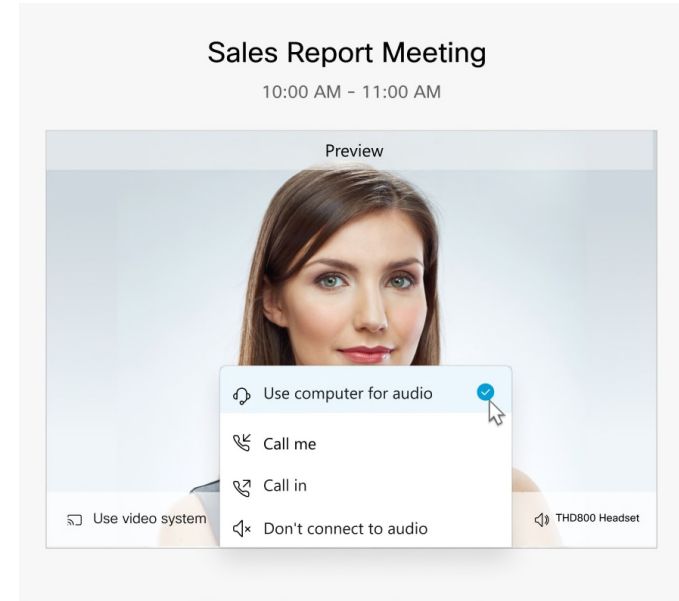
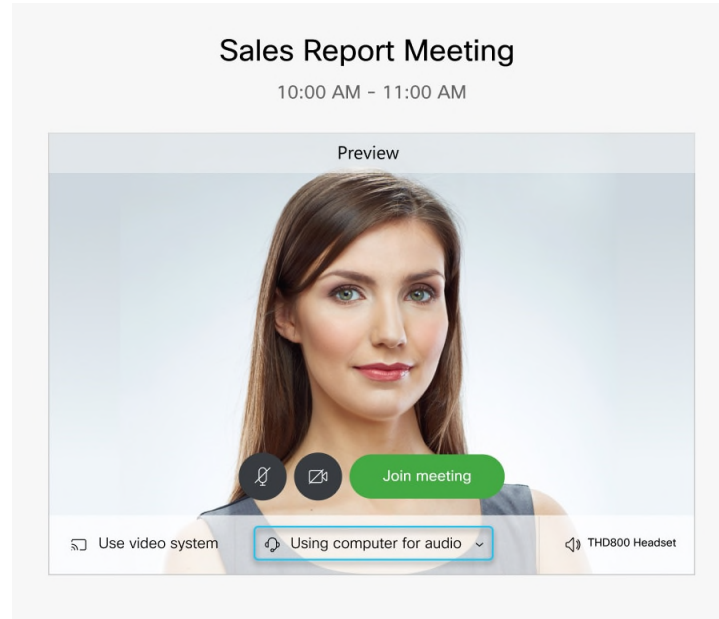


Welcome and thank you for joining us for today's presentation. Our topic is **“Manufacturing Success: Transportation Management Issues.”**

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# Manufacturing Success: Transportation Management Issues



