

# FREIGHT FORUM



Introducing...

## *Tucker Company Worldwide, Inc.*

Exciting news is spreading internationally! From years of planning and preparation, we have attained our goal to expand our global reach and service expertise into international freight. To celebrate this exciting new time and worldwide service capability, we changed our name. After 48 wonderful years as Tucker Company, we are pleased to introduce to you, the new us: **Tucker Company Worldwide, Inc.**

This change reflects the impact of our newest federal authorities, allowing us to operate as an ocean freight forwarder and a Non-Vessel-

Operating Common Carrier ("NVOCC"). The Federal Maritime Commission granted Tucker its ocean transportation intermediary license, #021989NF. Our name change was "name change alone;" no stock changed hands, and our federal tax ID remains unchanged.

### **So Why International?**

Many of our customers have indicated that they love the proactive and highly competent approach to service Tucker applies to their North American freight, and wished we would do the same in the international arena.

We agree!

For far too long, ocean freight service and good, proactive communication and service at the piers has lagged far behind North American and domestic service levels. Increasingly, steamship lines are refusing to handle inland transportation, choosing to handle the ocean piece only.

Today, ocean freight providers contribute to increased demurrage costs for shippers. We believe there is no excuse for this kind of service, and our international logistics group will improve ocean shipping service and communications.

Vol. 10A, Issue 1  
First Quarter, 2009

## In this issue

Lessons from Professional Freight Buyers	2
Congratulations CTBs	2
Shippers Beware of Poorly Designed Contracts	3
Jury Award Against C.H. Robinson	4

## Tucker Company Worldwide Experiences Continued Growth in Challenging Times

Tucker Company Worldwide experienced strong growth in 2008, posting a 25% increase in sales despite being in the second year of the transportation recession. Even in these worst of times, Tucker is debt-free and remains financially sound.

Last year's strong and steady growth came from winning new market share with existing customers and from vendors from within our customer's supply chains. Our consistently strong communication, strong carrier relationships and the resulting high reliability of our service are winning friends and business.

A common thread to our growth has been our ability to find customers who care as deeply about the safety and security of their freight on the highways as we do, and in our ability to demonstrate our commitments through procedure, practice and proven competence. Tucker is a proven industry leader in the selection and use of safer motor carriers.

We believe that people inherently want to be responsible, and make responsible choices of motor carriers for everyone's safety. Sometimes people simply need to know what represents responsibility.

(continued on page 2)



# Lessons from Professional Freight Buyers

**The economy has lowered some rates to ridiculously low levels. Take it from a firm that makes its living by buying and selling freight effectively. Now, more than ever, you must be on your guard! Many firms who treat freight buying transactionally, like the stock market, and choose price first are learning tough life lessons.**

Economic downturns cause dangerous, fraudulent, criminal and otherwise unsavory events to increase. Good firms living on the “edge” of financial disaster may wrongly sacrifice routine maintenance and safety in favor of business survival. With these situations occurring throughout the industry, firms are taking chances with your freight and peoples’ lives. Trust us — you never want to be in the position of testifying in an injury or death trial that you went with the lowest price, and didn’t fully evaluate the company you selected.

In addition to the economy twisting some vital priorities, there seems to be an increase in theft, unauthorized and unlawful double and triple brokering —

even quadruple brokering by carriers, brokers and some fraudulent firms.

We regularly receive reports where a carrier or broker re-brokered freight to another company, kept the money and did not pay the next carrier. We also hear many stories about carriers, sometimes in receipt of re-brokered loads, holding loads for ransom and asking for more money than what was agreed.

Buyers must exercise more prudence, caution and strategy than ever. Do not relax your risk management and carrier safety evaluation and risk analysis a bit.

We do not believe it is any firm’s responsibility to pay higher than competitive market prices for goods or services, but pricing alone is not the full story in transportation.

Consider that capacity will tighten again. Most predict it will be far worse than in 2003-5. The number-one lesson learned then was successfully weathering the capacity storm requires you to “maintain and develop long term business relationships with service providers.”

In addition to obtaining evidence of current operating authority and proper insurance, consider evaluating new providers on the following:

- Their contracts and procedures must prohibit re-brokering of your freight
- They should be reputable, healthy and professional
- They should have a record of good credit score (your collections department can run a quick check for you)
- They should carry more than the minimum amount of insurance and
- Most importantly, that they can demonstrate through well documented procedures a commitment to safety and security.

At Tucker, we feel far more comfortable working with incumbent, vetted and proven carrier vendors. So, when market prices fall, our first step is to communicate with incumbent carriers and provide them with the opportunity to review, react and respond. In most cases, if the market is moving, these incumbent, proven and more reliable carriers can move with it. Our key has always been communicating clearly with our carrier vendors and taking these business relationships seriously.

## Continued Growth

(continued from page 1)

Any entity (shipper, broker or another carrier) that hires a motor carrier who is involved in an accident, may be found either negligent in the selection of that carrier, or vicariously liable (exercising too much control over the carrier), or quite possibly found both. In fact, the freight brokerage industry’s “low cost leader” continues to make headlines for courtroom losses involving vicarious liability, negligent hiring/entrustment.

On a separate note, in a recent Pennsylvania truck accident case, the driver, his dispatcher and an inspection facility are now facing vehicular homicide charges, for bad (and fraudulent) decision making. Please contact a Tucker representative for more information.

