Changes in Contracting for Truckload Transportation: The Three C’s

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I. CSA: Why CSA/SMS Methodology Should Not Appear in Contracts

- Safe to operate is safe to use.
- It is the agency's job, not the shipper's and broker's.
- Assuming additional safety obligations increases, not diminishes, liability.
- Expert witnesses agree / FMCSA not shippers and brokers are charged with duty.
  - See *NASTC* settlement
  - See FAST Act
- Watch out for vendors trying to create felt need and those seeking competitive advantage.
- Agency is trying to circumvent Congressional will in SFD.
- Focus on the issue – licensed, authorized and insured is preemptive standard.
- Even the agency proposes to make little use of it.

II. Coercion

A. New rule on coercion:

(1) Could make shippers and brokers liable for fines.

(2) More likely, plaintiff's bar will use to establish up-supply chain liability:

(a) when driver says "the shipper made me to it."

(b) contract contains penalties for missed deliveries regardless of circumstances.

B. Recommended response:

(1) Reasonable dispatch must be standard.

(2) Avoid contract penalties for misdelivery.

(3) Require better communication.

(4) Recognize HOS and loss of sleeper berth regulation stifles flexible delivery - Little Debbie got it right.

(5) Extra loading and unloading shifts is cheaper than "pay to wait."

III. Control

- Excess control in contracts opens the door for vicarious liability.
- Brokers are not carriers and should not assume carrier duties.
- Carriers have anti-indemnity protection under state statutes, brokers do not.
- Coordinated delivery, not rigid JIT with penalties is necessary.
- No more “hire me a jet plane” if you are going to be late.
- Pro labor wants to eliminate advantages of independent contractor one truck through movements.
- Shippers and brokers cannot sit on the sidelines.
- Use telemetrics to coordinate P/U and P/D not to micromanage.