

As the World Turns

The Increased Liability Faced by 3PLs

By Lewis Harper and John Stalzer

Third Party Logistics companies (3PLs) are brokers who match shippers with carriers to move commercial goods. For many years they have enjoyed freedom from personal injury liability related to truck accidents. Today, 3PLs are no longer insulated from liability. They have become a target susceptible to large verdicts for compensatory and punitive damages in catastrophic personal injury litigation.

3PLs are an important link in the supply chain. Many 3PLs do not own transportation equipment, but instead match shippers together with carriers to move commercial goods. In addition to transportation services, 3PLs provide warehousing, cross-docking, inventory management, packaging and freight forwarding for customers that outsource part or all of their supply chain management functions.

The Motor Carrier Act of 1980 paved the way for the creation and growth of 3PLs by limiting the Interstate Commerce Commission's authority over trucking. As a result, companies that previously provided warehousing services began to expand into freight movement.

For many years, 3PLs were deemed "independent contractors" free from liability for personal injuries caused by tractor-trailer accidents involving the shipment of the freight they brokered. Courts now allow claims against 3PLs for negligent hiring and vicarious liability. The Federal Motor Carrier Safety

Administration (FMCSA) rates a carriers' safety performance and provides readily searchable information online. As a result, liability for accidents caused by carriers with poor safety ratings has extended beyond the carriers to 3PLs.

In 2002, a plaintiff filed a lawsuit against a 3PL who arranged for a carrier to transport soy milk from Missouri to New Jersey. After being in a catastrophic accident with the carrier, the plaintiff alleged that the 3PL was negligent in hiring the carrier. Despite acknowledging that evidence of the 3PL's negligence was "somewhat thin," the court held that the 3PL may be liable for negligent hiring because a 3PL has a common law duty to use reasonable care in the selection of carriers. According to the court, a 3PL has a duty to check the FMCSA-available safety statistics and evaluations of the carriers with whom it contracts and maintain internal records of the entities with whom it contracts to assure that the entities are not manipulating their business practices in order to avoid unsatisfactory safety ratings.

In 2011, an Illinois state court expanded the types of claims that may be asserted against a 3PL to include vicarious liability. In that case involving a claim for wrongful death, the 3PL and the carrier executed an independent contractor agreement before the 3PL arranged for the carrier to transport perishable goods for the 3PL's customer. The court found that an agency relationship existed between the 3PL and the carrier. The 3PL could be found vicariously

liable because it had sufficient control over the work the carrier was performing. Specifically, the 3PL gave special instructions to the carrier about the size and type of the trailer to be used, the timing of the shipment and reporting progress of the delivery. Further, the agreement permitted the 3PL to fine the carrier for failing to meet the 3PL's requirements. The plaintiff's claim for vicarious liability survived.

In 2012, 3PLs were hit with large verdicts for compensatory and punitive damages. An Iowa jury awarded \$27 million against a logistics company and a trucking company for a woman who suffered paralysis when she was struck by a semitrailer hauling steel coils. An Oregon jury awarded \$5.2 million to the family of a man killed by a driver high on crystal meth.

These recent verdicts illustrate the trend of liability attaching to companies that broker loads. 3PLs and transportation companies who sometimes act as brokers may be held responsible for another company's actions if they do not perform adequate due diligence. The likelihood of liability increases with the amount of control brokers have over the manner in which shipments are made. It is important for these companies to review the increasingly available safety information the FMCSA publishes and to maintain their own records of a carrier's performance. [LM](#)

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