is training and developing a good market sense in the dispatcher. A market sense can best be described as a nose for the right rates and load availability in a distant market. Today the point of sales is increasingly occurring at the dispatcher level.

**Properly integrated brokering in a carrier** Carriers who don't extend economic decision making power to their dispatch are not long for this world. UPS, on the other hand, extends rate decision making power to their brokering dispatch, providing instant nose load freight rate to shippers. Most common carriers send shipping customers to a "Rate Department", thus effectively demarketing their shipping clients. The market belongs to the nimble. Common carriers still defending a Tariff are swimming upstream because management is unwilling to change their old inefficient ways. Modern carriers, who adapt to deregulation, are adjusting their dispatch personnel into spot marketing machines, both in accepting and peddling freight. Some carriers convert sales people to dispatchers or dispatch supervisors to compensate for the increase of spot marketing occurring over the phone. Carriers need to learn and then

create a brokering capability to survive today's fragmented market, shippers expect no less. In fact the Author has actually heard from students that declare that shippers have found their one-two truck operation without a brokering capability as "too small" to work with. Truckers need to serve the world and the only way to legitimately do this is with a Broker's License. Loadtraining.com trains the small trucker to operate worldwide through brokering with their trucking operation. Con-Way recently announced a new "Simplified Tariff" of sixteen pages down from some 6,000 pages. I think, after all these years, they are catching on.

## **BROKERS TRUCK FINDING TECHNIQUES**

Master brokers are taught to seek, collect and then use Carrier Call In information before resorting to the next more costly information default. Carriers who call a broker are putting themselves into the inferior negotiating position in this Miles & Money scenario. Brokers post loads and then wait for calls. The carrier who did the load last is the next step for the Master Broker; broker searches records for "who did it last" and books in 2 to 3 phone calls. (70% of broker's loads are "repeat" business). Some carriers don't post trucks and then wait for the desired load to appear on the Load board before calling, a practice that yields the lowest freight rates for the carrier. Remember, post your truck and let the broker call you and then you, the carrier, are in the superior position, or better yet take the Loadschool.com Home Study Program and learn how to completely eliminate brokers from your life.

**CARRIER'S QUALIFICATIONS to a Broker.** Carrier should provide the usual

- Authority and Insurance Acord listing the broker as the "Certificate Holder" only, never as the "Additionally Insured". The Author has actually worked on a case involving a broker listed as an Additionally Insured and when the container hit the bridge and it in turn totaled an SUV, broker was in a legal pickle. Broker by his conduct created liability for the Cargo where there was supposed to be none, because the broker's name appeared on the BOL and the Broker dispatched the driver. (Note: if you are a carrier working with another carrier, the originating carrier rightfully will require you list the originating carrier on the BOL and as Additionally Insured on its Insurance Acord. If the broker only provides you, the carrier, a "License" he can only be considered a Pure Broker without liability, but is actually now completely liable for the cargo in the event of a loss. (Its best to be a Master Broker trained to avoid big pitfalls). For the broker to install an "interest in a cargo" as an Additionally Insured by using only a broker's license is accepting 100% of the liability for a 15% commission, DUH.

The Author has requested the actual hauling carrier to obtain and present an Acord listing the actual shipper as the “Additionally Insured” who is the proper party to be listed on the Acord.

- The obligatory completed W-9 to comply with the IRS (Tax Simplification Act of 1986) Regulations requiring FEIN Numbers. Brokers who request safety information are wasting the carrier's time, because the current information is on the DOT website. Brokers who request “Safety” information however are measuring the efficacy of the required Carrier Safety Program. Carriers should prepare a Safety boiler plate page ready to fax to testing brokers.

### **BROKER QUALIFICATIONS for Carrier to examine before extending credit**

Upon a “booking” where carrier has given a “commitment” (See Broker Operations Manual) to haul the load, Brokers must present first their Credit Qualifications to you, the carrier. This Credit Information should include Broker's Banking location with a phone number and person capable of receiving a carrier inquiry, a place on Broker Credit Qualification giving the carrier listed, permission and instructing the Bank to release to carrier, the requested information. Carrier's first question to Broker's Banker is about a lending relationship for trucks and or brokering receivables. (Remember the Truck Broker – Pure Broker scenarios.) Also don't forget about broker needing to sign carrier's “Broker Credit Application” after Carrier agrees to extend credit to the Broker.