Jeffrey P. MacHarg, Partner

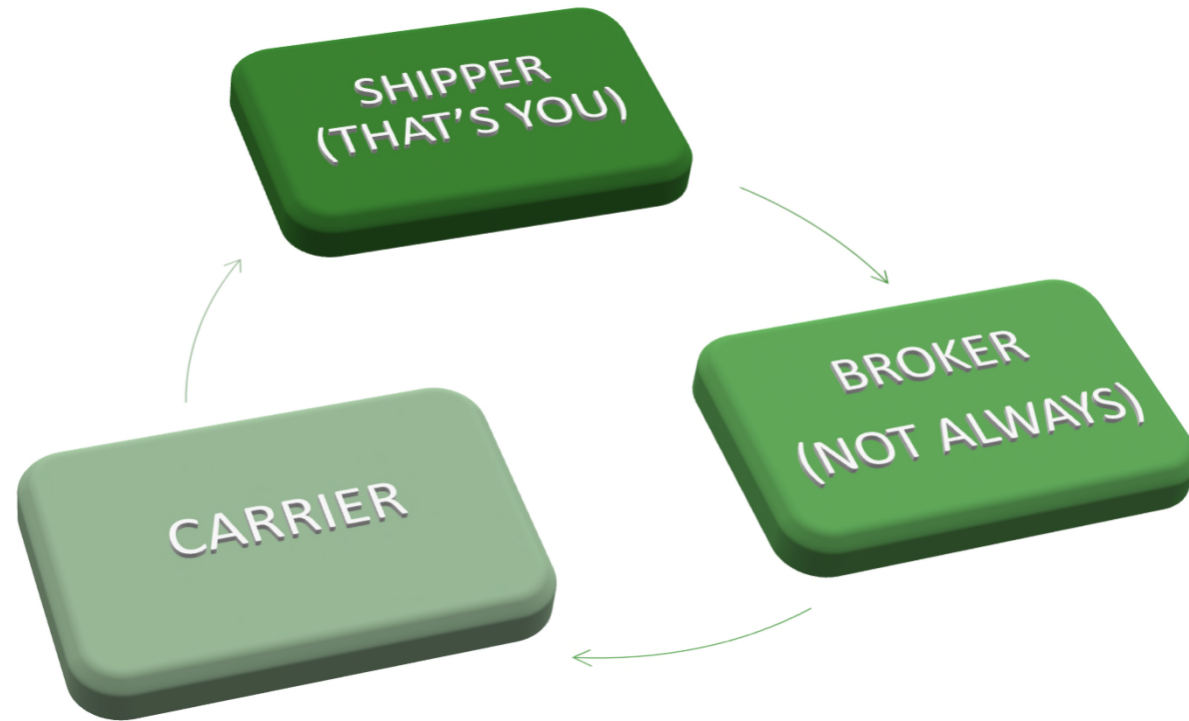
July, 14, 2020



Marc C. Tucker, Partner



# THE PLAYERS



# Typical Situation

- Shipper/manufacturer needs to ship product
- Hires and pays third party/broker
- Motor carrier picks up product for delivery
- Motor carrier contacts shipper/manufacturer and demands payment
- What went wrong?



# Carmack Amendment

- Applies to damaged cargo claims
- Sets deadlines
- Motor carrier is liable, unless . . .
- Streamline claims process



# Bill of Lading

- Parties
- Value and Goods
- Payment terms

C.O.D. charge to be paid by	{ Shipper <input type="checkbox"/>	{ Consignee <input type="checkbox"/>
Subject to section 7 of Conditions of applicable bill of lading, 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.		
(Signature of consignor)		
If charges are not to be prepaid, write or stamp here, "to be prepaid."		



# Who Are You Working With?

- The term “broker” means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or **arranging for, transportation** by motor carrier for compensation. *49 USC 13102*
- Brokers do not operate vehicles, nor do they transport or otherwise handle cargo
- Broker is not exposed to bodily injury, property damage, or cargo loss or damage liability



# Who Are You Working With?

A person may provide interstate brokerage services as a broker only if that person:

- Is registered under, and in compliance with, Section 13904
  - Has sufficient experience to qualify the person to act as a broker for transportation
  - Is fit, willing and able to be a broker for transportation and to comply with this part and applicable regulations of the Secretary
  - Duration – as long as in compliance
  - Experience or Training Requirements – has at least 3 years of relevant experience; or can demonstrate the individual's knowledge of related rules, regulations and industry practices
- Has satisfied the financial security requirements under Section 13906
  - \$75,000 bond



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# General Rule

The Motor Carrier Always Gets Paid



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# The Motor Carrier Always Gets Paid

- Even if the freight charges sought by the motor carrier have already been paid to a freight broker, in many circumstances, the shipper or consignee remains responsible for payment of the freight charges earned by the motor carrier.



**DELIVERY COST**



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# The Motor Carrier Always Gets Paid

- This is the case even though this may result in duplicate payment of these charges. Courts have determined that **a shipper bears the risk when it chooses to pay for freight charges through a broker rather than directly to the carrier.**
- Shippers remain bound to pay the carrier directly for services rendered per the bill of lading.



# How Can This Be?



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# Basis For Shipper Liability

- A bill of lading is the basic transportation contract between the consignor and the carrier, and its terms bind the consignor and the carrier.
- A consignor is the person named in a bill of lading as the person from whom the goods have been received for shipment. *49 U.S.C.A. § 80101*
- As a general rule, the bill of lading's shipper-consignor is primarily liable for all freight charges associated with the shipment of cargo including freight charges.



# Basis For Shipper Liability

- A consignee is defined as the person named in a bill of lading as the person to whom the goods are to be delivered. *49 U.S.C.A. § 80101*
- A carrier may recover outstanding freight charges from a consignor, consignee or owner of the property, or on others by statute, contract or prevailing custom.
- The consignee becomes a party to the transportation contract, and is therefore bound by it, upon accepting the freight; thus it is subject to liability for transportation charges even in the absence of a separate contractual agreement or relevant statutory provision.



# Basis For Shipper Liability

- Motor carriers maintain an independent right to collect from shippers under the bill of lading.



