

## Hiring Carriers with Due Diligence

### Carrier411 Exclusive Article

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Hiring motor carriers has always presented problems to brokers, 3PLs and shippers, but these problems have recently escalated as a result of the [Schramm](#) decision involving C.H. Robinson.

This monumental decision will change the way shippers and third parties qualify carriers for decades to come if they wish to avoid the risk of being held liable for the injuries, deaths and damages caused by the carriers they hire. It may also alert the government to the need for more accurate, current information on the nation's truckers, their drivers and equipment.

**Schramm is all about "due diligence"**. It presents a guideline to everyone having a responsibility for selecting a carrier to transport a load over the highways. However, in this writer's opinion, the court's guidelines are unrealistic given the time constraints on third parties during a normal business day. It is particularly unmanageable during periods of truck and driver shortages.

Nevertheless, it presents a challenge for every entity that hires carriers to establish a corporate policy on qualifying carriers that balances due diligence with reason and current conditions in the marketplace.

#### A reasonable policy might include the following procedures:

1. Create a file on every trucking company to be used in the firm's "stable" of carriers, and insist that it be checked prior to loading them the first time.
2. Include a copy of the carrier's operating authorities and insurance filings with the FMCSA.
3. Include the carrier's safety rating with the FMCSA. Don't use a carrier if it has an "Unsatisfactory" rating.
4. If a carrier's rating is "Conditional", call and obtain its explanation. Insist on receiving copies of the FMCSA's inspection reports, which may reveal that the infractions were minor. Ask the carrier to explain what it is doing to change its rating to "Satisfactory". Use that carrier only if you are convinced it is sincerely trying to be in full compliance and that it probably will be restored to a "Satisfactory" rating.
5. If the carrier has no safety rating, you must conduct your own investigation into the carrier's record of accidents, FMCSA inspection reports, driver compliance with hours of service regulations, its compliance with record-keeping regulations, medical exams, accident reports, etc. (The Schramm court ruled that "...it seems entirely reasonable to require firms, including third party logistics companies, who assist newcomers with market entry, to evaluate their safety control measures in the absence of a DOT rating.")
6. Check the FMCSA's SafeStat records for the carrier's **SEA rating** (a rating over 75 is deemed to be deficient. In Schramm, the carrier had a 74 rating in its driver safety evaluation area. The court ruled that this was a "marginal one" that "implies a duty of further inquiry").
7. Every trucking company file must be kept current with any information received, and it

should be reviewed on a regular basis for changes.  
A monitoring service should be employed for that purpose.

8. Review your holding-out to the public through advertising, website, promotional brochures, insurance coverage and your corporate name to be certain that it does not imply that you are the carrier. (In the Schramm case, the court noted that C.H. Robinson advertised it was a "...third party logistics 3PL company that specializes in brokering" and that it provides "one point of contact" service to shippers.)
9. Review your insurance policies to be certain they do not imply that you are a carrier. (In the Schramm case, the court noted that C.H. Robinson advertised "...in the rare event that the damages [caused by an accident] go beyond the carrier's insurance limits, CHRW maintains a liability insurance policy that pays the rest.")
10. **Brokers and 3PLs should not knowingly permit their name to be shown on the bill of lading as the carrier. If a shipper is following that practice, request they discontinue doing so immediately.**

**The problem that confronts everyone who selects carriers is the trade-off between the cost of due diligence and the urgent need to load trucks to meet customers' shipping requirements and schedules.**

No one wants to get "Schrammed", but the temptation to overlook a particular trucking company's safety record on occasion to get a load moved on time will prove to be too great for some firms. As Murphy's Law will have it, that truck will invariably be involved in a serious accident, which will result in a lawsuit against everyone who played a role in selecting that carrier. Its called "the deep pockets strategy."

**Following sound corporate procedures strictly will help to avoid being held liable for damages caused by truckers, but there is no guarantee against an adverse court decision if someone has been seriously injured in a truck accident.**

However, this published decision will be used by the tort lawyers for decades to come. It is "must" reading for every shipper and third party that selects or hires carriers. The clear messages are that **(1)** Firms that hire trucks must fortify themselves with current information on truckers' safety records; **(2)** Courts will look to what firms do rather than what they call themselves; and **(3)** Courts will look to the contractual arrangements between the parties.

**Contracting is another method of protecting a third party against this problem.**

A carefully-drawn contract with carriers and shippers should help to clearly frame the role that the third party is to play in shipping goods. C.H. Robinson, the broker-3PL in this case, was fortunate to have the court rule that it was not liable as the carrier for the damages incurred by the trucker it hired. However, the court remanded the case to the jury to rule on whether it was negligent in hiring the trucker under Maryland's law that recognizes that an employer may be held liable for negligence in "selecting, instructing, or supervising ...an independent contractor." In light of the court's very clear inferences of liability, Robinson settled the case rather than risk a jury's verdict for a more substantial amount of money.

Shippers and third parties can benefit from the Schramm decision, but only if they train their employees to strictly adhere to the procedures established to avoid the consequences of careless, thoughtless or negligent hiring of carriers.