# NO GOOD DEED GOES UNPUNISHED

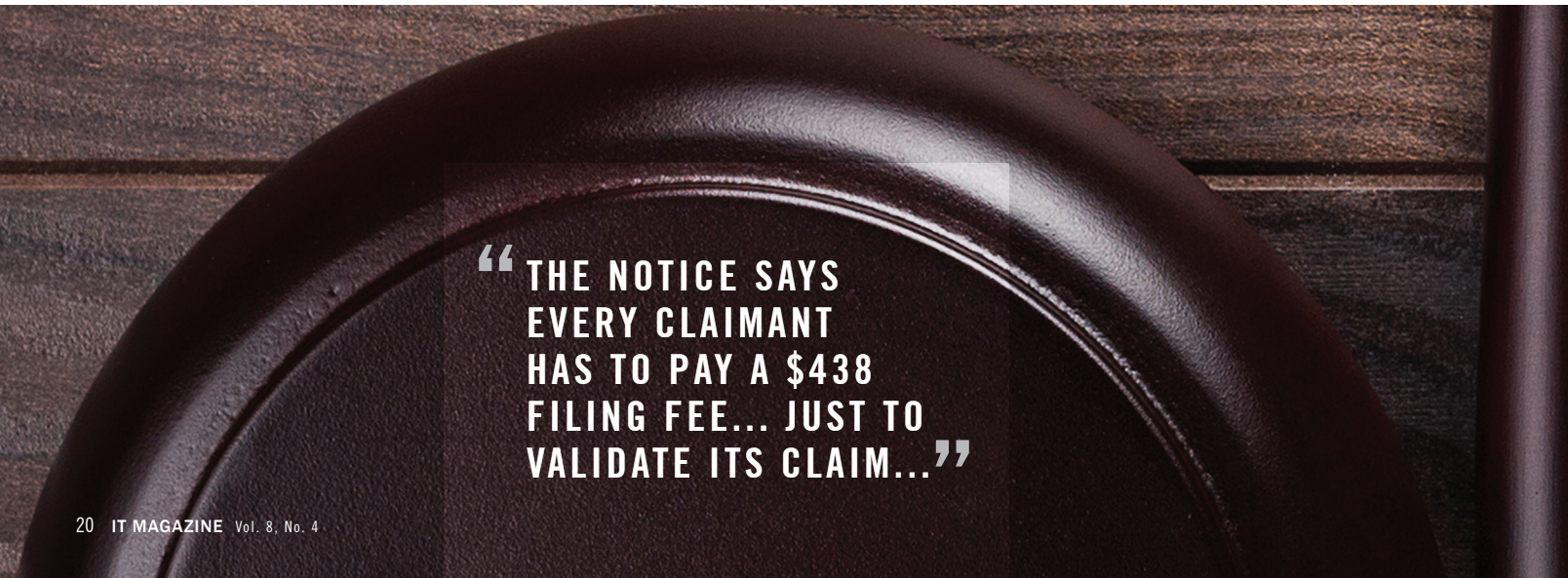
BY HENRY E. SEATON

Increasing the broker's bond to $75,000 seemed like a good idea. For too long, crooked middlemen have stolen carriers' money and the existing broker regulations have not been enforced to require brokers to receive funds in trust and pay carriers upon receipt, so increasing the bond to $75,000 seemed like some remedial response.

In my view, the law went too far in requiring every carrier who used convenience interlining to become a broker or forwarder. Proper exceptions were created for air freight forwarders, ocean intermediaries and customs brokers when they were arranging for transportation for compensation as part of their ordinary course of business. But many do not understand the purpose and limits of those exceptions.

The agency provided a soft landing for compliance and the cost of the bond fell well below the initial estimates, but the chaos is far from over.

The agency has not promulgated implementing regulations for the new statute. Some people are suggesting red tape that will stifle competition and create a bureaucratic nightmare for both the agency and the industry. Some believe new applicants should have 30 to 80 hours of training based on ill-defined



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"best practices" – you have got to be kidding! The law requires that at some future time every new applicant will have to have an officer with three years of experience and will be required to renew its application every three to four years. Isn't that enough?

Now listen to this. The law sets forth a process for distributing bond proceeds. It requires the bank trustor or the surety to immediately cancel the bond, publish a notice and 60 days later distribute the entire $75,000 penal sum to valid claimants on a pro rata basis.

Yet, here comes the first one out of the box. A sizable insurance carrier in the trucking industry who should know better, files an interpleader in California state court, serves up over 75 known claimants, and requires them to show up in California to validate their claims. What is worse, the notice says every claimant has to pay a $438 filing fee to the court just to validate its claim and the surety wants its costs and attorney's fees out of the bond proceeds!

This is not what MAP-21 intended. The burden is supposed to be on the surety or bank trustor to distribute the full bond proceeds and no carrier should have to go to California and "pay to play" to get some pennies on the dollar return. Hopefully by the time this article appears, somebody will have challenged use of this practice in light of the law and rectified this obvious abuse.

One thing is for sure – MAP-21 and the $75,000 bond is no panacea for guaranteeing that motor carriers will receive payment of their freight charges on brokered loads. Issues involving payment of freight charges and use of brokers and other intermediaries are far from settled.

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