**BROKER/CARRIER CONTRACTS** **Contracts between a broker and a carrier ARE NOT REQUIRED BY LAW** but it's a good idea. The shorter the better, because a broker should always limit their liability AND keep their nose out of the legitimate motor carrier business. Remember, the carrier with his BOL is “God” as far as the Law and regulation would have it. Brokers cannot legally create a BOL, put their name on it, and declare an interest in a cargo creating liability for them. Most brokers are forced into pretending to be a motor carrier to their shipper relations. Acting and quacking like a truck creates liability for every broker who fails to properly position himself in front of a shipper and carrier. Most brokers try to copy another broker's incorrect contract and thus stupidity is perpetuated. Brokers who have an interest in a cargo should be a Licensed Forwarder, with insurance, usually involved in intermodality purchasing multiple modes of transportation for their clients, for travel between points A & B. (See Regulations 49 CFR 355 et seq. in the Syllabus of Loadtraining.com). Master Brokers are trained to do it right the first time every time.

The Author has seen the growth of Continuing Contracts from simple 1 page documents to 21 page monsters. If a broker is to maintain a lack of liability, the shorter and simpler a Contract, the less chance of litigation in a misunderstanding, in an accident, or cargo loss. (The Author has given direct Testimony about these long Contracts and the broker who wrote them.) The

trend is toward getting the broker involved in the event of any loss. Plaintiff Attorneys are doing a good job of tearing away the fabric of non liability from the Property Broker License because brokers are aiding them in their quest. (Why would a broker seek 100% of the liability for only 15% of the commission?)

The biggest problem with untrained brokers is that they want the actual hauling carrier to give up their rights to their own BOL and their interest in their own cargo to the broker. The TIA "Model Contract" actually creates the Carrier as an "Independent Contractor" of the broker, a position fraught with liability, and asks the carrier to give up their BOL rights to bill the shipper. (It remains unclear if broker fails to pay carrier from whom carrier will get paid.) The TIA Contract creates the broker in possession, and the actual broker on the other hand is taught that the broker works for the carrier the opposite of the TIA Model Contract. The TIA is dominated by Large Broker/Forwarders, and their practices in light of the Forwarder having a cargo interest, is good administration. Those who want to conduct brokering without liability, however, should read on, as the TIA wants their members to be liable for loss and insure it, a practice you should eschew.

### **CARRIER - BROKER DISPATCH PROCESSES**

Incompetent Brokers want to do the entire dispatch of your driver and make all of the appointments. Some brokers don't even tell carrier dispatch about the name of the shipper, instead only telling the driver (this is the first sign of an untrained broker). This type of brokering is not profitable. First, because the broker is making himself liable for carriers conduct and second, the broker is signed up for hours of unnecessary work for his commission. Claims for loss are 5 times higher for a broker who insists on dispatching every driver. The broker who requires the carrier do all of the required work of making and keeping appointments is the Master Broker. There are certain circumstances where the broker wants to be more involved, such as when the broker counsels driver about a "Blind Shipment" is an example.

Competent Master Brokers are trained to write all inclusive detailed Rate Confirmations, where there is no room for misinterpretation (Robert E. Lee was a great General, always outnumbered in battle 3 to 1, but he wrote Orders that could not be misinterpreted and consequently seldom lost a battle). Remember the Rate Confirmation is an Addendum to a "Continuing Contract" (see Syllabus of Loadtraining.com), writing an order for transportation service is an Art Form, just as Robert E. Lee has proven, and is easily accomplished by a Master Broker. Average Brokers make themselves liable for loss, especially cargo, when they see themselves as a dispatcher of the driver, because they are found and said to "INSERT" themselves in to the motor carrier rights and duties. Carrier dispatchers should contact broker in the event of unclear or vague instructions, and keep on the broker to be clear about every load detail. Brokers who are

vague on details will end up burning you, the carrier, for time and distance charges.

### **CARRIER CREDIT: CHECKING THE BROKER**

Why carriers don't request a Credit Application from a broker I will never know. (See suggested Shipper/Broker Credit Application in the Manual and you're free to adopt the language). Your Carrier Credit Application should include a provision for broker to personally sign and pay for any collection expenses - as collateral for Carrier credit extension - a good practice to adopt. Broker should provide (3) three credit references (could be other carriers as references.) Here are some questions to ask each reference.

