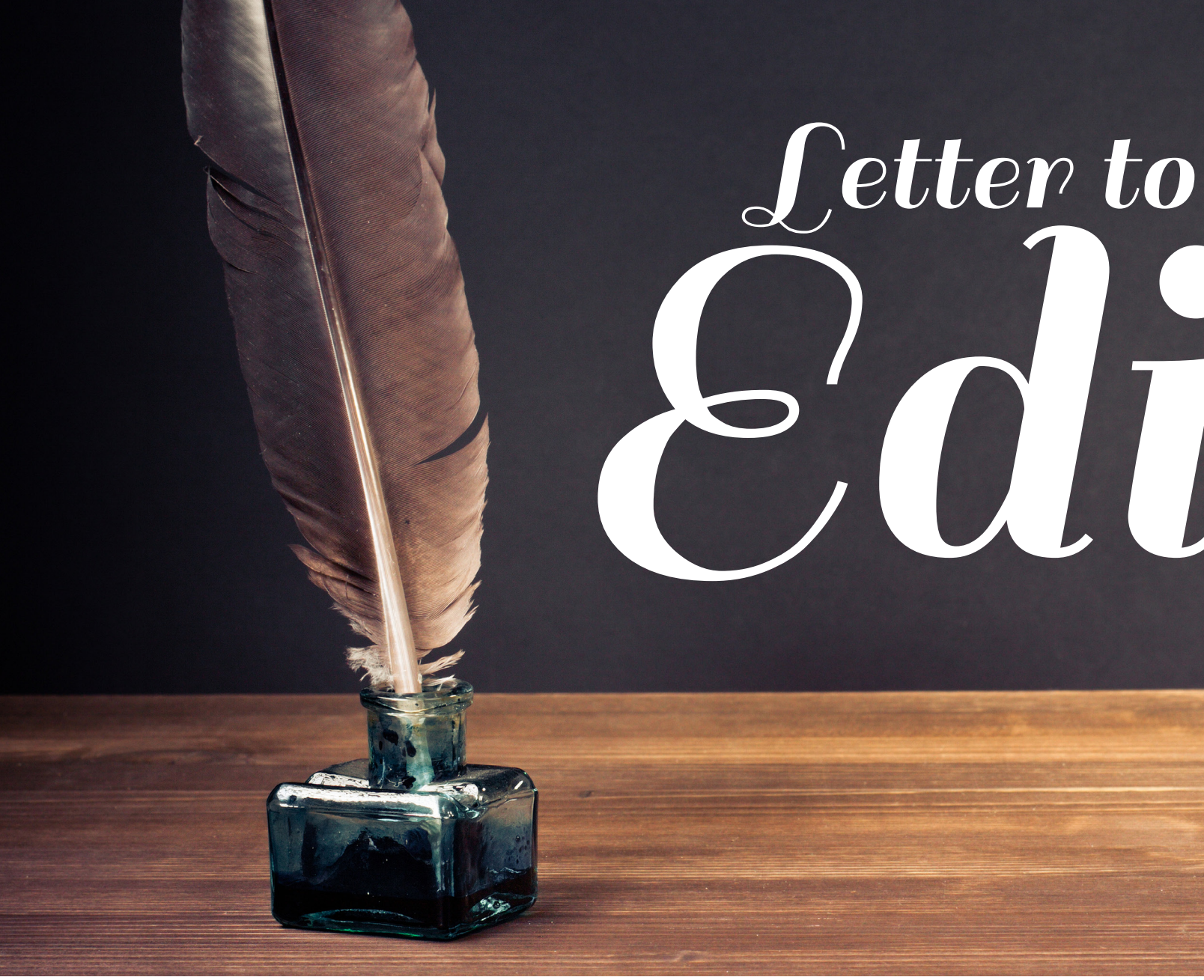

Letter to the Edi

Reader Takes Exception to Seaton Article

I am writing this letter to take issue with your recent publication, "No Good Deed Goes Unpunished" by Hank Seaton.

Mr. Seaton is a well-known transportation defender. I agree with his assessment of the Surety Bond situation in California. However, I disagree completely with comments about "convenience interlining;" "in my view, the law went too far in requiring every carrier…". Most brokering nonpayment events are by unscrupulous licensed brokers and motor carrier who broker without a license and bond (truck brokers) as well as those carriers who convenience interline (brokering in another carrier to point A, to haul a load to point b). Trucking companies brokering their freight (in possession of) are acting illegally by MAP 21. The FMCSA because of MAP 21, has ruled the interlining to be unlicensed and bonded brokering for a GOOD reason.

