

MARKET TRENDS

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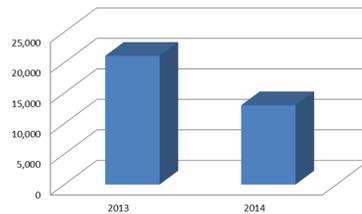
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Market Trends & Analysis

Market Trends - Consolidation of 3PL/Broker Service Providers

Consolidation is a trend in the brokerage space that has been moving modestly forward over the past decade, but has accelerated rapidly over the past couple of years and remains prominent as we enter 2015. More and more shippers are taking steps to consolidate the number of 3PLs and freight brokers they are doing business with. Issues around capacity constraints, financial risk, liability exposure and dramatic increases in transport costs are driving these strategic decisions.

Brokers in the Market



Inclusion of 3rd party provider(s) among a shipper's or consignee's carrier base for most cargo owners stopped being optional long ago. Tighter capacity and associated rate inflation have made it largely essential for shippers to gain access to the large and diverse carrier base that a 3PL or broker provides. Large 3PLs like BNSF Logistics provide a shipper access to literally thousands of carriers,

many of whom would otherwise never be known to the shipper. With assurances that each carrier is thoroughly vetted and that safety, maintenance, insurance and operating authority meet required standards, BNSF Logistics can provide capacity in lanes that an asset based provider has no interest in serving or will only serve for a premium. When a shipper has a load destined to a relatively remote destination, BNSFL will often have a carrier under contract that is not only willing to go there but may actually want to go there, whether to move capacity into a head-haul lane unique to them or perhaps to get a driver back home for the weekend. A large asset based carrier is looking first and foremost at optimizing their assets and getting a return on that extensive investment, as any good owner would do. BNSF Logistics is looking first and foremost at bringing value to our customer and has no preference over origin or destination.

Many shippers and consignees have reservations and concerns that doing business with a third-party or broker can expose them to undue risk and loss of control. Frankly, when dealing with the thousands of brokers that lack a solid financial foundation, the hundreds that lack the resources or the determination to take all the steps necessary to protect the freight owner's interests, and unfortunately the few who lack the integrity or intentions to do the right thing, those concerns are legitimate. Since elimination of brokers altogether isn't practical, consolidation down to a trusted few seems to be the predominant direction most shippers are taking. Herein we share some market examples of the risk and reward of working with third-party logistics services providers.

Broker Revenues



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Fraudulent Broker Gets 10 Years in Jail

William B. Cassidy, Senior Editor - Excerpt from [JOC.com](#)

A California man who pleaded guilty to a scheme that defrauded truckers and freight brokers was sentenced to more than 10 years in federal prison. U.S. District Judge Lawrence K. Karlton sentenced Kulwant Singh Gill to 10 years and 10 months in prison, followed by three years of supervised release. Karlton ordered Gill to pay \$443,388 to the victims of his scheme, in which he accepted shipments as a trucker and then brokered them to actual carriers. The 10-year, 10-month sentence is one of the toughest handed down for this type of fraud, which logistics industry officials say is rampant and hard to prosecute.

Posing as a trucker, the 53-year-old would secure loads through freight matching services and then post those loads on the same or other websites as a broker. Although he received payment from the original brokers, who believed Gill had delivered the freight, he then refused to pay the truckers who actually hauled it.

That's just one of the many headlines plaguing the industry...

Tuscaloosa County Freight Broker Charged with Bribing Guard Officials to Get Transport Contracts

Indictment Charges Three Alleged Con Men & Their Companies with Defrauding Brokers Out of \$2.6 Million in Elaborate Shipping Scam

McAllen freight broker detained without bond on wire fraud and bankruptcy fraud charges

Double Payment By Shippers: The Case In Favor Of the Carrier's Right to Payment - John M. Daley, Esq. - Excerpt from [johnmdaley.com/double-payment-by-shippers](#)

"Double Payment"--all shippers hate it, some brokers hate it, and all carriers believe they are entitled to it when a broker fails to pay the freight charges owed.