- What has been the average time from delivery to payment?
- What has been the high credit extended monthly?
- What are your "Terms" for payment?
- Do you have a Balance due - y or n?
- Have any collection problems arisen over claims?
- Has this broker ever double brokered a load to you?
- Will you load with them again?

(Terms for evaluating responses are available in class and in the Loadtraining.com Syllabus)

Carriers can examine the Broker's Surety Bond form (BMC 85) and call the Surety Bond Company for a history of claims if any, (See Form in Brokerage Operations Manual Loadtraining.com and on FMCSA.DOT.GOV) and use similar surety bond language in their Carrier to Broker Credit Application.

### **CARRIER SEIZING CARGO to get paid**

Not a good idea, unless the carrier discovers after the loading fact that broker is unable to pay carrier. The FMCSA complaint procedures go both ways. Brokers can complain about carriers not playing by the rules, and carriers can literally shoot themselves in the foot. Carriers who seize freight may be subject to felony charges in addition to a complaint; there is still such a thing as "Grand Larceny". If a carrier withholds freight under certain circumstances, State Police Powers can be invoked and applied should local District Attorneys get involved.

The Author has actually seen several cash strapped carriers driven out of business, just because they adopted freight seizure as a policy, and has actually filed complaints against motor carriers who did, in his years of brokering activity.

In a world where shippers are now beginning (slowly) to check carriers credentials that enter their yard at FMCSA.DOT.GOV and heaven help the carrier and/or broker who sends in an unqualified carrier with complaints already on file at the FMCSA website. (See Puckrein v ATI Transport, where shipper and his cargo were found liable for wrongful death in a car/truck accident, on the principle of "Negligent Hire").

Master Brokers actually send a copy of the Puckrein Court Decision to shippers they solicit to convince them to check all carriers or work with their brokerage instead.

### **CARRIER COLLECTING FROM A BROKER WHO FAILS TO PAY**

Visit Loadtraining.com and download free sample forms and information about how to contend with brokers who fail to pay. Filing a Complaint with DOT should occur at the same time a claim for the Surety Bond is made.

### **CARRIER PROCEDURES for putting a Non Paying Broker out of business**

Carriers should immediately report brokers who don't pay to DOT (see FMCSA.DOT.GOV for Complaint form) and report it to OOIDA so they can take steps to limit the broker's further damage to others. Call as many other carriers (E-Mail or Fax is best) and get the word out, the longer the bad broker is in business the more damage he does.

### **CARRIER FILING AGAINST BROKER'S SURETY BOND**

Carriers should receive a valid copy of the first page of the Surety Bond (BMC 85 is typical) **BEFORE LOADING** with that broker. Once received they can simply call the Trustee (Pacific Financial of San Diego, CA is typical as they are the largest writer of bonds) It takes only seconds for them to verify whether or not any claims have been filed. Here are the questions for the Trustee:

- **How long has the bond been in place? If less than 1 year ask for an advance on the load.**
- **Any filings or inquiries or threats of filing in your log? Y or N – If yes: find other freight.**
- **How can I file a claim in the event of nonpayment? If they refuse to tell you, find another broker, as their surety bond writer is incompetent and you will struggle in payment recovery in the event of nonpayment.**

**When does Carrier file against the Surety Bond?** The carrier must give "Notice" to the broker that he will be sent out for collection in the event of Non Payment in a reasonable period of time. (15 days is reasonable time).

- Carrier must make verbal demand at 30 days from delivery, if broker is not forth coming send them Notice of Intent for collection. *Carriers who work with brokers would be wise to FAX Freight Bills and POD and then mail them immediately. Call the broker and ask them if they received the Fax. You can tell immediately if the broker is on the level. The next time you work with this broker give them more latitude.*

- Brokers who said they never received carrier bills, carrier should fax them copies ASAP and ask for a check immediately. If they say they won't pay for 30 days from that date, you are working with a struggling broker, and it would be wise to avoid further loads from them.
- The carrier must give 2 written notices by Registered mail to the company. (10 days apart is sufficient distance between "Notice" for it to be considered "adequate.")

In the event of nonpayment, FILE a complaint Form with DOT and file for payment from the Surety Bond Company at the same time.