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# What Do You Do?

- Shipper broker contract
- Bill of Lading



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# Shipper-Broker Contract

- PAYMENTS. SHIPPER shall identify all necessary paperwork for payment at the time it tenders a shipment to BROKER. BROKER shall invoice SHIPPER for its services in accordance with the rates, charges and provisions set forth in Appendix C, attached, and any written supplements or revisions that are mutually agreed to between the PARTIES. If rates are negotiated between the PARTIES and not otherwise confirmed in writing, such rates shall be considered “written,” and shall be binding, upon BROKER’s invoice to SHIPPER and SHIPPER’s payment to BROKER. SHIPPER agrees to pay BROKER’s invoice within 30 days of invoice date without deduction or setoff. BROKER shall apply payment to the amount due for the specified invoice, regardless whether there are earlier unpaid invoices. **Payment of the freight charges to BROKER shall relieve SHIPPER, Consignee or other responsible party of any liability to the carrier for non-payment of its freight charges; and BROKER hereby covenants and agrees to indemnify SHIPPER, Consignee or other responsible party against such liability.**



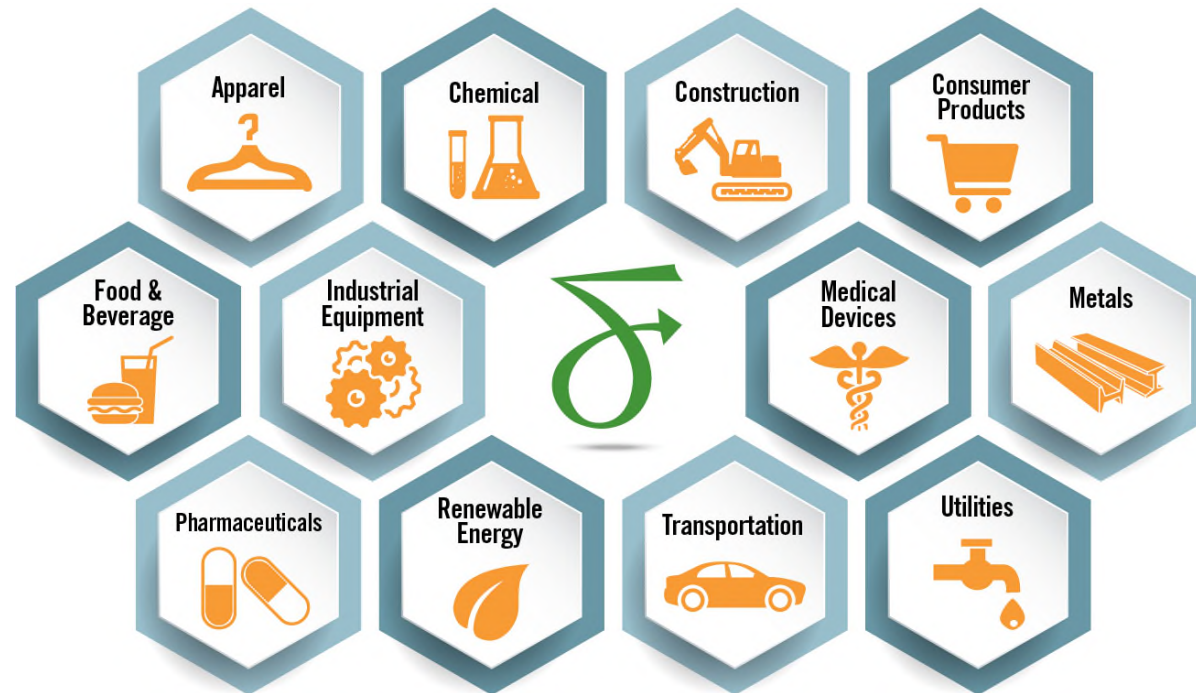
# Shipper-Broker Contract (Cont'd)

- **FREIGHT CARRIAGE.** BROKER warrants that it has entered into, or will enter into, bilateral contracts with each carrier it utilizes in the performance of this Agreement. BROKER further warrants that those contracts comply with all applicable federal and state regulations and shall include substantially the following provisions:
  - Carrier shall authorize BROKER to invoice SHIPPER for services provided by the Carrier. Carrier shall further agree that BROKER is the sole party responsible for payment of its invoices and that, under no circumstance, will Carrier seek payment from the SHIPPER, consignee or BROKER's customer.



# The Fox Rothschild Manufacturing Team

Our Manufacturing Team combines deep experience and industry knowledge spanning a wide range of legal disciplines to provide clients with the strategic advice they need to succeed.



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# Thank You for Joining Us!

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