

WHEN IT COMES TO RAISING PROPERTY BROKER BONDS, CONGRESS SHOULD TREAD LIGHTLY

--by James P. Lamb

As a consultant operating in the world of motor carrier transportation permitting and licensing over the past decade, I have helped tens of thousands of motor carriers and property brokers secure their operating authority from the Federal Motor Carrier Safety Administration (FMCSA) and its predecessor. I therefore represent both one-man independent truckers and small carriers on the one hand, and, on the other, small property brokerages. Additionally, I offer property broker training (commonly referred to as "freight broker training") to transportation intermediary candidates online and in cities across America on a bi-weekly basis.

As a former New York DOT regulator and a current player in the Industry, I have followed the concerns voiced by independent owner-operators through their representative organization -- Owner Operator Independent Drivers Association (OOIDA), and the Transportation Intermediaries Association (TIA), the trade group representing property brokers and other third-party intermediaries. I watched OOIDA ask the FMCSA to increase the property broker bond in 2004 from its current \$10,000 level to somewhere between \$350,000 and \$500,000. FMCSA commenced rulemaking at that time with no final rule having been promulgated to date. TIA recently announced it would, on behalf of its constituency, accept a \$100,000 bond and has essentially invited same. I offer this article to the Industry as an analysis of the impact such a drastic change would have and advice that Congress and FMCSA should tread lightly. In doing so, I speak for my little-guy clients in both trucking and brokering.

The main purpose of a property broker surety bond is to ensure that financial security exists for the protection of the motor carriers and independent carriers with whom brokers do business; that is, those duly licensed trucking firms that accept loads from brokers and perform transportation services at the request of brokers on a credit basis in the hopes that these brokers will pay them upon receipt of the carriers' bills of lading. Sometimes brokers pay, and well... sometimes they don't. The argument on the trucking side is that \$10,000 just doesn't cut it when a broker goes bad... and they are absolutely right. But there's a larger picture, here, that is being irresponsibly overlooked by the trade groups, one which, if not considered, could result in an unjust tilting of the scales, which could have a devastating impact on the Industry -- the size caused by the meteor that wiped out the dinosaurs.

A review of the current premium costs for property broker bonds suggests that these bonds are already relatively high-cost bonds when compared to other professions that are similarly regulated. For instance, under current market conditions, a one-year federal \$10,000 property broker surety bond goes for \$350-\$550 per year. In comparison, the premium for a private investigator's \$10,000 New York State bond is about \$100 to \$175 for a two year bond. So, because of the inherent high-claims nature of these property broker bonds, they are already expensing enough as it is. What will happen when the bond issuers' risk exposure increases ten-fold?

At the time of release of this article, America is in a consumer-driven Recession. The author knows it, the reader knows it, and the American people know it. Due to decreases in freight volumes, major truck-load carriers have responded by decreasing their capacity; that is by taking trucks off the road. As we monitor leading economic indicators such as the Consumer Confidence Index-- which is up compared to January 2009, and the American Trucking Association's (ATA) recent report that trucking tonnage increased in December 2009 by 6.6% year-over-year, it would appear that there are signs of a recovery-in-progress. If that's the case, then once consumers begin to spend in numbers again, there will be an increased need for trucks... and quick! Indeed, there is a "Coming Capacity Crisis". So, get ready for "C3"...

I would therefore suggest that now is the time for new broker entrants. Those brokers who are in place when the consumer demand wave hits, will ride this demand tsunami and make quite a few quick bucks. Once consumers start to massively spend again, stores will need to replenish stock. In turn, manufacturer-shippers will then need more trucks to distribute product (in case you haven't heard, trucks bring good stuff). In accordance with the supply and demand cycle, there will be a shortage of trucks until capacity returns and a huge demand for brokers to find those relatively scarce trucks. Unfortunately, however, if you compare the number of new property broker applications currently published in the *FMCSA Daily Register* with the numbers from before the Recession hit, they are drastically down. Just ask the people who sell property broker bonds and trust fund agreements. Raising the bond now will only compound the situation.

Currently, *Entrepreneur Magazine* lists its freight brokerage start-up book on its website as the number two bestseller, second only to import/export. It's been that way for over three years now. Previously, freight brokering came in number five. That's still respectable in spite of this Recession that, according to the National Bureau of Economic Research, began in late 2007. This is because of the low start-up and operating costs associated with brokering freight from home, and the potential to earn big money-- like \$100,000 or more per year. The reasonable cost of the current \$10,000 bond is one of the reasons why small business freight brokerage owners are currently able to open up and operate under these market conditions. Drastically raise the bond amount-- and bond premiums, and that will all change.

We know that OOIDA represents the "little guys" in trucking. The major truckload carriers like JB Hunt and Swift have ATA to protect their interests. But who is looking out for the small brokerages? Over time, should TIA and OOIDA secure the significantly higher property broker bond they either seek or support, it would be the little guys in brokering, that is, the mom and pop brokers, who would be put out of business due to high bond costs. This new barrier to entry would leave major players in brokering like Landstar and C.H. Robinson, TIA's constituents, with distinct, albeit unfair, economic advantages. With the little guys in brokering unable to afford and/or collateralize a \$100,000 property broker bond, they will not be able to enter the Industry and broker license revocations will quickly out-number new applicants. In turn, OOIDA members will be left to beg the few remaining big brokerages for loads, brokerages that could then play rate games with owner-operators. Holy oligopoly, Batman! We don't need Nostradamus to predict the further antitrust climate change that will follow.

So what should happen? Well, the bond should go up for sure to protect independent truckers. But Congress should consider a \$25,000 bond as an alternative for the general well-being of all the little players in the Industry. And with TIA essentially abandoning the interests of the little-guy brokers, perhaps its time for the creation of a new “Independent Property Brokers’ Association.”

As for you card-carrying members of OOIDA, well... you would be wise to heed the old adage and warning: “Be careful what you wish for, because you might just get it!”

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