

# Transure

For The Road Ahead...

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## BROKERS - CONTINGENT LIABILITY

Transure has long recommended that if you are acting as a freight broker you need a separate docket for that entity. We ask you to do that because if you combine your brokerage with your trucking company under the same docket your primary auto

liability carrier will pick up the freight brokerage and charge a premium for the "contingent" exposure.

Until recently the "contingent" exposure was low if you did your due diligence in selecting truckers to haul your brokered loads.

The primary reason a "contingent" claim would happen would be no other collectible insurance to cover the loss. Most brokers have not purchased insurance because the exposure has been relatively low.

Franklin and Prokopik in  
(Continued on page 3)

## NON-TRUCKING LIABILITY

If you use owner operators in your fleet you know that at some time there may be a situation where the driver may need to use his tractor with no trailer attached for personal use. In the old days we called it "bobtail" for obvious reasons. Now it is known as non trucking liability. Personal use may be a trip to the store, a restaurant or a trip to get the truck serviced, but hold on, there is a catch.

An owner operator is considered to be in the course of employment if he is dispatched to get or deliver a load. The dispatch lasts until the owner operator has returned to his place of first dispatch. This is to say that if the owner operator is at home when Benny the dispatcher calls him, he is under dispatch until he is once again safe in his driveway at home. What's that you say? What about the fact he was dispatched to pick up a load at the terminal 20 miles away. He did not have a trailer so

he's on personal use, right? Wrong, he is under dispatch to go get the load, trailer or not.

What happens when he drops the original load at our terminal in California and is now officially done. Actually he is not "done". Somehow he has to get back home, so he is now waiting for another load so he tells the dispatcher that he is going to get dinner and he will be right back. Is the use of the tractor considered personal use if he goes to get a meal? No, technically he is in the business of the trucking company. Remember he has to get back to the original place of dispatch before he is considered to be on personal time.

OK, he picks up his load in California drops it in Illinois, picks up a load there and comes back to the original dispatch terminal and drops his trailer. Most courts will decide that he is in the

business of the trucking company until he arrives home.

The next day the owner operator takes his tractor to get it serviced at an independent garage. One might think that it would fall under personal use. Not necessarily. Even though your dispatcher,



maintenance manager or safety director did not "dispatch" him to get the work done, the courts have ruled that this may fall "in the business" of the trucking company. This is based on the logic that the lease agreement usually requires the owner to maintain the equipment in proper condition.

(Continued on page 2)



For questions or suggestions, please feel free to contact Andy Sharpe at 800-326-8198 ext. 216 or [andy@transure.com](mailto:andy@transure.com).



*“...more than 12 percent of all fatalities in truck crashes involve a rollover.”*

*“Your placard on the door makes you liable for whatever the truck does if the public is involved.”*

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## VARIOUS TRUCKING STATISTICS

### Rollovers Cause Most Truck Driver Fatalities

According to a University of Michigan Transportation Research Institute (UMTRI) report reviewing rollovers of heavy commercial vehicles, there are approximately 15,000 rollovers of commercial trucks each year, and about 9,400 of these rollovers involve tractor-semitrailers. UMTRI also found that while only about 4 percent of all truck crashes involve a rollover, more than 12 percent of all fatalities in truck crashes involve a rollover.

Although most truck-crash fatalities involve occupants of smaller vehicles, such as passenger cars, the majority of truck driver fatalities (50 to 60 percent) involve roll-

overs. In addition to the top-heavy nature of large vehicles, speed and load shifts, a Baldwin & Lyons insurance newsletter also cites the difficulty that drivers can have in assessing rollover risk. Due to the separation of the tractor cab and trailer, a twisting trailer can exert enough force on the cab to cause the cab to flip or roll before the driver even realizes the danger.

Seatbelt usage is most likely another factor, as the Federal Motor Carrier Safety Administration recently reported that only half of all truck drivers use their safety belts.

### Truck Driver Life Expectancy

An item in a recent Roemer Report stated that while

the average American male lives to be 76-years old, the age expectancy drops drastically for truck drivers. The typical male truck driver can expect to live to age 61, according to Dr. Martin Moore-Ede, a Toronto researcher.

The reason, perhaps predictably, boils down to lifestyle. United States truck drivers typically eat poorly, lack exercise, and tend to smoke. Making unhealthy eating choices alone can cause chronic diseases like high blood pressure, high cholesterol, heart disease, arthritis, and certain types of cancer. Smoking can lead to stroke, heart attack, bronchitis, or emphysema.

