NAPA RIVER
INSURANCE SERVICES®

RISK IN SIGHT

TRANSPORTATION ISSUE

WINTER 2019

Napa River: How We Help Solve the Transportation Claims Puzzle

With the start of the new year upon us, we would like to take a moment to reflect back on the past year. 2018 was, indeed, an exciting year for Napa River. As our client base continued to grow, so did our staff. We added new members to the safety & risk management team, and our claims team is now triple the size it was in 2017! Our growth, while substantial, has been very deliberate and intentional for one specific purpose—to better serve you, our clients. As we look back on 2018, we are ever grateful for your support.

As we advance into 2019, we move forward knowing that the support you have provided has laid the foundation for the path to our success. Thus, we remain steadfast in our resolve to continually provide you with exceptional client service, while persistently and consistently offering you the personalized products that fit your specific needs and goals. Should your needs change or if you have any questions about our products, feel free to contact anyone on the team. You can also get more information about our services at napariverinsurance.com.

We are excited about taking this boundless journey with you not only into this new year, but also for many years to come. Thank you!

Peggy Killeen
Director
Napa River Insurance Services
212.978.2847
pkilleen@napariverinsurance.com

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Weather the Perfect Storm in the New Year

Jeffrey K. Davis
Vice President of Safety
Napa River Insurance Services
317.810.2034
jdavis@napariverinsurance.com

As we proceed into the new year, it is natural to turn our thoughts to how we can be better. What can we do to improve safety on our nation's highways? How do we provide an environment in the trucking industry that encourages our drivers' success and well-being? How do we encourage quality young people to consider commercial driving as a career of choice rather than a last resort? Will YOU play a role in actively seeking change, or simply spend another year complaining about the various woes of this business?

Over the last year, we saw an increase in the rate of truck-related crashes and claims costs. In many of these cases, speed and driver distraction were a common cause. While it will be at least another year to get official crash data, we do not have time to wait before taking action.

WHY THE JUMP IN CRASH FREQUENCY AND SEVERITY?

In talking to drivers and trucking company personnel, it seems that electronic logging devices (ELDs) have stressed capacity and overall trucking operations. Electronic logs have, indeed, made time more regulated and finite. Drivers and dispatchers can sometimes feel added pressure, even though much of it seems self-imposed, to complete trips faster. Perhaps this is why CSA roadside data has shown an increase in the highway speeds of trucks over the last year. At the same time, there seems to be less traffic enforcement resulting in citations, rather than simple roadside write-ups.

While many companies govern top-end truck speeds, a closer look at where speeding write-ups or citations occur indicate the problem isn't just on highways, but also on secondary roads with speed limits less than governed unit speeds. As a result, we have seen an increase in serious crashes on secondary roads as well as intersections, in particular.

Additionally, despite more widespread use of safety technology, the underlying hours of service (HOS) regulations remain sorely outdated. The Federal Motor Carrier Safety Administration (FMCSA) has stated that updating the HOS regulations will be a priority in the coming year.

HOW YOU CAN WEATHER THE STORM

There is currently no reason to believe this trend will reverse anytime soon without serious industry-wide effort. The commercial trucking industry has been, for some time now, in that perfect storm of driver shortage, stretched capacity and a worsening legal environment. As the number and severity of claims have risen, so has the pressure on commercial auto insurance companies to raise rates. It is feeling more like a perfect storm indeed.

Enhanced training of drivers and operations personnel must continue to be a top priority in 2019. Although many companies adequately trained drivers on the mechanics and use of ELDs prior to deployment, it is imperative that drivers and operations personnel continue to hone their skills and thoroughly understand the advantages of having the accurate data these new ELD systems provide. Some of these advantages include increased fleet utilization and the ability of operations personnel to better plan assignments so drivers are not pressured to complete loads while needlessly pushing speeds.

