



An Electronic Newsletter for the Transportation Industry

Volume XVII, Issue 7

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July 2012

SPIKE IN BROKER SURETY BONDS, AND CHALLENGE TO FMCSA USE OF FLAWED DATA

After many years of contentious debate and numerous false starts, Congress has upped the ante with transportation brokers. And it made its move very quietly, quite noteworthy for an institution which usually creates more noise than substance.

Brokers are now required to obtain a broker surety bond with a \$75,000 threshold as opposed to the \$10,000 threshold which has been in effect since the late 1970s. As always, there were apparent winners and losers but over time the true score will be known.

First, everyone has heard of rogue brokers, many of whom own only a computer, phone lines and some other miscellaneous office equipment, who have disappeared in the middle of the night, only to reappear a short while later with a different name but otherwise it's the same operation. The 10K surety bond was not much of an impediment to accomplishing this maneuver.

The new 75K requirement will make it more difficult for those folks to shed their skin and reappear chamleon style with a new name.

The law was passed without debate, as it was appended to other legislation. Passage without debate of new ground-breaking legislation is not without precedent, as Congress did away with intrastate regulation of the transportation of property during the dog days of summer in 1994 in much the same manner, which was likewise quite a feat as that action

wiped out valuable intrastate authorities which, up to that time, would command a tidy sale price as they were generally transferable.

The new legislaton was supported by groups who are frequently on the opposite sides of the fence, namely the American Trucking Association, the Owner-Operator Independent Drivers Association, and brokers' trade group, the Transportation Intermediaries Association. The TLI

New carrier operation shut down; same employees, new name

In a somewhat related matter, the FMCSA recently shut down a carrier which started up after a related carrier was shut down. The new operation was at the same address as the prior carrier, and had the same employees, telephone number, vehicles and customers as the prior carrier. The new carrier claimed that there were no ties with the old carrier. But of course not.

has taken some heat since it is being accused of favoring its larger members at the expense of its smaller members, which is reminiscent of the situation in which the Oregon Trucking Association found itself in 1994, when Congress deregulated intrastate transportation of property, as OTA had many members who were damaged by the new legislation, while others benefitted.

FMCSA USE of BAD DATA: Time to challenge

OOIDA is also in the news for other reasons, namely its filing of a lawsuit against FMCSA regarding

what OOIDA claims is FMCSA's use of flawed data in its CSA-related database. In its lawsuit, OOIDA states that FMCSA does not update its database when cases against drivers are dismissed or the driver is found not guilty of the charges.

The driver, and the motor carrier, can face negative consequences vis a vis their shippers, brokers or other third parties who rely upon FMCSA records it making their transportation related decisions.

And once again, the ATA finds itself in OOIDA's camp, at least in regard to some of the allegations. These two entities are frequently at odds with each other. ATA is not a party to the lawsuit but for the time being, they are holding hands for their common good.

If you scratch the surface, you'll see that the scenario is somewhat more complicated than it might otherwise appear. Drivers and carriers can challenge the negative data through the FMCSA, through its DataQ process. The problem is that FMCSA takes a powder and defers to the states to adjudicate the challenges. What you end up with are inconsistent practices and results.

It is peculiar, at best, to be found free of fault of a certain alleged offense, only to have the federal government state so what, it doesn't matter to us.

These challenges in court take their time and their toll. Hopefully the government will get proactive and change its practices. Better pull up a comfortable lawn chair as that might be a long wait.

That's it for now. Until next time, keep the cargo rollin'!

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Short Bio

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