With constant vigilance and a committed effort, truck drivers can live healthier lives.

[www.innovativedrivers.com](http://www.innovativedrivers.com)

## NON-TRUCKING LIABILITY (CONTINUED)

Now consider the premium being charged for non trucking liability versus the premium you pay per unit. Non trucking is about \$300 to \$450 per year for a \$1,000,000 limit. That's less than you can insure your personal auto for and most of you charge it back to the owner operator. It is cheap because the underwriter expects no losses. Personal time in a tractor should be kept to an absolute minimum because the rig is designed to earn revenue and not to go to dinner or to visit a girlfriend.

Consider the consequences if the owner operator had no non trucking insurance. Your placard on the door makes you liable for whatever the truck does if the public is involved. We know you hire responsibly so

this would never happen, but what if the owner operator who just got back to his place of original dispatch and decides the tractor is easier to take to the package store. On the way back after having one beer he kills a pedestrian he did not see. This is a non trucking loss. If there was no non trucking insurance policy in place you would find yourself with a million dollar claim under your auto liability policy. That would show up on your loss runs for 3-5 years and cost you much more than the cost of the somewhat restrictive non trucking policy you made him buy.

There used to be a coverage available called “unladen coverage”. This policy was similar to the non trucking policy of today except it did give coverage for

anytime the driver had no load (i.e. driving the tractor only or pulling an empty trailer). It provided coverage if the driver went to get a meal or was off route for any reason as long as he was bobtailing or was pulling and empty trailer. The premiums were considerably more than non trucking but so was the exposure. The losses were much higher than the premiums and this coverage eventually went away.

In review, non trucking does not cover the owner operator for trips from his home to your terminal or customer once your dispatcher has called and offered a load. Once the owner operator is on his trip the courts will usually rule that he is on business use until he has returned to the original place of dispatch.

By Kent Selby, VP Marketing

## BROKERS - CONTINGENT LIABILITY (CONTINUED)



their winter 2005 Liability Dispatch discuss a claim that is causing mega broker C H Robinson a whopper of a legal fee and if the case is lost, a new exposure to be concerned of as a broker. Just before the case was to go to trial, there was an undisclosed settlement to avoid setting an unwanted legal precedent.

Plaintiff attorney has charged Robinson with negligent hiring in contracting with a motor carrier to haul their freight. In a Maryland courtroom the theory of broker liability survived summary judgment. The judge denied Robinson's Motion for Summary Judgment as to the plaintiffs' claim they had negligently hired the motor carrier, Groff Brothers, LLC.

Plaintiffs initially sued Groff Brothers LLC and its driver. Upon learning the load being transported had been brokered by Robinson Plaintiffs amended their complaint to bring in Robinson. Plaintiffs Amended Complaint added claims of respondeat superior, negligent hiring, negligent entrustment and alleged violations of the FMCSA against Robinson.

Robinson responded to say they had followed the same procedure in checking out Groff Brothers as it had in the preceding 20,000 plus motor carriers with whom they also contracted. Robinson had received the tax identification number, determined Groff had at least \$750,000 auto liability in place, verified with the FMCSA that Groff Brothers was authorized by them to operate as a motor carrier. Robinson had also verified with the DOT website that Groff Brothers did not have a "conditional" or "unsatisfactory" rating.

Groff Brothers informed Robinson it had not yet received a safety rating because it was a new company. Prior to the accident Groff had transported 191 loads for Robinson without incident.

The court agreed with Robinson on issues of respondeat superior, negligent entrustment and as to the alleged violations of federal regulations. However, the court denied Robinson's motion for Summary Judgment as to the negligent hiring count.

Plaintiff alleged that Robinson should not have hired Groff Brothers because they knew that Groff Brothers were "unsafe" and that they were "impaired financially" and that "the likelihood of a major accident with a member of the public was foreseeable". Rob-

inson argued that Plaintiff could not prove the existence of an employer / employee relationship between them and Groff. Robinson also argued that there was no evidence that the alleged negligent hiring proximately caused the Plaintiffs' injuries.

Robinson argued that it was not prudent time wise to take more time to qualify all of the carriers they dealt with in more depth and said public documents available to them were flawed. They also brought up the disclaimer on Safer as to its reliability.