It is important that trucking companies take full advantage of available technology, such as truck-based satellite communication systems, to more easily monitor a driver's point-to-point speeds. While highway speeds can be kept at bay with reasonably governed power units,

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secondary road speeds must be monitored using trip data. Even better is the use of an add-in tool, such as SpeedGuage or another comparable product. However, the most effective tool to monitor individual driver behaviors, including speed, is the use of dash-mounted camera systems. Over the years, we consistently have seen this technology investment pay for itself. Events captured by these systems provide the greatest insight into a driver's habits. Some of the latest products even provide ongoing monitoring of following distance, speed and other factors without a particular triggering event.

When considering camera systems, we often get asked about inward-facing cameras. Oftentimes, companies relent to driver pressure and activate only the outward facing camera; however, inward-facing cameras are recommended. Drivers must sometimes be sold on the value of the inward-facing camera; therefore, it must be stressed that one of the main reasons you have invested in this technology is to improve their ability to make it home safely and protect their livelihood, rather than to "spy" on them.

The key to success in camera/event recorder implementation is timely and consistent counseling of drivers. This counseling must be positive and designed to have the driver better understand the needless risks he or she is taking on the road, and must also include actionable changes a driver can make to eliminate future issues. In the end, there must be a commitment to eliminate those drivers that do not adequately respond to repeated counseling efforts.

When considering cameras or any type of safety technology, you may ask yourself how it might influence liability in the event of an accident. All in all we have found that, in the event of an accident, cameras have an overwhelmingly positive impact rather than negative implications. Monitoring drivers through the use of safety technology will give you the opportunity to preemptively correct less than safe behaviors and help avoid accidents.

OUR TEAM PROVIDES SHELTER IN THE STORM

Napa River's Loss and Risk Control Services team stands ready to assist in your ongoing safety and compliance efforts. We can provide customized training for frontline personnel through our Driver1st™ (formerly DriverCare) program. This training provides an interactive look at the issues your drivers face every day, and provides those who deal with drivers the communication and problem-solving skills to better partner with your drivers.

We can also provide guidance in setting up a wide variety of effective speed and driver behavior monitoring and improvement programs. Please call your assigned Loss Control Specialist or contact Jeff Davis at 317-810-2034 or jdavis@napariverinsurance.com

Driver1st is a registered trademark of Napa River Insurance Services, Inc., Napa, California.

Interchanging, Interlining & Brokering: Avoiding Common Pitfalls

Patrick Lennon
Sr. Loss Control Representative
Napa River Insurance Services
317.810.0062
plennon@napariverinsurance.com

Motor carriers often perform a variety of activities beyond straightforward freight hauling to serve customers. Some of these are relatively low-risk, while others can involve significant exposures. This article will discuss equipment interchanging, interlining and brokering, and explain some easy ways to avoid the common pitfalls related to these activities.

When carriers make arrangements with other carriers that involve activities such as interchanging equipment or interlining, it is important to clarify who is responsible for loss, including damage to the

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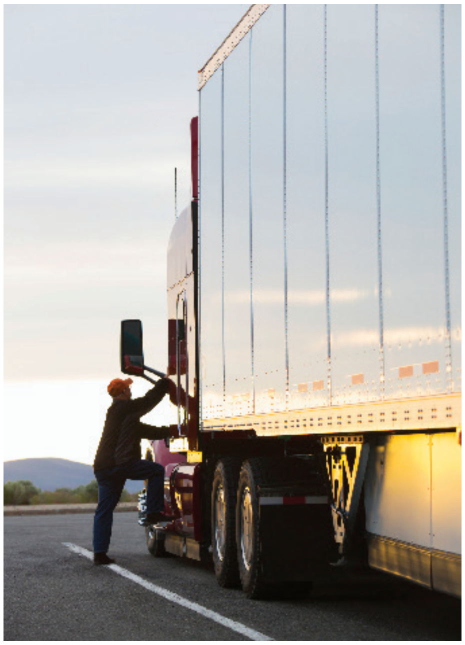
equipment or cargo. Similarly, with the growth of freight brokering, there are some pitfalls to avoid in order to minimize exposures to loss.

