AVOID TAKING CHANCES

Checking out new carriers before they load up

By Dan Alaimo

Hiring new carriers has become a major challenge for produce shippers and brokers. Putting the pieces together from diverse sources for proper due diligence is no easy task. But without thorough examination of a new carrier, it can be quite risky—rolling the dice on your company and future.

Although truckers were originally regulated by the Interstate Commerce Commission back in the 1930s, liability for carrier actions shifted dramatically with 2004's *Schramm v. Foster*. The landmark case concerned "negligent hiring," and subsequent rulings have held that brokers do indeed have "vicarious liability" and must exercise "reasonable care" in selecting carriers.

FMCSA and CSA

For a time, the transportation industry looked to the Federal Motor Carrier Safety Administration (FMCSA) and its

Compliance, Safety, Accountability (CSA) initiative, launched in late 2010, to provide "yes or no" guidance on the suitability of individual carriers. But in May 2012 CSA acknowledged it could not do this job, stating that its percentile rankings were "not a safety rating" and ceased providing these rulings. Instead, shippers and brokers were advised to use FMCSA information to make their own decisions on carriers.

Many brokers already viewed CSA as flawed. Not only did it cover just 40 percent of the carriers on the road, but many of the available numbers just didn't add up—especially given the wide disparities in inspection and enforcement priorities from state to state. Viewpoints also changed dramatically depending on size; many independent carriers felt CSA unfairly targeted smaller fleets or single-truck owner-operators.

In an analysis of state inspections by RigDig Business Intelligence, in the two year period from December 2010 to December 2012, Maryland led the nation in per lane-mile truck inspections at 32. California followed with 23 lane-mile inspections, while Idaho had the fewest inspections at just three per lane-mile, with North Dakota and Oklahoma tied at four each.

In addition to the sizeable gaps in frequency, each state had its own agenda for which violations were most critical, with some concentrating on hours of service infractions and others on faulty truck equipment.

In a recent poll conducted by *Commercial Carrier Journal,* fleet executives were asked to rank their top complaints with CSA. Among their responses were crash fault determinations not taking into account preventability factors (78.9 percent); minor infractions and violations with little or no effect on actual safety counting against safety records (62.7 percent); too many violations with what operators considered "inappropriately high point severities" (60.5 percent); and the incidence of many 'clean' inspections not showing up in federal databases (55.2 percent).

So instead of relying on the government's often inconsistent information, many transportation firms established their own due diligence programs. Although they have to use CSA, shippers and brokers point out that FMCSA data is insufficient to thoroughly vet a potential carrier.

Risk, Efficiency and Profitability

In the absence of a central authority, due diligence in hiring carriers is like a jigsaw puzzle. So says Kenny Lund, vice president of support operations at Allen Lund Company, Inc., headquartered in Los Angeles, CA with more than two dozen branch offices throughout the country. "You gather a lot of pieces from all over, and then take a look at that carrier. Everybody wants hard and fast rules about how to qualify a carrier, but it's much more of an art than a science." Lund finds the whole process rather ambiguous, stating, "it is much more difficult to do well than people realize."

A holistic approach is needed for risk management and due diligence, says Toronto lawyer Marvin Huberman. Companies must identify all the steps and procedures to take in minimizing risk, while maximizing efficiency and profitability. This may require the advice of outsiders like board members, consultants, and other experts, he adds. "Companies cannot afford *not* to do it. It's not even a question of should we do it, or how do we do it best. In my view, it's imperative. There is no choice," he declares.

While a produce load may be valued in the thousands, a wrongful death or injury lawsuit could cost millions. It is therefore well worth the investment of time and capital to create a solid due diligence program. Following are some of the basics.

Due Diligence

First Steps

Prior to evaluating new carriers, experienced brokers suggest selecting a person or team to be responsible for keeping track of carriers and providing the necessary training, or outsourcing these duties to a company with the required expertise.

For example, Allen Lund Company has nine people in its Carrier Resources department dedicated to finding information, keeping track of insurance certificates, and identifying potential problems.

"You need people who are experts, and our people are trained so they can look at a setup and identify all the red flags somebody else would miss," Lund says. "Once you have two, three, four, five red flags, you eliminate them. It's usually not just one thing that eliminates a truck, it's a combination."

Before putting together its carrier packets, Edinburg, TX-based Mike's Loading Service, Inc. prescreens truckers using FMCSA's "SAFER" (Safety and Fitness Electronic Records) system website, part of the CSA program, says risk manager Greg Herman. "The bottom line is there isn't a central place to look up all the information. You have to cull through the site and use your best judgment," he says.

The carrier packet should include a transportation contract with the carrier, which can be a standard document like one provided by the Transportation Intermediaries Association (TIA), or written by an attorney, but it should be specific to the needs of the produce industry, Herman notes.

CSA: Hit or Miss

Among transportation companies, there is considerable disappointment in FMCSA's efforts to regulate carriers. "The jury is out on whether the new CSA has increased safety at all, but what is indisputable is that it has created havoc for otherwise good trucking companies," commented Doug Stoiber, vice president of produce transportation operations at L&M Transportation Services, Inc. in Raleigh, NC. "The ratings have been hard to figure out, ambiguous, outright incorrect at times, and have created mountains of paperwork for all involved," he says.