Plaintiffs brought up the fact that Robinson did more than act as a company that matched shippers with carriers and that it dominated the entire transaction. They ordered the Groff driver to call Robinson for dispatch, providing the driver with specific pick up and delivery dates and times, requiring the driver to inspect the load, call when loading, use cargo locks and gave the driver emergency numbers to call at Robinson.

The court noted that Groff did not have a satisfactory rating at the time the accident took place. Robinson's own rules called for a carrier to have a satisfactory safety rating to qualify. The owners of Groff Brothers also owned a company, R F Groff that had been cited for several hours of service violations. Plaintiff argued that the violations by this company spoke to the competency of Groff Brothers. No evidence was in the record to substantiate this allegation.

Robinson was made out to be more than a broker because of their self proclaimed status as a third party logistics company providing one point of contact service to its shipper. The court ruled that Robinson increased the risk of harm to innocent parties by its own actions. In its contract a paragraph read that "in the rare event that the damage caused by an accident goes beyond the carriers, insurance limits, Robinson maintains liability insurance that pays the rest". This statement showed they thought they may have some exposure.

This case is one that appears to have been created by Robinson's own need to satisfy the customer. The law in Maryland will need to catch up to the obligation Robinson assumed presumably in response to the demands of the market. Although Robinson had thought it had all the bases covered the court found that in conducting its everyday affairs, Robinson apparently recognized the ambivalence of its position and purchased excess liability insurance, both to protect itself and to gain new customers.

*"Just before the case was to go to trial, there was an undisclosed settlement to avoid setting an unwanted legal precedent."*

By Kent Selby, VP Marketing

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**IMPORTANT:  
Angela Johnson - Claims**

Angela, only 32 years old, had a major stroke on June 4th and will be out on medical leave.

We all have Angela in our thoughts and wish her all the best in her recovery and ask that everyone do the same.

Angela had fallen playing tennis and hit her head around a week prior. During her doctor visit she learned that her blood pressure had reached dangerous levels, but since she is very young, did not think much of it.

As we now have all learned, it can happen at any age under the right conditions.

Renee Boggs will be helping out while Angela recovers.



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# NEW: RICKISMS...JOKES BY RICK JOYCE

Transure's Controller



*Here are a few gospels regarding golf:*

Golf can best be defined as an endless series of tragedies obscured by the occasional miracle, followed by a good bottle of beer.

Golf! You hit down to make the ball go up. You swing left and the ball goes right. The lowest score wins. And on top of that, the winner buys the drinks.

"I wish I could play my normal game...just once."

"Golf is harder than baseball. In golf, you have to play your foul balls."

If you find you do not mind playing golf in the rain, the snow, even during a hurricane, here's a valuable tip: your life is in trouble.

And the finally:

An interesting thing about golf is that no matter how badly you play; it is always possible to get worse.

**I'm just serious!**

## ***Transure Services, Inc.*** **Your Truck Insurance Specialists**

For over four decades, Transure has been fulfilling the insurance needs of the transportation trade. By specializing exclusively in the associated risks of that business, Transure is clearly the best qualified broker to recognize and respond to the exceptional demands created by a unique industry.

Specialization is a key to Transure's success. Our clients are provided with a host of ancillary services not available through other brokers that are not focused in the transportation insurance field. This single industry concentration enables Transure to remain consistently informed about cycles and changes in both the insurance and transportation industries. A single focus helps us match clients with the most cost effective program offered, custom tailored by a Transure team, you (the client), and the insurance carrier.

Transure Services is composed of a staff of proven professionals with over 200 years of collective experience in transportation insurance. Both sales and administrative personnel have had experience and success in direct and retail sales of this kind of insurance placement. This industry knowledge and dedication, coupled with our outstanding insurance company relationships, adds value to Transure's strength in marketing.

We pride ourselves on individual attention to service which contributes to our success and to client satisfaction. Statistical loss analysis is designed specially for various client needs. Our staff identifies the risks that adversely impact your financial statement. Once identified, we make recommendations to eliminate, reduce or transfer the risks via insurance or alternative risk financing methods.

One of our most important services is providing prompt claims services to clients when a claim occurs. Our claims department handles each loss with efficiency and speed whether we do the adjustment or it is sent to a company for handling. We follow through with the companies to ensure the satisfaction of our most valued asset, our client.