It is fairly common for carriers to interchange equipment, especially when one carrier pulls a trailer owned by a shipper or another carrier. This is typically planned ahead of time, with formal interchange agreements exchanged. However, it's not unusual for a load intended for one carrier to be put on a trailer owned by another when multiple carriers serve a large shipper. In such cases, the carrier for which the load was intended will often take the load using the other carrier's trailer, and arrange to return the trailer.

Regardless of how equipment ends up being interchanged, doing so creates additional exposures that need to be managed. If damage occurs to a non-owned trailer, it is almost always the responsibility of the one in possession of it at the time of the damage, even if no interchange agreement exists. In fact, it's common for carriers that interchange equipment to do so without formal agreements. We often hear rationalizations such as, "We've been pulling their trailers for years on a handshake agreement. They know if we damage it, we'll fix it." Thus, while using a written agreement is recommended, that doesn't always happen.

Even more concerning are the exposures created when another carrier uses your equipment. If that carrier were to have a serious loss—one that may exceed their coverage limits, it's possible your coverage could be exposed even if you did nothing wrong. For this reason, it's advisable to have a written interchange agreement that clarifies duties and liabilities, and includes indemnity as well as a "hold harmless clause" to protect the trailer owner.

When a driver has an accident, proper safety protocol mandates that the driver immediately report the incident…it is important that the company clearly communicates to the driver the next steps and proper procedures that should be followed.



Interlining, though not as common, is still performed. This may occur when a shipper asks a carrier to take a load beyond the geographic area where that carrier normally operates. The carrier may not want to tell the shipper they can't take the load, since that might invite other carriers to begin serving their customer. Instead, the carrier will accept the load, take it part of the way, and then arrange for another carrier to complete the delivery. They may interchange trailers or move the cargo from one trailer to another, perhaps at one of the carrier's terminals.

When a load is interlined, there are a few issues that need to be addressed:

- Is the shipper aware there are two carriers involved?
- How do the bills of lading work?
- Does the originating carrier retain a fee for the second carrier's segment?
- Is there a formal agreement between the two carriers?

Ideally, the shipper will be made aware that two carriers are involved. But if the original carrier does not want to disclose this information, the carrier may instead bill the shipper for the full trip under their bill of lading, then pay the other carrier for its segment. In such an instance, the original bill of lading could result in exposure issues for the original carrier if the second carrier has a loss during their part of the trip.

If the primary carrier retains a fee for the second carrier's segment, the primary carrier is essentially engaging in freight brokering and, thus, needs to have both the authority and the required bond in place. Assuming the carrier has both, it's better to simply handle it as a brokered load, with the second carrier issuing its own bill of lading for its segment of the trip and running on its authority only.

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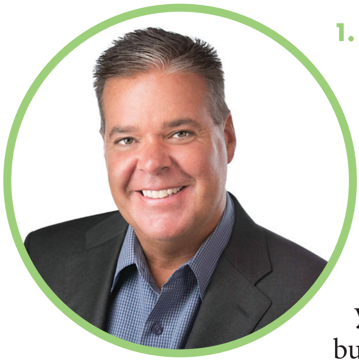
Those who have been involved in trucking for a long time recall when trip leasing was the norm, rather than brokering. Trip leasing involved hiring another truck for a single trip on the hiring carrier's authority. This practice sometimes resulted in complications, since the carrier would rarely examine if the driver fully met their standards, other than simply checking for a valid commercial license. Thankfully, trip leasing is nearly obsolete due to the preferred practice of brokering.

As previously noted, one must have authority from the FMCSA, as well as a bond for $75,000 (up from $10,000 a few years ago), to engage in brokering. When loads are brokered to other carriers, it is essential to perform due diligence to confirm the carriers have both the authority and proper insurance, including an adequate cargo limit. If the carrier may be used repeatedly on brokered loads, it is recommended the broker require they be named as an additional insured on the carrier's policy. In that instance, the broker will be notified if the carrier's coverage is cancelled.