Although the prevailing view of the Courts is that the carrier is entitled to recover from the shipper even if they have already paid the freight charges owed to their property broker, shippers continue to argue that requiring them to pay twice is unfair, and that the Courts should deny carriers the right to recover the freight charges they have already paid for various reasons.

In this article, I shall explain why I believe the carrier is entitled to so-called "double payment" from the shipper when a broker fails to pay the freight charges owed to the carrier in all but the most unusual cases.

The primary objection of shippers to "double payment" is that it is "unfair" for them to have to pay freight charges twice. However, the issue presented in double payment situations involves a balancing of "unfairness," since denying recovery of freight charges to the carrier is also "unfair."

Furthermore, shippers are in a better position to control the risk of loss through a brokers' default than are carriers. In fact, shippers can and should investigate the creditworthiness and reputation of property brokers before they retain them to perform brokerage services on their behalf.

Lastly, we think that our result comports with economic reality. A freight forwarder provides a service. He sells his expertise and experience in booking and preparing cargo for shipment. He depends upon the fees paid by both shipper and carrier. He has few assets, and he books amounts of cargo far exceeding his net worth. Carriers must expect payment will come from the shipper, although it may pass through the forwarder's hands. While the carrier may extend credit to the forwarder, there is no economically rational motive for the carrier to release the shipper. The more parties that are liable, the greater

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the assurance for the carrier that he will be paid.

Although the carrier's right to recover unpaid freight charges from shippers and consignees results in a degree of "unfairness" to shippers who have already paid the charges to their property broker, such recovery is presently carriers' only means of obtaining relief when a broker fails to pay the charges owed, and it is by no means the best solution.

Litigation is often an unsatisfactory solution to both sides, primarily because of the expense involved. Although various regulatory solutions have been suggested, there are presently no reforms which are likely to be adopted.

Unless and until a better solution is available, the carrier's only effective method of recouping unpaid amounts owed by an insolvent or missing in action broker is to file a lawsuit for recovery of the amounts owed from the shippers and consignees who received the benefit of the carrier's service.

Case Study

Profile: An active BNSF Logistics' customer of more than 6 years, major player in the building products industry.

Situation: Shipper had already taken steps to consolidate the number of brokers they were working with. Load volumes managed by BNSF Logistics grew in a 12 month period from an average of 40 loads a month to more than 400. Shipper opted not to force conversion, but to encourage and allow a natural evolution to the more restricted list of brokers. With facilities across North America, local relationships with "regional" brokers slowed conversion efforts. Three times in the first six months of 2014, brokers being utilized failed and exited the market with carriers left unpaid. Those carriers threatened legal action to force Shipper to pay for services provided and based on case law and the prospect of an expensive and likely unsuccessful legal defense, the carriers were paid hundreds of thousands of dollars in what were essentially double-payments. After the third failure, conversion to the corporate approved and heavily vetted limited list of approved brokers become mandatory.

Recommendations

Work with a 3PL or Broker with a strong financial base and recognized longevity in the market. BNSF Logistics is a Berkshire Hathaway company as well as a wholly owned subsidiary of Burlington Northern Santa Fe, LLC, a company with over \$22 billion in annual revenue and roots that stretch back to the 1800's.

Work with fewer brokers to consolidate your leverage, ease visibility and reduce the number of channel partners competing for capacity to serve your needs, which can artificially increase demand and thus purchased transportation costs.

Double-check the processes, standards and due diligence your broker(s) use to validate carrier operating authority, insurance coverage and safety rating as well as their corporate compliance standards and adherence to FCPA and other government regulations.

Your BNSF Logistics representative can provide you with any details regarding our processes, standards and compliance efforts as well as discuss a transition plan to transition or consolidate your 3PL/Broker shipping activity.