

# If Everything's Coming Your Way You're Probably in the Wrong Lane

CBMU Annual Conference

November 27, 2012

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# Agenda

1. The Players

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2. What is Happening?

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3. Legal Exposures and Regimes

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2. What is Happening?
3. Legal Exposures and Regimes
4. Preventive Maintenance and Best Practices

# 1. The Players

- “Shippers” *and* “shippers”
- Cargo intermediaries
  - Freight Forwarders
  - Load Brokers / Freight Brokers
  - 3 PL’s
    - » Acting as agents or principals?
- Trucking companies
  - Dispatched to perform move
  - May be sub-contracted or “double brokered”
  - May be an interline carrier if long haul

# 1. The Players

- You may provide first party cargo insurance
- You may insure carrier liability
- You may insure contingent cargo liability
- You may be an “asset backed” carrier who as a ‘principal’ may be responsible for safe delivery of cargo [point to point bill of lading with direct handling, or interline, or sub-contract]
- You may be a non-asset backed carrier similarly liable as a carrier
- You may be a forwarding agent or a freight broker who maintains you were merely an “arranger” not responsible for performance

## 2. What's Happening?

- Fraudulent Pick-ups of Cargo:

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- Rogue carrier a 'sham' company intended for short term and intensive series of fraudulent pick-ups

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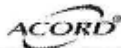
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- Rogue carrier 'trolls' Loadlink / internet 'message boards' for posted shipments or posts 'available equipment'
- Rogue carrier manipulates legitimate Loadlink equipment postings



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/17/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION** IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER [REDACTED] Inc. [REDACTED] LLC Danis FL 33312	CONTACT NAME: Certificate Processing PHONE: [REDACTED] FAX: [REDACTED] PRODUCER CUSTOMER ID # (TT,INC)	INSURER A: [REDACTED] NAIC # 20281 INSURER B: [REDACTED] TO [REDACTED] NAIC # 12882 INSURER C: INSURER D: INSURER E:
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COVERAGES CERTIFICATE NUMBER: 907993600 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSTR. LTR.	TYPE OF INSURANCE	ADDITIONAL BUSINESS	POLICY NUMBER	PERIOD OF EFFECT (MM/DD/YYYY)	POLICY END (MM/DD/YYYY)	LIMITS
8	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES FOR <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-ECT <input type="checkbox"/> LOC		2108001047	11/5/2010	11/5/2011	EACH OCCURRENCE \$1,000,000 COVERED TO EXTENT OF POLICY LIMITS (wherever) \$100,000 MED EXP (Per Occurrence) \$10,000 PERSONAL & ADJ INJURY \$1,000,000 GENERAL AGGREGATE \$1,000,000 PRODUCTS - COMPROP ADD (included) \$
9	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> P.P.P. TO/LEASERS UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$		2108001047	11/5/2010	11/5/2011	COMBINED SINGLE LIMIT (Ex includes) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$10,000 EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/WHEREAS-RESERVE OFFICERS/DIRS EXCLUDED? (Mandatory in FL) FAC. EMPLOYER RESPONSIBILITY OPERATIONS/LEASE	Y/N N/A				WORKERS COMP. \$ EL EACH ACCIDENT \$ EL DISEASE - EA EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$
A	TRUCK CARGO		6499449	11/5/2010	11/5/2011	LIMIT \$100,000 VES/ARTICL \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 901, Additional Remarks Schedule, if more space is required)  
 Vehicles Covered:  
 1) 2008 Freightliner 1FU7DSZ84YPB94666  
 2) 2001 Freightliner 1FU7BBCC22LJ47904  
 See Attached...