Moreover, it is recommended that the carrier have staff devoted exclusively to brokering who not only operate from a location separate from trucking, but also hold the authority in a separate entity from the common and/or contract authority. Although many long-time brokers don't heed these recommendations, it is important to create as much separation as possible in case a carrier hauling a brokered load has a serious loss.

Be sure to contact your agent, broker or lawyer for more guidance on the topics covered in this article. While most services provided involve relatively little additional risk, all have pitfalls that need to be avoided.

Three Ways to Build a Safer Fleet



Tom Dorazio
Senior Product Manager
SuperVision, Explore Services, LLC

"Since 2011, it's like somebody flipped a light switch and every other month, on average, there's been a verdict of over $10 million against a commercial trucking company."

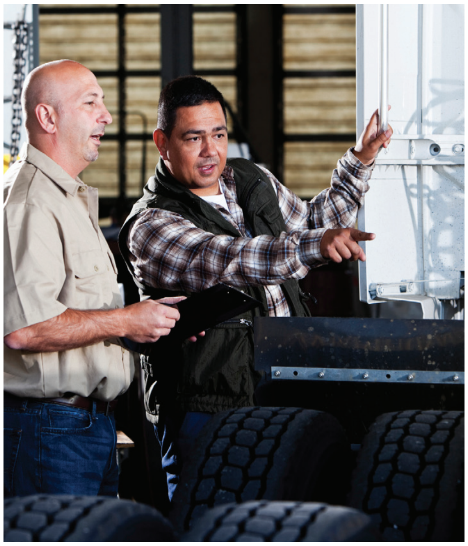
– Rob Mosley, Transportation Attorney

Fleet safety isn't just a buzzword; it's the key to protecting your bottom line and your greatest assets—your drivers. How can your fleet improve its safety and avoid becoming the next multi-million dollar headline? It begins with an organizational focus and a solid monitoring program.

1. COMMIT

The key to any successful initiative is support at all levels of the organization. From C-Suite to truck cab, everyone needs to understand your fleet's goal and their role in its achievement. Set your course and ensure that you have buy-in from all of your stakeholders.

This can begin with an assessment of your current state. Where is your CSA score? How is your driver fitness? Where do you need to be to achieve your goals? Level-setting with relevant metrics can help your organization understand the need for action and the importance of support.



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Once you have buy-in, keep the lines of communication open with your stakeholders and report leading indicators and progress. This allows your fleet leaders to continue to engage in the safety initiatives and support its continued progress.

2. MONITOR

How often are you updated on your drivers' violations and/or license status changes? If the answer isn't "continuously," you have blind spots. When it comes to violations and license status, what you don't know can definitely hurt you. Self-reporting policies are no longer sufficient, as case law continues to push more responsibility onto fleet leadership. If you aren't monitoring your drivers, you are opening yourself up to negligence lawsuits and the potential for a multi-million dollar settlement.

Select a monitoring provider that offers continuous license monitoring for both violations and driver's license status. Each fleet varies in size, scope and attributes, so it's important to consider the level of service as well. A partner that can provide individualized planning and support will allow for smoother implementation and execution.

3. COACH

Creating a safety culture requires being proactive in your approach. Make driver safety a regular topic of conversation in meetings and discussions. Communicate safety reminders via posted material and emails to ensure it is top of mind on a regular basis. Bringing safety to the forefront of your organization will reinforce its importance as a cornerstone component of your fleet.

Use your telematics and monitoring data to assess your current state and provide both customized and individualized coaching. What violations is your monitoring provider reporting? Are there any trends? Where are your drivers struggling? Knowledge is power and knowing your fleet's weaknesses will help you overcome them.

CONCLUSION

Avoiding adverse safety events is a team effort that protects both your drivers and your bottom line. Don't let your fleet be the next lawsuit headline. Lead your fleet's commitment to safety, continuously monitor your drivers and coach them to help your fleet reach its potential.

Napa River Insurance Services, Inc. has formed a strategic partnership with Supervision, Explore Services, LLC (Saint Paul, MN) to provide a discount for the SuperVision driver record monitoring service to our insured partners.

