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THIS IS A COPY OF THE LETTER, FROM DAVID G. DWINELL TO TRANSPORT TOPICS, A WEEKLY MAGAZINE OF THE AMERICAN TRUCKING ASSOCIATION, ALEXANDRIA, VIRGINIA. THIS IS REPRINTED WITH THE PERMISSION OF DAVID G. DWINELL, MASTER BROKER, AUTHOR OF THE LETTER WHICH APPEARED IN THE OPINION SECTION OF THE MAY 29, 2006 ISSUE OF TRANSPORT TOPICS.

Transport Topics
Letter to the Editor

5/2/2006

Dear Sir

I read the TIA and Nitr Shipper/Broker Transportation Agreement (TIA) on their website/

This Contract at its face is contrary to the intent of the Negotiated Rates Acts of 1993 and 1995 (Acts) and FMCSA Regulations and common law. It is predatory on motor carriers rights. I recommend that ATA challenge this proposed Contract in court, before the TIA Principle/Agent relationship embodied within this silly instrument become common practice in this land. TIA is basically taking the position *the broker is a Principle* and the *motor carrier is his Agent*. I want to make it perfectly clear, Brokers work for the benefit and for the well being of the Motor Carrier, quoting only motor carrier rates plus their commission. The TIA Contract creates the Broker as the dog of shippers.

The Acts do not require a written contract between a shipper and broker. In fact the broker is defined as a "shipper" in the Acts. The TIA Contract creates the Broker the "Agent" of the shipper contrary to the intent of the License.

Brokers are widely understood to lack liability in transportation. The TIA creates the Broker as in control but not in possession of cargo, an ownership interest in the cargo. Control and possession are inseparable rights of the Motor Carrier. TIA Contract creates liability for the broker in a cargo loss.

A TIA Broker not wanting liability and but controls the actions of a driver is liable from that act. I recommend that brokers stay out of the realm of liability by repudiating the TIA Contract.

This is the kicker as they say in poker. Look at part E in the TIA recommended Contract. ***"Carrier shall authorize Broker to invoice shipper for services provided by carrier. Carrier shall further agree that Broker is the sole party responsible for payment of it invoices and that under no circumstances will Carrier seek payment from the Shipper, consignee or Broker's customer.*** This is TIA authored Broker Extortion. I believe in the last 500 years, motor carriers rights to collect from any of the three parties to a transportation Contract in the event of NON PAYMENT by the Broker are extant. Motor carrier has an undeniable and inalienable right to bill, the Consignor (**the shipper**) ; the Consignee, and/or Broker's Customer in the event of non payment. TIA Contract is a license to steal from motor carriers.

Why does the TIA think that Brokers have a position in a Cargo. They don't. Declaring a position in a cargo creates liability and can be fatal for the broker.

Here are the basic truths about the role of brokers to motor carrier

First Broker must disclose his commission to both parties pursuant to 49 CFR 370 -395 "Records to Be kept by Brokers". TIA Contract not only fails to disclose but ask the motor carrier to give his rights to his own cargo and rights to his recourse for non payment

Second, Brokers are the fiduciary of the Motor Carrier in that they collect from the shipper on behalf of the motor carrier, and keep the motor carrier funds safe from assignment to anyone but the Motor Carrier (see Worldpoint case in previous TT edition), and remit to the Motor carrier the full sum of money collected, less the brokers disclosed commission. The position of the broker in the TIA Contract position, is the Motor Carrier works for the Broker, This again exposes the broker to liability (visit the TIA Article 2/05 about the Schramm case)

(49 CFR 370 thru 395 available at FMCSA.DOT.GOV, cite "Records to be kept by Brokers" a Broker must provide access to the entire transaction, saying both parties are entitled to view" the brokered transaction.

TIA should fully disclose they are a lobbying organization that has brokers interest at heart, not the motor carriers and at the cost of the general public.

TIA membership wants their lack of liability to prevail, but creates several levels of liability for their broker members in recommending the TIA Contract to its members. As a Broker I would never be a TIA member

David G Dwinell Master Broker