CERTIFICATE HOLDER [REDACTED] NORCROSS QC R4T 125	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE [Signature]
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BOL NBR. **60386624**

**STRAIGHT BILL OF LADING**  
ORIGINAL - NOT NEGOTIABLE

PAGE 1 OF 1

DATE 01/17/11

CARRIER TFFC

TYPE OF SERVICE - TL

PU DATE 01/17/11

Requested Delivery :  
01/20/2011 - 01/20/2011

WAVE# 0032094406	
LOAD# 2935895	
POST-PAID	UNPAID
157	89.2
26878	
P	

SHIPPER  
[Redacted]  
FONTANA, CA 92335-6832

CONSIGNEE  
STOP NO. 1  
[Redacted]  
SUITE B  
SUMNER, WA 98390

BILL TO OR REMIT TO  
[Redacted] Co.  
920 Sylvan Avenue  
Englewood Cliffs, NJ 07632

MERCHANDISE RECEIVED 253-826-6555  
Signature Of Consignee \_\_\_\_\_ Date Received \_\_\_\_\_

GENERAL COMMENTS

N/A Appointment Date: 01/19/10 Time 06:30  
Number: 4902  
Wave / Load / Stop : rhonda  
0032094406 / 2935895 / 1  
Customer P.O. # SEE BELOW Customer Phone # 6099046555

PIECES	IN	HM	DESCRIPTION	WEIGHT LBS.	CLASS
TOTAL CONSUMER PRODUCTS					
8 CTNS			P.O.# 001710106542 N1F11010700580	1021.19	
34 CTNS			P.O.# 001710106639 N1F11011100253	992.084	
456 CTNS			P.O.# 001710106529 N1F11010700666	23122.2	
				25135.474	

**Driver responsible to secure load**  
**Driver Count**

"Payment of transportation charges shall be made only to carrier named on this B/L or receipt"

REMIT G.O.D. TO  
ADDRESS  
NOTE - Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.  
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding:  
\$ \_\_\_\_\_

COD AMT: \$ \_\_\_\_\_  
COD FEE \_\_\_\_\_  
PPD COLLECT \_\_\_\_\_  
PREPAID  PREPAID  
COLLECT   
TOTAL CHARGES \$ \_\_\_\_\_  
FREIGHT CHARGES ARE PREPAID UNLESS MARKED COLLECT  
CHECK BOX IF COLLECT

(Signature of Consignor)

RECORD, subject to the conditions and bills of lading on the back of the bill of lading, the property described above is shipped under the terms, conditions and liabilities of the bill of lading, which shall control in the event of any dispute.

This is to certify that the above named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation, according to the appropriate regulations of the Department of Transportation.

SHIPPER [Redacted] CARRIER VTL DATE 01-19-11  
DRIVER (PRINT) Arthur [Redacted] SIGNATURE [Redacted]  
NY DL # 16329405E EXP 03-28-12

\* Mark with "X" or "RC" if appropriate to designate Hazardous Materials or Hazardous Substances as defined in the Department of Transportation Regulations. When marking the transportation of hazardous materials, the use of this column is an optional method for identifying hazardous materials on bills of lading per Section 172.203(a) (1) (B) of the HMR, 49 Code of Federal Regulations. Also, when shipping hazardous materials, the shipper's certification statement prescribed in Section 172.204 (b) of the Federal Regulations must be indicated on the bill of lading, unless a specific exemption from this



# Certificat de constitution

Loi sur les sociétés par actions

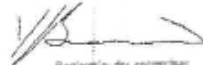
J'atteste que la société par actions



a été constituée le 24 avril 2012, en vertu de la Loi sur les sociétés par actions, comme l'indiquent les statuts de constitution ci-joints.

Déposé au registre le 25 avril 2012 sous le numéro d'entreprise du Québec 1169204338.



  
Registraire des entreprises





120490



REG.ÉCO. (Québec)  
N° 120490

120490

EX 5 pg 6 of 7

Le 27 avril 2012

Numéro d'entreprise du Québec (NEQ) [REDACTED]

Objet : Envoi des documents de constitution

Il nous fait plaisir de vous faire parvenir les documents de constitution de QUÉBEC INC. Leur dépôt au registre des entreprises a eu pour effet d'y inscrire cette personne morale.

Notez que, conformément à la Loi sur la publicité légale des entreprises, la déclaration initiale a également été déposée.

Votre numéro d'entreprise du Québec mentionné ci-haut vous servira dorénavant d'identifiant et devra être mentionné dans toute communication avec le Registraire des entreprises.

