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NEW BROKERAGE LAW, IMPACT ON OTHER INTERMEDIARIES, & A FAIR CONGRESS WITH LIFE

Although the 2012 do-nothing Congress has largely lived up to its name, it did manage to pass a transportation bill this summer that substantially changes the landscape. Some will welcome these changes, some will not, and some will find themselves ensnared in the changes.

As previously reported here (July 2012), property brokers must now obtain surety bonds with \$75,000 limits, as opposed to the longstanding \$10,000 cap. Brokers have until October 2013 to get their new surety bond. Easy to understand.

The new law also makes it illegal to accept a load as carrier for transport, but then to turn around and broker it out, unless the carrier has authority to do so, and also informs the customer (who could be a shipper, broker or consignee) of the subsequent brokering. There are substantial penalties for violating this law, such as a \$10,000 penalty per violation. This penalty can be assessed not only against the offending entity, but also against warm bodies such as officers, directors and other principals. Kind of easy to understand.

It can get complicated. Carriers frequently have dual authority, holding both carrier and broker authority. But they use the same phones and email addresses with the same employees at the same address and serving the same customers. A load may be accepted for brokering and then the cargo gets damaged or stolen while in the care of the hired carrier. Normally, a

broker is not liable for cargo loss and damage claims, but the broker-carrier may be deemed to have accepted the load as a carrier. The inquiry can be fact-driven. Not so easy to understand.

Meanwhile, insurance companies aren't known for their generosity and may decline the claim. On the other hand, if the claim is very large, especially where there is an accident involved, and the liability limit fairly low (e.g. \$750,000), the insurance company may just want to cut a check and be done with it, leaving the broker-carrier to fend for itself.

This new legislation will result in more applications for brokerage authority, as carriers without brokerage authority will fill that void. In and of itself, this is an easy fix. But there is more.

It should be noted that property freight forwarders, historically not subject to the surety bond requirement, must now also obtain brokerage authority. It is becoming more evident that this new legislation is far reaching.

The acquisition of new brokerage authority is not an automatic. In order to qualify, the warm body applicant behind the scenes must either have three years experience or comply with a training requirement that is subject to certification. The brokerage licensing must be renewed every five years by all brokerages, both new and existing.

**Other intermediaries:** This new legislation could also impact customs brokers, ocean and air freight forwarders, and nvoccs even though they are normally exempt from these considerations. At times these

entities undertake activity that may be subject to regulation, such as arranging of delivery after the cargo clears customs, for delivery of empty containers to customers for loading, or post in-bond moves. These entities may find themselves exposed to potential liability, and for some it will prudent to obtain the property broker surety bond.

Again, that is easier said than done as the new property brokerage law comes with its baggage. No one wants to be subjected to new laws, let alone on a volitional basis. For some, pain may precede capitulation.

The brokerage world as it is now known will soon disappear.

**Congress: Finding a life, equilibrium and (gasp!) fairness**

Now that the election is over, the country can now move on. To the joy of some and sadness to others, the fact is that the goal of the House majority to limit the president to one term is behind us all. The do-nothing Congress is now free to find a life.

To be sure, the members may first jerk us around and put the market through gyrations before dealing with the fiscal cliff (more like a slope as the impacts will be phased in). As for the deficit, Warren Buffett has a sure fire way to balance the budget: Pass a law that no member of Congress is eligible for re-election if the budget is not balanced.

While they are passing new laws, it would also be a nice touch to pass a law that provides that all members of Congress are subject to the same laws that Congress imposes on the rest of us. Pretty bold stuff though.

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

**The Obligatory Disclaimer**

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

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**Short Bio**

Admitted to the state bars of Oregon, Alaska and Florida. Practicing law for over 30 years and emphasizing transportation law, business law and related litigation.