### ***BROKER RATE DEVELOPMENT process and HOW TO COUNTER OFFER***

Perhaps the least understood brokering practice is rate development. For years carriers could depend on the US government's institutionalized inflation creator, called a COLA (Cost of Living increase) to cause the rate bureaus to increase prices automatically. Deregulation wiped out the carrier collection stipulations. Rate Bureaus are now no longer protected from Sherman Anti-Trust Laws, (9/2007) and the Tariffs they quote are in fact PRICE FIXING. Tariffs are no longer enforceable unless by contract where a shipper signs up for fixed prices (woe is them). Now carriers have to react to competition to be profitable. Broker's price their movement of freight on SUPPLY and DEMAND indicators, regardless of COLA, Tariff, Teamsters or the cost of doing business. From a broker's perspective, carriers who still believe that a tariff offers them price protection could end up leaving a ton of money on the table. Brokers point out to shippers that common carrier tariff practices may have enormous hidden financial liabilities, such as undercharge claims or Back Billing. Federal Bankruptcy referees collect years after the freight is moved. Shippers are seeking easy ways to avoid certain collection practices which are often employed during court ordered liquidations and restarts. Tariffs are, in fact, a two edged sword. They cut both ways. (See videotape story of **60 Minutes**® "You're Kidding" by Leslie Stahl, at Loadtraining.com) carriers who have obtained contract carriage authority and move shipper's freight under its provisions, find that they have much more flexibility to respond to supply and demand in turn, shippers are assured of their right to market their freight on a load by load basis, each being a tariff unto itself so to speak.

Brokers develop a market sense based on interviewing backhaulers thus providing lower freight rates to shippers. Rate forming processes are more realistic when actual carriers are asked for rates than brokers who shoot from the hip, just making up rates. Master Brokers are taught to not shoot from the hip but quote rates based on backhauling carrier interviews. Only a fool of a broker would shoot from the hip, low ball the rate only to find out carriers will not respond and the broker is forced to give the load back. Author has actually interviewed brokers who had "salesmen" on the road and complained that their average shipper lasted 90 days before moving on, while the Author still has most

of his original shippers (96% he has never physically met) in an average relationship age of 17 years and has never had a salesman for his brokerage on the road knocking on doors.

Carriers who operate brokerages quote the rates they want as a carrier, to shippers, giving the Master Broker and all Pure Brokers a distinct market advantage over the Truck Broker. Competitive Rates are always based on the backhauler quote, because the backhaul is generally half of the outhaul. This discrepancy only occurs when supply (trucks) are plentiful. The marketing tool of brokering provides competitive information. That is the distinction brokering brings to the marketplace. Carriers should never stick to a set Rate structure, because mathematically 50% of the time they are leaving money on the table. Carriers should become market creatures and if they are the last trailer in town make the broker and the shipper bleed but not pump out.

### **CARRIER NEGOTIATIONS WITH BROKERS**

Carrier dispatchers have a frenzied work schedule most of the time. When one of their regular shippers calls to place an order, there is not much discussion of rates. Dispatcher checks equipment and driver availability and accepts or declines load on that basis. When a broker calls with a load carrier dispatch should always counter offer broker's rate.

The dispatcher will now have to make an economic decision that can only be his alone due to the brevity of the call, in addition to all of his other duties. Good dispatchers should be instructed to "haggle" in a Bid/Ask process for a good freight rate, and know a good rate when they see one. Most dispatchers don't have the time to assess the marketplace where the empty truck appears, but should take the time and negotiate with the broker based on supply and demand indicators present. Remember, brokers will tender at 15 to 20% below where they are ready to settle, so counter offers are always in order.

### **CARRIER PROCEDURES IN THE EVENT OF A CLAIM ON A BROKERS LOAD**

Brokers have no liability in the freight if they have conducted their business correctly. This type of broker adjudicates claims for loss as a mediator, because they are in the brokering process for the least amount of money. (Remember 95% of all Claims are resolved "Voluntarily" without a lawyer or judge).