Vous avez l'obligation de tenir à jour au registre les informations concernant votre entreprise. Vous devez produire chaque année, durant une période déterminée, une déclaration de mise à jour annuelle. De plus, vous devez produire une déclaration de mise à jour courante dans les 30 jours suivant tout changement.

Vous recevrez dans environ 15 jours, un code d'accès clicSÉQR, express qui vous permettra d'accéder à votre bureau d'entreprise. À partir de ce bureau d'entreprise, vous retrouverez, entre autres, les informations à jour au registre concernant votre entreprise, vos obligations et le suivi de vos demandes. Vous aurez aussi accès à tous les formulaires en ligne. Assurez-vous que la personne chargée de communiquer avec le Registraire dispose du code d'accès.

Pour en savoir plus sur les services en ligne, consultez le site Internet du Registraire des entreprises au [www.registreentreprises.gouv.qc.ca](http://www.registreentreprises.gouv.qc.ca).

Veuillez agréer nos salutations distinguées.

Yves Bannon  
Direction du Registraire des entreprises

p. j. Documents de constitution

REG-489 (210-10)

EXS pg 7 of 7



July 17, 2012

[Redacted]  
SAINT-LAURENT, QC H4T 1A2  
CANADA

CERTIFICATE OF STANDARD CARRIER ALPHA CODE (SCAC) ASSIGNMENT

The Standard Carrier Alpha Code of TXFQ has been assigned to:

[Redacted]  
SAINT-LAURENT, QC H4T 1A2  
CANADA  
MC-788970  
US DOT- 2813887

This Alpha Code will apply only to the company name shown above through June 30, 2013. An invoice will be mailed approximately one month prior to expiration and must be returned promptly together with payment to ensure its continued validity. Should the company name or address change, please notify the National Motor Freight Association, Inc. at the address above. If you participate in the Bureau of Customs & Border Protection ACE, AMS, CAFES, FAST or PAPS programs, it is your responsibility to ensure that a copy of this letter is forwarded (email preferred) to the following address:

CBP SCAC Processing  
Bureau of Customs and Border Protection  
7681 Boston Blvd., Room 4690 (B-306)  
Springfield, VA 22153  
AMS.SCAC@DHS.GOV

Alpha Codes ending with the letter "U" have been reserved for the identification of freight containers. If your Alpha Code ends with the letter "U", it should be used only for this purpose. A non-U ending Alpha Code should be obtained to satisfy other requirements such as company identification for Customs, Electronic Data Interchange, freight payments, tariffs, etc.

NOTICE: Assignment of the above listed SCAC is unrelated to participation in the National Motor Freight Classification (NMFC). Further, it does not confer membership in the National Motor Freight Traffic Association, Inc. or allow use of the NMFC in connection with freight rates. For participation and membership information, please call (703) 638-1810.

EX 11  
358725

TRANSPOR [REDACTED]

PH 514-319-1691  
FAX 514-635-6312

LOAD TRANSFER SHEET

FL78242

TRANSPORT  
PH  
FAX  
CONTACT

TRANSPOR [REDACTED]

STEPH

RATE

\$600

PICK-UP

[REDACTED]  
MAHWAH, NJ 07430  
CHET 201-512-0033  
PO# 13492

DATE

AUG 9 BEFORE 3: PM

DELIVER

[REDACTED]  
FLORES TO DELIVER TO SURREY, BC.

DATE

10-aout

NOTES:

7 SKIDS 16,3000 LBS  
CUSTOMS UPS 604-270-0860

SIGN AND FAX BACK TO [REDACTED]

MAIL OR FAX INVOICES TO,

[REDACTED]  
ST. LAURENT, QUEBEC  
H4T 1A2

PAYABLE IN 15 DAYS

# 3. Legal Exposures and Regimes

- Intermediary / logistics arm function
- Shippers need to appreciate that more players = higher degree of risk of information slipping into the wrong hands
- The “middleman” between the shipper and carrier
- intended carrier may not be liable if its bill of lading not issued at origin – potential shipper liability to other cargo interests; potential broker liability to cargo interests