Lund is an outspoken critic of CSA and authored a widely circulated post in the Lund company newsletter. Because of inadequate information and the possibility of costly lawsuits, CSA "is the equivalent of making it possible to sue the travel agent when an airline or cruise line has an accident," he wrote.

"Sometimes even the carrier is not aware [if] his cargo insurance covers reefer breakdown. For us to have that assurance, we would have to request a copy of every policy every time we loaded a truck, which is practically impossible."

Safety Ratings

While many like Lund and Stoiber believe the system is flawed, they must still rely on FMCSA for its carrier ratings of satisfactory, unsatisfactory, suspended, or conditional.

"Primarily, we need to know if (carriers) have a satisfactory rating. If their rating is unsatisfactory or suspended, we will not tender them loads. If the rating is conditional, we need documentation on the carrier's letterhead that addresses the areas in which they were marked down and their plan for regaining satisfactory status," Stoiber says.

"With these safety ratings, that's where you can get pinned," says Ron Lovell, operations manager and controller at Plant City, FL-based Sam Patterson Truck Brokers, Inc. "If you're using a driver with an unsatisfactory safety rating and he has an accident, that gives attorneys all the fuel they need to go after you." Patterson uses a program called SaferWatch to stay updated on the status of its carriers; Lovell mentioned similar programs like Internet Truckstop and CarrierWatch.

Max Strickland, general manager and vice president of Pearce Worldwide Logistics, Inc. in Haines City, FL, believes no one is exempt from litigation. He says lawyers will sue "the driver first, then the broker, and...the shippers and receivers as well." Pearce Worldwide uses the Carrier411 monitoring service, Strickland explains, which provides safety scores along with complaints made by other brokers.

Compliance & Violations

Besides the ratings, Strickland outlined several other safety concerns that should be checked such as serial number verification (to be sure the trucks on the road match the ones on the insurance policy); the number of inspections (which verifies the quality of the equipment); and violations per truck and driver (for vehicle safety compliance as well as warning flags concerning individual operators with citations for drugs, alcohol, or logbook inconsistencies).

"Fifty percent of the carriers that apply are rejected," Strickland emphasizes. "We have to look at it now with one thought in mind: safety—what can you defend in a court of law?"

Although FMCSA's website provides information on violations, the agency says these numbers should not be used to determine a carrier's safety compliance. "But if you have a carrier who is running five trucks and has twenty violations in the last twelve months," Strickland says, it is probably a sign regulations are being ignored. If a broker doesn't check for drug and alcohol or equipment violations, "then you have not done your due diligence," Strickland states.

Beyond safety compliance, there are also environmental issues. Because so many produce carriers go in and out of California, they must either meet CARB (California Air Resources Board) regulations for reefers or stay out of the state.

"Ask for a CARB card or certificate," Herman advises. If one is not readily available or provided, drivers can simply take a photo of the truck's CARB-compliant serial number with a smartphone.

Insurance

When Pearce Worldwide is vetting new carriers, Strickland says the company requires a complete application with contact and mailing information and wants to know how long the carrier has been in business, the numbers of trucks and different types of trailers—van or reefer—and requests insurance certificates for cargo, liability, and workers compensation.

The broker also requires $1 million in liability (above the government's $750,000 minimum coverage) and $100,000 on cargo. "If they're going into our system as a refrigerated carrier, we require mechanical refrigeration breakdown (coverage). Probably 75 percent or better of the cargo claims we have are covered under mechanical breakdown," Strickland notes.

"Sometimes even the carrier is not aware [if] his cargo insurance covers reefer breakdown," commented Stoiber. "For us to have that assurance, we would have to request a copy of every policy every time we loaded a truck, which is practically impossible. If reefer breakdown is not in effect in the policy, the trucker shoulders the burden," he says.

Reliability and Professionalism

"When you handle produce—especially items like berries—you have to be careful to get someone who has experience," Lovell says, which is why references are so important for new carriers.

Stoiber looks for a track record of on-time delivery and good arrival. Among his questions: Did the carrier perform on the load as called for in the dispatch directions? Did the driver stay in contact with his/her dispatcher on a long trip? Were the documents presented at the end of the delivery?

"Professional carriers communicate well, ask good questions, do their due diligence on inspecting loads, and communicate immediately with the shipper, customer, and dispatcher if they

Reported U.S. Fruit & Vegetable Truck Shipments 2005 – 2012 (1,000 tons)

Year	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Annual
2005	7,629	9,481	8,360	8,051	33,520
2006	7,009	9,554	8,486	7,618	32,668
2007	7,796	9,680	8,033	7,718	33,226
2008	7,819	9,754	7,994	7,519	33,086
2009	7,919	9,762	8,537	7,834	34,052
2010	7,878	9,910	8,605	8,165	34,558
2011	7,887	10,179	8,536	8,694	35,296
2012	8,541	10,151	8,442	8,227	35,360

Source: USDA Agricultural Marketing Service, Market News Division

"We monitor the documents, monitor the company, monitor how they are doing every which way we can. But it is difficult, it's hard—you have to do it every day, all day long, every load, a thousand loads a day. There are no shortcuts to good monitoring."

are concerned about quality, condition, temperature, and delivery instructions," Stoiber explains. "Red flags for a marginal carrier can be asking for the entire settlement to be advanced, not making check calls when en route, showing up late without a valid excuse, losing paperwork, or turning off his/her cell phone," he says.