Cyber Liability: Today's Rapidly Growing Risk

This is the final article in a series. The first three parts discussed the nature of cyber liability, ways your organization can be harmed and preventive measures to limit exposure.

John Whall
Senior Vice President
Hudson Insurance Group
816.778.0710
jwhall@hudsoninsgroup.com

Part Four: Preparing for the Time When Preventive Measures Fail

With nearly 80% of healthcare providers recently reporting a healthcare ransomware or malware attack in the preceding 12 months[1], it is a question of "when," not "if" your having an Incident Response Plan is a necessity, rather than a luxury.

Knowing who in your organization is responsible for specific tasks and how they should work with others within and outside the organization can dramatically reduce the time spent to re-secure the network or digital assets affected, as well as reduce the overall financial severity.

Your IT department will be a critical component of any response plan, but representatives from many disciplines should be involved. Once IT is aware of the problem, many companies

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designate counsel—inside or outside—as the first phone call. The investigation and response then take place "under the direction of counsel," helping to invoke privileges and helping posture for potential regulatory and liability issues. Do not assume, however, that every communication with counsel is privileged. Thus, verbal communication, rather than email, may be more appropriate.

Aside from the CEO, appropriate IT personnel and counsel, other team members involved in a response plan may include human resources, public relations, contractors, accounting, and/or an outside forensics company. The same disciplines that may be called upon if a breach or denial of service attack takes place are the ones that should participate in formulating the plan to be implemented when an event occurs. This preparation can involve looking at back-up facilities, data back-up practices and contracts with outside vendors to determine whether contract terms are appropriate for an unauthorized intrusion or a denial of service attack.

If you currently purchase cyber liability insurance, it is important that the terms of the policy are factored into any response plan to help ensure the plan isn't encouraging action that could be detrimental to coverage under the policy. Be sure to read your policy—know what it covers and what you need to do when an event occurs.

If the policy provides a list of authorized law firms, familiarize yourself with them. They may be willing to do an initial consultation with you free of charge, and you can then decide if they are a good fit. Knowing who you are going to call in advance is a huge advantage. If your insurer doesn't provide a list, research firms on your own. They may still do an initial consultation for free, since they will want your business when the time comes. Lawyers who handle these types of situations are specialists; for many of them, this type of work is all they do, so they will likely have relationships with response service providers at more favorable rates than are available in the open market.

Larger organizations should work with a law firm to identify preferred vendors to provide, if needed, post-event services such as forensics, notifications, credit monitoring, PR, etc. But don't stop at identifying just one firm; you need to have back-up options in the event that your top choice is not available or has a conflicting engagement. The bottom line is: ***be prepared.***

The combination of a highly regulated environment, coupled with a high volume of valuable personal information, leave the healthcare industry prone to frequent and severe cyber incidents. The number of attacks is on the rise at an alarming rate, and there is no reason to believe that is going to change in the near future.

While prospects appear bleak, there is hope. Progress is being made.

Healthcare organizations started off in the cyber era with a disadvantage shared by the financial industry—legacy systems. Both industries were early adopters of technology; however, the financial industry on the whole, was able to more quickly absorb the cost of migration from those legacy environments that pre-dated the internet and today's electronic security concerns. Healthcare is catching up rapidly, and today's healthcare networks are vastly superior to what existed even a few years ago. There is still work to be done, but the distance to get there is not as great as it once was.

In addition to that challenge, healthcare has an ever-expanding network of peripheral devices, posing an ongoing challenge to keep up with securing all of these various devices. Healthcare device manufacturers are responding to industry concerns about security and are focusing more attention on security than they have in the past, which will help in reducing potential entry points for hackers. Cyber liability will continue to be a major challenge facing healthcare organizations, but with diligence and perseverance, it's an exposure than can be successfully managed.

[1] *https://globenewswire.com/news-release/2017/12/12/1253114/0/en/New-Research-Reveals-Healthcare-Providers-onsider-Email-a-Top-Attack-Vector.html*

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