# 3. Agency – Contractual and Factual Question

- Canada – little case law on duty [U.S. = “negligent selection”]
- no barriers to entry / essentially unregulated
- compare with United States increased “profiling” and security behind intermediaries: *“Moving Ahead for Progress in the 21<sup>st</sup> Century Act”*
  - refines registration requirements and licensing of carriers [when acting as an intermediary], freight forwarders and freight brokers
  - \$75,000 surety bond requirement – on broker *and* carriers who broker freight out i.e. “non-asset backed” operations
- most contracts are “one-off’s” with limited paperwork vs. Shipper-Broker tariff agreement or contract agreement [NTBA / TIA]

# 3. Liability as a “Principal”

- “But I don’t own a truck” ...
- U.S. Law – potential full unlimited liability
- Standard Canadian uniform bill of lading:
  - Can an intermediary qualify as a ‘carrier’ for the purposes of limitation of liability and other defences?

### 3. Road Carriage ... Fraught with Risk

- \*90% of cargo moves with dedicated contracted carriers. - Your safest option
- \*Majority of the other cargo moves with known carriers who you have moved cargo with in the past – Your next best option
- \*a very small percentage of cargo moves with new carriers – The highest risk.
- \*80% OF CARRIERS MAY ONLY BE USED ONCE!

# 3. Road Carriage ... Fraught with Risk

- high volume / low profit margin
- all about moving cargo and avoidance of empty revenue generating assets
- 99.9% problem free cases deter focus on .1% nightmare scenario
- concern that “any unnecessary detail” may focus shipper’s attention on the next guy: “loose” quotation process [shipper-carrier or shipper-broker] ≠ “loose” dispatch paperwork [broker-carrier] e.g. carrier confirmation sheet
- internet connections [e.g. *Transcore / Link Logistics*] and ‘one-offs’ vs. Master Carrier agreement / tariff with established relationship



### 3. Road Carriage... Fraught with Risk

- common law right of carriers to ‘substitute’ another carrier
- carrier ‘comprehensive’ service offerings: principal vs. agent distinction blurred and, by extension *‘exactly who is going to handle the freight’* is blurred: – [“asset backed” vs. “non-asset backed” distinction blurred if not even contemplated by customer]
- ‘double brokering’ or ‘re-brokering’

# Trend towards Customized Contracts

- Increasing trend toward customer drafted contracts requesting forwarders to assume increased liability
- Increased liability greater than CIFFA STC's
- Higher limits and possibly no limits
- Liability for "Consequential Damages"
- Contracts moving away from "negligence" based [e.g. "*reasonable care*"] and toward performance based [e.g. a *guarantee* of successful delivery]. Clients looking for "All Risk" coverage. Will we see a customer request a performance bond?
- Double insurance. Does the customer have their own insurance?

# 3. CIFFA Standard Trading Conditions

- 1. **ROLE OF FORWARDER (“the COMPANY”)**
  - The Company acts as **agent** of the Customer, except
    - (a) where it issues a transport document or electronic record evidencing its obligation for the delivery of goods, or
    - (b) to the extent it physically handles goods by its own employees and equipment in the course of performing any service in which cases it acts as **principal**...

# 3. CIFFA Standard Trading Conditions

- 4. **ROLE AS PRINCIPAL** Where requested by the Customer the Company may
  - (a) issue a transport document or electronic record by which it as **principal** undertakes carriage of particular goods; or
  - (b) guarantee in writing proper performance of the terms of any contract between the Customer and a third party whose services the Company has engaged on behalf of the Customer.
- Where it issues a transport document or electronic record, or provides a guarantee, the rights and obligations of the Company will be governed by the special conditions therein in addition to these conditions, and in any event the Company is **liable only to the same extent as the third party** who performs the carriage or guaranteed service, as may be limited by the conditions on which that party customarily offers its services.

# 3. CIFFA Standard Trading Conditions

- 6. **THE COMPANY'S GENERAL RESPONSIBILITIES**
  - (A) The **Company** shall exercise **reasonable care** in the discharge of its obligations **including the selection and instruction of third parties** that provide any services engaged on behalf of the Customer.
- 7. **CUSTOMER'S GENERAL RESPONSIBILITIES**
  - (A) The **Customer** shall be deemed to be **competent** and to have reasonable knowledge of matters affecting the conduct of its business, including terms of purchase and sale, the **need for insurance** and the **extent of coverage available** for the type of goods being tendered for shipment, **the need to preserve and retain documentation**, the need for care to avoid transmitting viruses by electronic communications, **the need for confidential handling of information relating to high value goods**, and all other matters relating thereto.