Map 21 by definition is designed to protect hauling motor carriers from predatory truck brokering practices. Convenience interlining is rightly ruled by the FMCSA as "brokering." Generally, prior to MAP 21, a truck brokering motor carrier is in possession of a load, hires another motor carrier to haul. MAP 21 clearly outlaws the practice. Today, there are those who believe a motor carrier can take possession, then gives that load to their own licensed and bonded brokerage for transportation arrangement. That broker, in turn, takes another commission from that same load, and the arranged trucker gets the load- minus two brokering commissions. Map 21 is designed to eliminate that practice, which is "double brokering" or "re-brokering." Clearly this process violates the spirit of MAP 21. Brokering transparency is the legal object of MAP 21.

> "BROKERING TRANSPARENCY IS THE LEGAL OBJECT OF MAP-21."

Prior to MAP 21, most brokering in this country is "truck brokering," and in a large part of that piece is "convenience interlining."

In my broker training classes (loadtraining.com), I have polled student attendees (since 1987) who own trucks. Most motor carriers report NOT being paid for a load by a "truck broker." Of most of those events, the unpaid carrier was an "agent" for someone acting as a motor carrier (licensed broker or

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BY DAVID DWINELL

> "MY PROBLEM WITH MAP-21 WAS, AND CONTINUES TO BE, THAT IT FRUSTRATES LEGITIMATE CARRIERS FROM WORKING TOGETHER WITHOUT THE ARTIFICIAL CONSTRUCT OF A BROKERAGE OR FREIGHT FORWARDER."

otherwise), whose transportation contract indicates a "principal/agent" transportation relationship exists — traditionally in transportation. When one trucker hires another trucker, the agent trucker has no rights to know the broker commission for the load, the amount of shipper's bill, the source of the load, and the principal carrier can legally make deductions from agent carrier's settlement, or simply not pay in the event of a loss. These brokering practices are contrary to 49 CFR 370 et al and MAP 21.

You see the reasoning for MAP 21 here in this article. The FMCSA is separating truck brokering from licensed and bonded property brokering. The reason is simple, to create financial responsibility to the hauling carrier through transparency. Truck brokers in the past, have, by legal means, kept their carrier hires (agents) in the dark. Licensed and bonded property brokers have NO RIGHTS against a motor carrier or the freight bill (unless contracted for). Licensed and bonded brokers are not the principal in a transportation contract, because they merely "arrange" transportation. Brokers are not "MODES" of transportation. Licensed and bonded property brokers, may not declare an ownership or beneficial interest in a load as in (49 USC 80101 et al.). Brokers may not insure the load of which they are not in possession. Brokers may not represent themselves as "carriers" in order to get the loading consideration. Brokers may not make a deduction from a freight bill without the carriers written permission (for whom would undertake an act of transportation if there existed a legal opportunity that that person would not be paid).

Too many licensed and bonded brokers assume carrier liability by their conduct, such as making carriers appointments, controlling and in some cases, being responsible for driver actions and requiring carrier call-ins. All of these actions are attributed to a truck broker. Clearly Hank missed this difference with his comments about "convenience interlining."

The most important part of MAP 21, is the transparency rule in 49 USC 13901 et al., where in every brokering event, "written notice" to the shipper is required from every authorized person in an act of transportation, which, today, almost never happens. A shipper receiving "written notice" of who is actually hauling is obviously required to make out bills of lading to the actual hauling carrier of record, and not the "interliner." Should MAP 21 actually take hold, then perhaps the nonpayment for transportation services would cease to exist.

As you can see, Hank is defending motor carrier from predatory brokering practices and simultaneously calling for the end of "convenience interlining." Logically one cannot defend a motor carrier while promoting predatory double brokering found in "convenience interlining." Convenience interlining ruling is double brokering or re-brokering and the FMCSA is right on track Mr. Seaton.

Thank you for your fine publication however.

David G Dwinell
Sun City, AZ

Seaton's Response

Ordinarily, I would not respond to the attached letter by the self-proclaimed "Professor of Brokerage" but given his circulation list and the tenor of the letter, I think some response is justified. Clearly, Mr. Dwinell does not appreciate the need of authorized motor carriers to outsource additional capacity to other carriers, nor does he understand the interline trust theory and the case law which has traditionally permitted a motor carrier, like a freight forwarder, to issue bills of lading, accept cargo liability for shipments, and retain subcontracted carriers with the assurance that they will be compensated upon receipt of payment from the customer.

To be sure, so-called "double brokerage" is a problem which MAP-21 was intended to correct. My problem with MAP-21 was, and continues to be, that it frustrates legitimate carriers from working together without the artificial construct of a brokerage or freight forwarder.

For truckload carriers who wish to augment their service offerings by hiring other carriers, MAP-21 only adds to the confusion and the red tape. Under as yet to be implemented rules, a small carrier in the future will have to find someone with three years of experience, set up a separate brokerage or forwarder, take courses in "best practices" and pass a test.

I simply think there are better solutions than this to address any freight charge payment issues that exist when legitimate carriers with notice to their customer accept liability for timely delivery of shipments and retain independently authorized, licensed and insured carriers as service providers.

Yours truly,

Henry E. Seaton, Esq.
Vienna, VA