Truck brokers are carriers for purposes of freight loss liability because if they take possession of the load as a carrier from the shipper and in turn broker it to another motor carrier, both carriers are 100% liable. Truck Brokers have to weigh this liability in the nature of the marketing of their trucking services. (See Schramm v Foster where broker tells shipper they are in possession of cargo and insure the risk and act the opposite with the actual hauling carrier, and gets caught for the loss - Brokers Insurance paid the loss, but still acts this way toward shippers and the general public). If the shipper placed the freight with the truck

broker for disposition as a regular freight movement, thinking the carrier is going to haul it, then they are liable and contingently liable for losses incurred by another carrier as they would be in case of an interline between common carriers. (Motor Carrier to Motor Carrier brokering) Does Broker have **Contingent Cargo Insurance?** If so it is something of a catch 22. On one hand the Pure Broker conducts his business correctly, without liability as a travel agent, he doesn't need insurance. (The Author has never had Insurance during 27 years of brokering). In fact having Contingent Cargo Insurance invites a law suit in the event of a loss. (Why would you insure a risk if there is none?) Having this Insurance is telling your customers and affected general public that you make mistakes and have insurance – wouldn't an "Errors and Omissions" Insurance policy be more appropriate instead of Contingent Cargo? Contingent Cargo is positioned in the event that the actual hauling carrier's insurance fails to pay or the carrier fails to pay or the carrier caused loss refuses to pay. If the broker employs the techniques outlined in Loadtraining.com they will negotiate away 95% of the claims as a voluntary claims adjudicator. Most brokers think they are the Agent of the Shipper and are always in an adversarial position with the carrier, a fatal error as they soon find out.

Carriers who haul brokered freight are liable for loss or damage as they would be hauling any shipper freight - the broker is in fact "A shipper" by Law. The Author has actually heard of an underwriter refusing to pay a loss because the broker had Contingent Cargo Insurance.

A broker cannot withhold payment of a lawful freight charge because of a pending claim, real or imaginary. The broker is subject to the Elkins Act (1903) as any shipper would be. The Elkins Act of 1903 and the Carmack Amendment to this Law about freight Rate discrimination and other issues (as it has been adjudicated over the years) requires a shipper to pay all lawful freight charges in FULL, before a Claim for loss can be honored or not. In other words Freight payment in full and the claim are two separate and distinct issues before the Law, and the first to be considered must be payment in full - one The Carriers Freight Bill, and two, the Claim for Loss. Number one can only be settled by payment in full, before number two can be settled.

## **BROKERS LIABILITY IN A RATE CONFIRMATION TO A CARRIER**

**The Continuing Contract:** a onetime event where carrier and broker qualify each other. The Negotiated Rates Acts of 1993 required a "written contract" between shipper and motor carrier for every haul. In the 1995 version of the ACT, the "requirement for a written contract" became optional.

When a broker represents a load and contracts for a move, any negotiation element that is untrue, causing the carrier to incur expenses creates Broker liability for carrier's losses. Remedy should be sought through negotiation or, if that fails, then Surety Bond claims or Court are avenues to follow. (The Author reminds the reader, that in this event he can provide "expert" services to

attorneys or to business owners who need help.) Most brokers haven't a clue about their liability and install in their Continuing Contracts provisions that usually preempt carriers rights to their cargoes and their rights for payment provided in the Bill of Lading. Carrier should erase these "provisions" and tell the broker he is in it for a commission alone and may not "declare an interest in the cargo". Master Brokers use a one paragraph continuing contract indicating that Rate Confirmations are a "Contract" between the shipper and the motor carrier (as the BOL does).

The "**Rate Confirmation**" is an "Addendum to" the Continuing Contract, as the Rate Confirmation has the "Rate" and "Time of Service" Contract Elements in it instead of the Continuing Contract. Carriers should make sure that full disclosure of all aspects of the pickup and delivery and "payment in full" are apparent. You should never route equipment on a broker's promise or a vague Rate Confirmation. Carriers should always stamp each Rate Confirmation from a broker, with their Detention/Demurrage charges after 2 hours free time, as "adequate notice" to the broker of what is "customary" in the industry, then sign the Rate Confirmation and fax it back to the broker. Carrier should also provide written and verbal notice to broker when free time has expired and charges begin. Smart carriers demand that the broker send a "Revised Rate Confirmation" before moving truck toward destination. Repeat the process if the similar detention is experienced at delivery. **Always remember that the 1995 Negotiated Rates Act also provided for Shipper/Brokers and receivers of property hauled in Interstate commerce to assist the driver in loading and unloading. AND PAY FOR IT. They also may NOT COERCE the driver under any circumstances.** (Call 1-800-776-7067 for a free copy of that portion of the Act.) Carriers should always send a copy of the Rate Confirmation to the broker along with POD (Proof of Delivery) and other requested items, e.g.: scale tickets, photographs, manifests, etc.