### 3. Transcore---

- Close to 5000 Transportation Companies and over 20,000 users throughout Canada access Loadlink everyday. The Loadlink system offers the chance to view “confirmed insurance details and operating authorities for all carriers in the Loadlink System”.

# 3. Transcore

- **4. DISCLAIMER**
- TransCore has not reviewed all of the sites linked to the Site and is not responsible for the content of any off-site pages or any other sites linked to the Site. Company's linking to any other off-site pages or other sites are at Company's own risk.
- **While TransCore uses reasonable efforts to include accurate and up to date information on the Site, TransCore makes no warranties of representations as to its accuracy. TransCore assumes no liability or responsibility for any errors or omissions in the content of the Site.**
- **Company's use of and browsing in the Site are at Company's own risk.** Neither TransCore nor any other party involved in creating, producing or delivering the Site is liable for any direct, incidental, consequential, indirect or punitive damages arising out of Company's access to, or use of, the Site. **Without limiting the foregoing, everything on the Site is provided to Company "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.** Please note that some jurisdictions may not allow the exclusion of implied warranties, so some of the above exclusions may not apply to Company. Check Company's local laws for any restrictions or limitations regarding the exclusion of implied warranties. TransCore also assumes no responsibility, and shall not be liable for any damages to, or viruses that may infect Company's computer equipment or other property on account of Company's access to, use of, or browsing in the Site or Company's downloading of any materials, data, text, images, video, or audio from the Site.
- Although TransCore may from time to time monitor or review discussions, chats, postings, transmissions, bulletin boards, and the like on the Site or posting service, TransCore is under no obligation to do so and assumes no responsibility or liability arising from the content of any such locations nor for any error, defamation, libel, slander, omission, falsehood, obscenity, pornography, profanity, danger, or inaccuracy contained in any information contained within such locations on the Site. Company is prohibited from posting or transmitting any unlawful, threatening, libelous, defamatory, obscene, scandalous, inflammatory, pornographic, or profane material or any material that could constitute or encourage conduct that could be considered a criminal offense, give rise to civil liability, or otherwise violate any law. TransCore will fully cooperate with any law enforcement authorities or court order requesting or directing TransCore to disclose the identity of anyone posting any such information or materials. TransCore reserves the right to remove messages or material posted by users of the Site to message boards or other areas, in its sole discretion. By submitting messages and/or materials to the Site, each user agrees to indemnify, defend and hold harmless TransCore from all damages, costs and expenses, including reasonable attorneys' fees and costs arising out of all claims, challenges or actions, including claims for infringement, libel and slander, related to the user's submission.
- TransCore may at any time revise these Terms and Conditions by updating this posting and notifying Company of such changes. Company agrees that Company's continued use of the Software and/or On-Line Services will constitute Company's acceptance of the revised Terms and Conditions.

# 4. Preventive Maintenance

- **Duties / expectations**
  - delegating a reputable company
  - 'screening'
    - call a phone number for the carrier other than the number contact person has provided
    - verify DOT and MC numbers
    - Schramm: check safety ratings [*...but mind the U.S. mine field*]
    - do not use carriers with 'unsatisfactory' rating
    - - check internet, MTO, FMCSA for a different number / address for carrier



# 4. Preventive Maintenance

- call head office to ensure that the person you are speaking with represents the carrier
- secure insurance policy and follow up with agent directly
- look for gaps in carrier authority history
- require operative bill of lading to identify attending carrier, with number to call if anyone else'
- advise shipper who will be attending? And ask them to check identification of the carrier. If they are not conform table they should not release cargo.

# 4. Red Flags and Practical Points

- Fraudulent carriers tend to offer lower rates to move freight. If it looks too good to be true , it probably is
- The documents produced by fraudulent carriers do not stand up to closer scrutiny. Company logos may be blurred, operating authority number won't match.
- The companies address may look funny. It's easy to double check on GoogleMaps. We had a case where a carrier was using the address of a church.

