



## Staying in Your Lane on Accident Liability

*By Jonathan R. Todd*

Accidents on the roadways are an unfortunate reality in the transportation business. Any carrier that has been in the business long enough, or that has reached a sizeable scale, experiences accidents despite a zealous focus on safety and training. The question of your liability as a carrier is relatively straightforward and is based upon the carrier's actual or required control and fault in the accident.

Sometimes the path forward is not that simple. The availability of insurance defense, the exposure you face and the way you manage exposure day-to-day in your business, all change if you were not the operating carrier. For non-carrier operations, every day holds customer and operational pressures to act inconsistent with your role in a movement. These can be managed as best as possible through process, training and paperwork.

### **The Non-Carrier Lane**

The question of your liability is less clear if you were not, in fact, the operating carrier at the time of the accident. This scenario could arise in a number of ways that could draw you in as a defendant despite your role. Brokerage or forwarding to a carrier involved in an accident is the common example; interchanging a trailer or lawfully interlining a load are other examples.

Shippers and consignees are even brought into costly claims and litigation when the documents about a shipment muddies the water as to each parties' responsibility. Legal theories of liability that could be used to attach responsibility to you include vicarious liability, negligent selection, negligent hiring and respondeat superior. The basic strategy for plaintiffs' lawyers is to establish negligence through your relationship with the operating carrier, or the way you held yourself out to the shipper, rather than through examining operation of the vehicle — because that was not you!

### **Non-Carrier Best Practices**

Operational practices and paperwork will draw or defend liability in the event of a serious accident involving a carrier with whom you do business. Using the brokerage example, your basic duty is to exercise reasonable care when selecting third party providers. This duty is met in large part by confirming that the carrier can lawfully and safely perform the services at the time of tender. Operationally, this means reviewing at least the carrier's operating authority, safety rating and insurance. Vigilance does not end there. As the non-carrier, it is key to not control the activities of the carrier. Direct communications with drivers and overreach — including pressure to deliver loads too quickly — can be used to suggest responsibility for the accident or to keep a non-carrier in a lawsuit longer than anticipated. Any documentation or communications suggesting responsibility for carriage — such as issuing a bill of lading in the broker's name, accepting

responsibility for equipment operation in a shipper contract, or electronic messages misrepresenting your role — can be detrimental by creating evidence suggesting that you should bear the carrier's liability.

Business operations are an art and not a science. Still, arms-length relationships between non-carriers and the carriers with whom they interact can be maintained as best as possible by developing defensible structures between relationships, training staff appropriately and papering relationships accordingly.

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