Complete Contract and Rate Confirmation development and writing practices are available at Loadtraining.com should you need to learn to broker freight. The best way to combat poor brokering practices is to become a Master Broker.

**CARRIER BACKSOLICITATION of Brokers Accounts** Is not a good idea. Motor carriers who practice this program will end up having DOT Complaints filed against them (Complaint forms are available at FMCSA.DOT.GOV.) Some brokers may spend a great deal of time telling other brokers about back-solicitors and if that carrier is dependent on broker for a majority of their dispatched miles they will literally be putting themselves out of business for sowing ill will. If you are a carrier desperate for shippers, call this number 1-888-752-5200 and get a Shippers Directory for yourself. Remember, the broker's relationship with the shipper is one of a personal service, not an Arms Length Transaction, as shippers have with carriers. Most shippers tell their brokers of these backsolicitation attempts because of their "closer" relationship to a broker

than to a carrier. Shippers may initiate a backsolicitation and in that event the broker will lose out.

## **CARRIER SUMMATION**

Brokers play an increasingly important role in the transportation economy, a role dictated by the continuing fragmentation of the Industry. Shippers are confronted with an ever increasing blizzard of truck purchasing choices and freight rates that can vary daily by 100%. Brokers are the natural phenomenon in every open market. Carriers that have limited information about loading and trucking opportunities rely on brokers to process enormous amounts of information and recall information that will assist in loading. The broker conducts this service for a fee. Understanding the broker's market function will assist readers in achieving better and more fruitful market results. What amazes the Author is the amount of money carriers leave on the table upon negotiation completion, when in fact they may be the last air ride van in LA and could have had \$10/miles and settle for \$1.25/mile. They truck and don't look at the marketplace (Transcore.com) before accepting freight. This ignorance is the grease of their destruction.

Carriers fail at even rudimentary negotiating skills turning down good paying freight on a hunch and it may be the only offer they get. Developing and honing negotiation skills for dispatchers and marketing personnel should become a higher priority in order to expand the marketing opportunities. Dispatchers should have a good and open sense of daily market freight rates at their location and anywhere they will become empty.

Carriers should seek as many offers of loads as possible, as far in advance of becoming empty as possible. If carriers seek broker freight, they should use "Load Boards" (Remember, Loadtraining.com teaches the carrier how to work with shippers direct, avoiding brokers by using the dumbbell approach. See Loadtraining.com for free downloads.) Load boards are cheap way to get cheap freight and are sold at the dispatch level. The Author offers his own version of Future Truck Capacity Coordination with Loadshome.com, where a driver for a few dollars per year can use any communications device to tell the Broker/Agent system where and when he will be empty. The Drivers get even more offers for return freight before he leaves home to go and become empty. (Remember, brokers compete and the broker who gets to the empty truck first wins, the other loses.) This system is sold at the driver level, not the dispatch level, greatly reducing dispatchers work load and obtaining more offers for loads with the drivers help. The moniker "Call Someone Who Cares®" is used to expand this capacity information system - loadshome.com.

The ATA is in contention with the principle of brokering per se, yet has not proposed an interactive structure for its integration into trucking operations. If they truly were interested in helping trucking as a transportation mode (not just the big boys country club, which it is), they would build a neutral market

information system (like the old ticker tape) where trucks (future capacity coordination) will be coordinated in some form of airline reservation system trucking equivalent. The ATA still does not believe brokering helps trucking because it offers no help to those getting into the brokerage business. The author contends that a change in ATA direction will bring improved market conditions through improved understanding of the players. Any Truck Reservations System will logically eliminate cheap freight and unscrupulous brokers. Imagine if every trucker and shipper knew about each other in a given day, brokers would be out of business. Imagine the ATA with 300,000 members not just a few thousand as it is now. Will ATA ever get with the times? Imagine if ATA had the website equivalent to FMCSA.dot.gov and displayed current, impartial and accurate information about brokers and truckers, the world would be a better place and all of the players would certainly be richer for the exchange.