# 4. Red Flags and Practical Points

- Should forwarders be outsourcing insurance component of carrier compliance to a third party like Registry Monitoring Insurance Services.
- Responsibility of Forwarder to share and report problem carriers to Freight Watch, Carrier 411, Carrier Watch or other similar tracking organizations
- Don't expect much help from the police. Cargo fraud is hard to track down and since there is no bleeding victim it's not a high priority for police. This is a battle we have to fight on our own

# 4. The “10 Best Practices in Brokering Freight”

1. If you are using a load board, confirm membership and verify contact names and phone numbers. If you don't see the company on there or the numbers don't match, contact the load board officials.
2. Review the paperwork you receive from a carrier to ensure it's valid. Check that the documents are clear and that there are no variations in font types or any other obvious signs of tampering.
3. Compare the authorities you've received with those listed on the DoT website ([www.safersys.org](http://www.safersys.org)) to certify that the authorities are valid and that the contact numbers provided to you match those on the site.

# 4. The “10 Best Practices in Brokering Freight”

4. If a company claims that they are a secondary office of a US based company or other large company, call the primary office to confirm the phone numbers and location of the secondary office. If it is a US based carrier, ensure you receive their Canadian authorities.
5. Call the insurance broker to confirm coverage. Confirm the broker's number online at [www.canada411.com](http://www.canada411.com). Do not simply call the number listed on the copy of the policy you've received.
6. Call display – use it. Is the # displaying as NA? Check to see if it's a landline or a cell phone. Prepaid cell phones can easily be obtained with cash and no credit check. Check online services such as [www.phonedetective.com](http://www.phonedetective.com) to find out if the number is a cell phone. (Currently no services are available to advise if the cell phone # is ppd or subscribed to.)

# 4. The “10 Best Practices in Brokering Freight”

7. Know the going rate. If a carrier contacts you offering a rate to move your shipment that sounds too good to be true, exercise additional vigilance.
8. Talk to your shippers. Ensure they write down the license plate of both the tractor and trailer and possibly the driver’s license when a carrier arrives to pick up a shipment. Ensure they don’t simply write down the name from the door of the truck.
9. Ask for references and check them. Ensure you know who the references are and that they are legitimate companies.
10. If you have been a victim of fraud or theft, report it.

# 4. Contractual Protections

- get the transportation contract between you and the broker /carrier in writing
- Broker or intermediary must not be the “employer” of the driver. The contract with the carrier should specify that:
  - 1) the carrier is an independent contractor
  - 2) the driver is the employee of the carrier,
  - 3) the carrier employs and pays its driver and not the broker
  - 4) the carrier is solely responsible for the operation of the transportation equipment
- the more that the broker controls the manner in which the trucker and driver perform their job, the more likely the broker may be found to have a master/servant relationship such that the broker will be liable for the negligence of the trucker and truck driver

# 4. Contractual Protections

- should have an indemnification clause for any claim arising from the ‘downstream’ provider’s performance of it’s duties”
- regulate double-brokering [e.g. prohibited unless expressly approved in writing” ] vs. “we will not pay your invoice”
- be named as an additional named insured on carrier’s policy
  - ...but.... an insurer would not agree to this. This would allow the additional named insured the same right under the policy as the insured. The usual practice is to be added as an “additional insured” without the word “Named”



# 4. Contractual Protections

- Representations and warranties:

Shipper from carrier: “will ensure that carrier will not double-broker or sub-contract”

Shipper from Broker: “will ensure that carrier will not double broker or sub-contract”

Each party ‘immediately below’ will hire a legitimate carrier

# 4. Contractual Protections

- NTBA standard form of contract
  - “Broker –Carrier”
    - no double-brokering “without prior written consent of Broker”
- NITL – TIA “Shipper Broker” Agreement
  - broker **warrants** it will contract a **carrier** on terms that the carrier will be liable for cargo loss or damage [but will this be protested by the carrier if a third party intercepts the shipment?]
  - Broker may still be liable for loss or damage to cargo caused by its negligent acts or omissions
  - Shipper may face a contributory negligence claim for failing to exercise due diligence in tendering freight