

HOW TO HIRE A TRUCKING COMPANY (OR A BROKER)

By George Carl Pezold, Esq.

Trucking companies come in all sorts and sizes from little one-truck companies to giants like UPS and FedEx. There are an estimated 790,000 companies that operate commercial motor vehicles, including private fleet and “exempt” carriers, which are registered with the Federal Motor Carrier Safety Administration (“FMCSA”), of which about 240,000 are active interstate “for hire” carriers that serve the general public. There are also about 20,000 licensed freight brokers - intermediaries that arrange for motor carrier services on behalf of shippers and receivers of freight.

What do you need to know when you want to hire a trucking company or a broker?

Unless you are dealing with a large, well-known trucking company or an established freight broker, the first thing you should do is **find out who you are dealing with.**

The first place to start is with the FMCSA, which maintains a public website that provides information on all registered motor carriers, freight forwarders and freight brokers.

SAFER

The easiest way to get into the FMCSA website is the Safety and Fitness Electronic Records (“SAFER”) System at <https://safer.fmcsa.dot.gov/CompanySnapshot.aspx>. You can search by USDOT number, MC/MX number or the name of the company.

SAFER will give you the official FMCSA information: entity type (carrier, broker), whether it is authorized for property, the legal name and any “d/b/a” name, the physical address, phone number, mailing address, USDOT number, MC/MX number, number of power units and drivers, and date of most recent MCS-150 filing. It will also tell you the type of operation for which the carrier is authorized (for hire, exempt for hire, private, etc.), whether it is interstate or intrastate only, the type of freight it can handle (general freight, household goods, etc.), and safety inspection and crash information.

From the SAFER site you can get the motor carrier’s “Safety Rating” (Satisfactory, Conditional or Unsatisfactory) and rating date, and can access the “Safety Measurement System” (“SMS”) results and “Licensing and Insurance” public websites.

LICENSING AND INSURANCE

The Licensing and Insurance website can be accessed from SAFER, or directly: at https://li-public.fmcsa.dot.gov/LIVIEW/pkg_carrquery.prc_carrlist. For those who wish to investigate further, this contains a wealth of additional information: the type of operating authority (common carrier, contract carrier, broker), application status, insurance requirements (BIPD, cargo), BOC-3 (registered agents for service of process), surety bond or trust fund (for freight forwarders and

brokers), insurance company and policy numbers, and operating authority history of when authority was granted, and if it was revoked or reinstated.

CARRIER SELECTION - SOME SUGGESTIONS

“Sophisticated” shippers and many brokers typically ask the carrier to provide a copy of its operating authority (as a “common” or “contract” carrier), and for certificates of insurance for auto bodily injury/property damage (“BI/PD”) and cargo liability (showing the shipper as certificate holder), a tax ID number, references, etc. Many shippers and brokers subscribe to carrier monitoring services such as Carrier 411 and DAT CarrierWatch.

If you don’t use one of these services it is a good practice to compare the information provided to you by the motor carrier against the information on the FMCSA Licensing & Insurance website and make sure that:

- The USDOT and MC numbers are the same.
- The business address, phone and fax numbers are the same. If not, ask why they are different, AND check other sources such as the phone book or Google them.
- The insurance company, address and policy number are the same as shown on the insurance certificate provided by the carrier. If not, ask why they are different, AND check directly with the insurance company listed on the website. (Note: It is a better practice to have the carrier’s insurance broker or agent send the certificate to you, rather than get one from the carrier.)
- Check the carrier’s operating authority history: When was it first issued? Has the authority been repeatedly revoked and reinstated, and if so, why? (Note: Authority will usually be revoked because the carrier has failed to keep the required insurance on file, or if it has an unsatisfactory safety record.)

SAFETY RATINGS

Why should a shipper (or a broker) be concerned about a carrier's safety rating? The reason is that there are a number of court decisions that say that the shipper or broker could have vicarious liability in the event of a highway accident involving personal injury or death of some third party. The courts will typically look at factors such as (1) “negligent hiring” - whether the shipper or broker was negligent in hiring a carrier without proper operating authority or insurance, or that had a bad safety rating, or (2) “respondeat superior” - whether the carrier was essentially acting as an agent or employee of the shipper or broker.

It should be observed that only about 20 percent of the authorized for-hire motor carriers in the United States actually have an FMCSA safety rating. There are literally thousands of small or new carriers that have never been audited or rated by the agency.

The best advice is to only use a carrier that has a “Satisfactory” safety rating, and don’t use one that has a “Conditional” or “Unsatisfactory” rating. If the carrier is “unrated” you can still use them, but you should be very careful and exercise “due diligence” in selecting the carrier.