## Tucker’s Newly Certified Transportation Brokers (CTBs)



Please join us in congratulating Mike Arlotta, Customer Service Coordinator in our Government Group and Hugh McLaughlin, VP of Sales. Mike and Hugh successfully completed each of three parts to the

certification exam, provided by the Transportation Intermediaries Association. The CTB program was designed to increase the professionalism and integrity of the brokerage industry through a rigorous certification program.

Mike and Hugh join about a dozen other CTBs on Tucker’s staff.



# Shippers Beware:

## Don't Make Brokers Primarily Liable in Your Contracts

**Understanding transportation contracts can be a daunting challenge for even the most skilled logistics professionals.**

An insidious new trend in shipper-broker contracts has the shipper placing all risk and liability for damages onto the broker — a “one throat to choke” approach that is having the opposite effect as the shipper intends. Such an approach is a misunderstanding that actually places far more risk on the shipper, far less risk on the carrier, and may exclude any company's insurance from covering loss!

**These contracts are dangerous to the shipper, the broker and the motoring public.**

One throat to choke contracts ignore the fact that if contracted with properly, the use of a properly licensed and insured broker, with good due diligence procedures in its carrier selection, can provide the shipper with better insurance and far lower risk and exposure to loss, than if the shipper dealt with a carrier directly.

Why? A good broker performs various types of qualification procedures on motor carriers before using them. This due diligence includes: a) basic safety review of

the carrier using certain publicly available DOT data; b) monitoring the existence and amount of insurance motor carrier vendors carry regularly; c) enters into a written contract with the carrier to outline service required and liabilities assumed. Additionally, the broker itself, also obtains its own policies for Cargo insurance, Auto Liability insurance and/or Third Party Liability insurance which are designed to act in excess to the motor carrier's policies. Designed properly, the carrier's policies act primarily and the broker's policies act in excess (if necessary) of the carrier's.

In the case of the one throat to choke contract, it is quite possible that nobody's insurance acts. The broker's insurance company will likely void the broker's policy because the policy covers a broker's customary legal and regulatory liabilities — which are contingent, not primary, in nature. The policies do not cover “contractual obligations” outside of the risks covered in a policy, such as in one throat to choke. Even worse, the one throat to choke contract may cause the carrier's insurer to deny policy coverage, because

the shipper and broker agreed by contract to look solely to the broker.

It is infinitely easier to settle valid claims when insurance is present, than to liquidate a company — which may take years or never happen at all. Effective contracts should place liability where it belongs, and properly and fairly leverage laws and insurance.

Do this the right way.

The largest US shipper and broker trade associations have produced an excellent “model shipper-broker contract” that maximizes the benefits of this relationship. The National Industrial Transportation League ([www.nitl.org](http://www.nitl.org)) and the Transportation Intermediaries Association ([www.tianet.org](http://www.tianet.org)) both offer this model contract on their websites.

For more information on risk management, due diligence techniques and emerging practices and risks in transportation, contact a Tucker representative.

**Come join us at Tucker Company  
Worldwide's 10th Annual Golf  
Outing benefitting the  
Alzheimer's Association  
June 22, 2009**

Please contact Paige Webster at 856 317-9600 x118 or [paige.webster@tuckerco.com](mailto:paige.webster@tuckerco.com) for more information.



### **Jeff Tucker Elected Secretary of Transportation Intermediaries Association (“TIA”)**

The TIA Board of Directors elected our CEO, Jeff Tucker to its Executive Committee and the position of Secretary. Jeff was also approved to serve a second term as chairman of the TIA's Government Affairs Committee. Since its inception over a year ago, the Government Affairs Committee has been exceedingly and increasingly active in Washington on both legislative and regulatory fronts.



# \$23.7 Million Jury Award Against C.H. Robinson

**If you hire truckers — beware. Your business may be in jeopardy.**

That is thanks to the injustice that a jury in Will County, Illinois, created recently, when it awarded \$23.7 million in damages against transportation broker C.H. Robinson Worldwide, after the company hired a motor carrier involved in a dual-fatality truck accident.

The case, *Sperl v. Henry et al*, began when on April 1, 2004, a multiple vehicle accident occurred. DeAnn Henry, the driver of a tractor-trailer, lost control of the truck and rear-ended multiple vehicles. The collisions killed two people and caused serious injuries to another.

The driver and the carrier both admitted liability, but had limited coverage. The current legal minimum is \$1 million for common carriers. The plaintiff and jury apparently turned to the next deep pocket, C.H. Robinson. C.H. Robinson justly contested liability,

since they were only a broker, did not own or lease the truck, nor manage the driver, and held itself out as a broker. Apparently, the jury believed C.H. Robinson might have exercised too much control over the carrier. Because the case is not yet published, this story is based on news articles and conversations with people close to the case.

There will always be “deep pocket” seeking plaintiff attorneys. However, there are procedures and measures shippers and brokers can and should implement, for the protection of your company. The old adage “an ounce of protection is worth a pound of cure” certainly is true in the decisions that impact freight transportation today.

For more information on due diligence, risk management and carrier qualification advice, please contact a Tucker representative.

To subscribe to our newsletter, please email:  
newsletter@tuckerco.com.  
Use Subject: “Subscribe to Newsletter”

