

**FOSTER PEPPER** PLLC  
ATTORNEYS AT LAW

# CONTRACTING INTERMODAL TRANSPORTATION

Transportation & Logistics Council

Charleston, SC

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# Participants

- Mostly U.S. terminology
- Non-Vessel Operating Common Carrier (NVOCC)
- Ocean Freight Forwarder (OFF)
- Freight Forwarder (surface - FF)
- Freight Broker (transportation broker, property broker - FB)
- Indirect Air Carrier (IAC)



# Shippers Association

- Private club
- In bed with the competition



# Licensing and Regulation

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- Federal Maritime Commission
- Federal Motor Carrier Safety Administration (USDOT)
- Surface Transportation Board



# Broker, Forwarder and NVOCC Considerations



| Ocean                   | Surface  |
|-------------------------|--|
| NVOCC                   | Freight Forwarder  |
| Ocean Freight Forwarder | Freight Broker<br>(property broker<br>or transportation<br>broker) |

# Interconnected Services

- Intermediaries wear different hats
- Often commonly owned and operated entities
- Consolidation (NVOCC and FF)
- Issuance of documentation
- Forwarding services – all



# Through bill of lading

- Intermodal service
- NVOCC/FF model
  - Books transportation through carriers
  - Often through own volume contracts
- Liability start to finish

| Bill of Lading   |      |  |  |      |         |
|--|------|--|--|------|---------|
|  |      |  | TRAILER/CAR NUMBER: _____<br>BILL DATE: _____  |      |         |
| TO   |      |  | FROM   |      |         |
| Consignee  |      |  | Shipper  |      |         |
| Street   |      |  | Street   |      |         |
| Destination  |      |  | Origin   |      |         |
| City/State/Zip   |      |  | City/State/Zip   |      |         |
| Route:   |      |  | Special Instructions:  |      |         |
| FOR PAYMENT, SEND BILL TO  |      |  | SHIPPER'S INSTRUCTIONS   |      |         |
| Name   |      |  |  |      |         |
| Company  |      |  |  |      |         |
| Street   |      |  |  |      |         |
| City/State/Zip   |      |  |  |      |         |
| NO. SHIPPING UNITS   | TIME | DESCRIPTION OF ARTICLES<br>SPECIAL MARKS & EXCEPTIONS  | WEIGHT   | RATE | CHARGES |
|  |      |  |  |      |         |
|  |      |  |  |      |         |
|  |      |  |  |      |         |
|  |      |  |  |      |         |
|  |      |  |  |      |         |
| REMIT C.O.D.   |      | C.O.D. AMOUNT: \$  | C.O.D. FEE<br>PREPAID <input type="checkbox"/><br>COLLECT <input type="checkbox"/>                 |      |         |
| TO:<br>ADDRESS:  |      | If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.<br><br>_____<br>(Signature of Consignor) | TOTAL CHARGES \$   |      |         |
| 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 \$ _____ per _____  |      |  | Freight Charges are collect unless market prepaid<br>CHECK BOX IF PREPAID <input type="checkbox"/> |      |         |
| RECEIVED subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading, the property described above in apparent good order, except as noted (contents and condition of packages unknown), marked consigned and destined as indicated above which said carrier (the word carrier being understood through this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery as said destination. If on its route, otherwise to deliver to another carrier on the route to said destination, it is mutually agreed as to each carrier of all or any of said property, over all or any portion of said route to destination and as to each party at any time interested in all or any said property, that every service to be performed hereunder shall be subject to all the Bill of Lading terms and conditions in the governing classification on the date of shipment. Shipper hereby certifies that he is familiar with all the Bill of Lading terms and conditions in the governing classification and the said terms and conditions. |      |  |  |      |         |
| Shipper  |      |  | Carrier  |      |         |
| Per  |      |  | Per  |      | Date:   |
| <small>Mark with "X" or "RC" if appropriate to designate Hazardous Material or Substances as defined in the Department of Transportation Regulations governing the transportation of hazardous materials. The use of this column is an optional method for identifying hazardous materials on Bills of Lading 172.201(a)(1) (iii) of Title 49, Code of Federal Regulations. Also when shipping hazardous materials, the shipper's certification statement prescribed in section 172.204(a) of the Federal Regulations, as indicated on the Bill of Lading does not apply, unless a specific exception from the requirement is provided in the Regulation for a particular material.</small>  |      |  |  |      |         |

# Contracting NSA

- NVOCC Service Arrangement (NSA)
- Confidential NVOCC contracts with shippers.
- Previous environment
  - Historic
  - Ocean Shipping Reform Act





# Contracting NSA

- Like service contracts, confidential
- Pricing
- Often commodity or lane specific



# Contracting NRA

- Negotiated Rate Agreement (NRA)
- Contract between a shipper and eligible NVOCC
- Specific transportation service regarding a stated cargo quantity
- From origin to destination, on and after carrier's receipt of cargo
- (or originating carrier in the case of through transportation)



# Contracting considerations

- Volume and pricing
- Intermediaries' contracts with carriers
- Special needs of cargoes (securement; temperature; seasonal delivery)
- Liability
- Forum selection



# Contracting negotiating position

- High competition among intermediaries
- Thin margins
- Many new startups
- Different positions with carriers
- Shippers accustomed to leveraging their volumes
- Insurance issues



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