Fraud & Theft

Brokers have learned to be vigilant about fraud, especially on busy Friday afternoons, and especially in South Florida. "Thieves come out of the woodwork," Strickland says. "They think no one is checking, everyone is in a hurry, everyone wants to go home, and procedures will get lax." Even when insurance and other checks look good, "you load a carrier and come to find out on Monday morning that your load has disappeared, and you already paid for it."

Identity theft involving carriers has been increasing recently, Lund says. "One of the unintended consequences of CSA is that when carriers get a bad score, they will change their name or buy another trucking company with a good score, then absorb the name of the company they acquired."

Additionally, Lund says FMCSA doesn't do a good job purging carriers that have gone out of business from its records, prompting opportunists to book a load, get an advance, and simply disappear. Further, identity thieves know the produce industry relies on a great number of small carriers, which makes it "fairly easy to pretend to be somebody else," he adds. And he warns, "you have to be careful using load boards, because that's where the bad guys often troll for loads."

Verification includes doublechecking phone numbers and addresses, and confirming the address actually exists—using a tool like Google Earth. Lund recounts how one search for a trucking company revealed the address to be a UPS Store where the fraudulent trucker had only a mailbox, even though it seemed like a regular street address.

Monitoring Carriers

After a new carrier has been set up, brokers and shippers need to make sure all the information and certifications are current. For example, has there been a recent violation or safety rating change? Will insurance coverage lapse during a multiday haul?

"We rely on the SaferWatch, mainly just for the safety rating," explains Lovell. "SaferWatch monitors the bodily injury and property damage coverage, and we use it to monitor contract authority too."

For contracts and insurance coverage, Patterson Companies monitors carriers through software from the Keypoint division of TransCore, which flags lapsing insurance certificates.

"We expect that a load picked up today will be delivered within five days max. So if the carrier's insurance is going to expire four days from today, the system will not allow them to load that carrier. We want to make sure it is covered all the way through," Lovell notes.

Other brokers use a spreadsheet to follow trucks, pay for services, and bill customers, Herman says, but Mike's Loading Service uses the McLeod transportation management system which will set up, track, and monitor a carrier's status related to safety ratings and scores, payments, insurance, interstate and intrastate authority, as well as provide a real-time carrier base.

"It is really important to have an ongoing evaluation of how the carrier is doing with professionalism and reliability," Lund says. Similar to commerce sites like eBay and Amazon, "we rank the driver and the carrier on every load. We're building a history and internal information about that carrier."

Lund also employs LocusTraxx to track loads in real time, which has been very successful. "We monitor the documents, monitor the company, monitor how they are doing every which way we can. But it is difficult, it's hard—you have to do it every day, all day long, every load, a thousand loads a day. There are no shortcuts to good monitoring."

Average U.S. Truck Rates for Selected Routes from 501 to 1,500 miles ($/mile) 2005 – 2012

Year	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Annual
2005	1.75	1.93	2.27	2.33	2.07
2006	1.76	2.06	2.21	2.08	2.03
2007	1.94	2.20	2.25	1.95	2.09
2008	1.87	2.53	2.79	2.25	2.36
2009	1.74	1.96	2.06	1.88	1.91
2010	1.72	2.18	2.37	1.99	2.07
2011	1.90	2.57	2.79	2.29	2.39
2012	1.96	2.52	2.49	2.33	2.33

*weighted average for all four quarters
Source: USDA Agricultural Marketing Service, Market News Division

Summing Up: "You Get What You Pay For"

"The reality is, if you're going to be in this business and you're going to do it right, whether it's exempt or regulated freight, you need to follow steps to protect yourself," Herman concludes.

The bottom line, Herman emphasizes, is about protecting your company "on the big scale. We all know the product is worth a certain amount of money, but the product is finite, it doesn't have 'pain and suffering'. If you have $60,000 of cargo on the truck, then the loss is going to be $60,000 at the most."

There are, unfortunately, far worse scenarios to deal with, like an accident. "If six people get killed, and it was because you hired a truck that was negligent or didn't have authority or proper documents," Herman continues, "you could be paying $6 to $8 million per death. That will put you out of business real quick. So this whole exercise is for protection of your company as much as protection of your product," he says.

At Pearce Worldwide, the due diligence program is "burdensome, costly, but very productive and very successful," says Strickland. "It saves us on every front. It gives us trucks that are qualified to do the job, and they run at far less of a risk of being taken out of service while en route with our cargo. It goes right back to the same thing: you get what you pay for." BP

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ONLINE

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