

A photograph of a large fire at a truck accident scene. Thick black smoke rises from a burning vehicle. Firefighters in yellow gear are visible near the fire. A red fire truck is in the foreground on the left. The scene is outdoors on a paved area with trees and a fence in the background.

# ***SHIPPER, BROKER, CARRIER LIABILITY REPORT 2006***

**Presented by  
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CLAYVILLE

1ST CHIEF  
INGLIS

BFD  
RESCUE 1





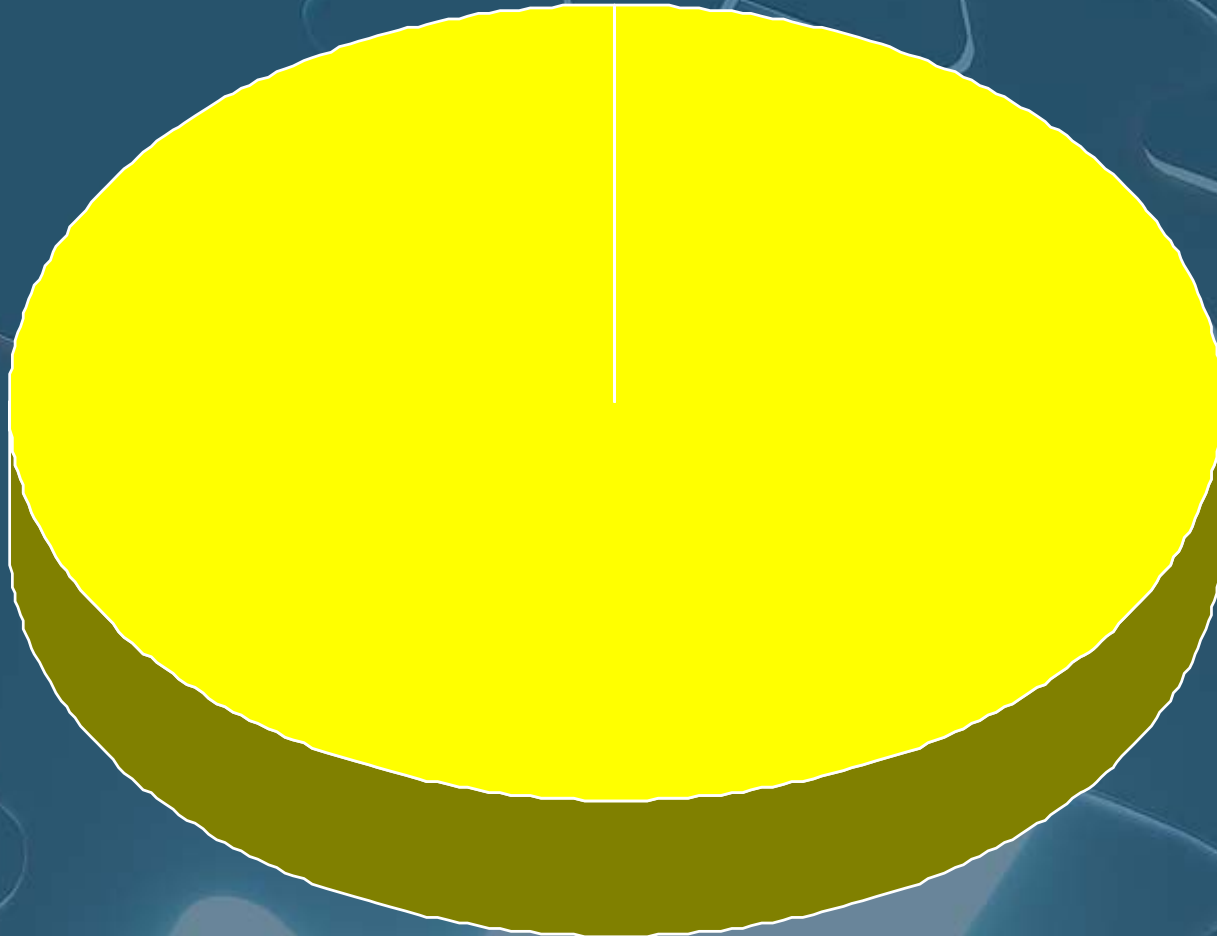




**SHIPPERS, BROKERS  
AND CARRIERS HAVE TO  
BUCKLE UP!**



# The Risk Universe



■ RISK

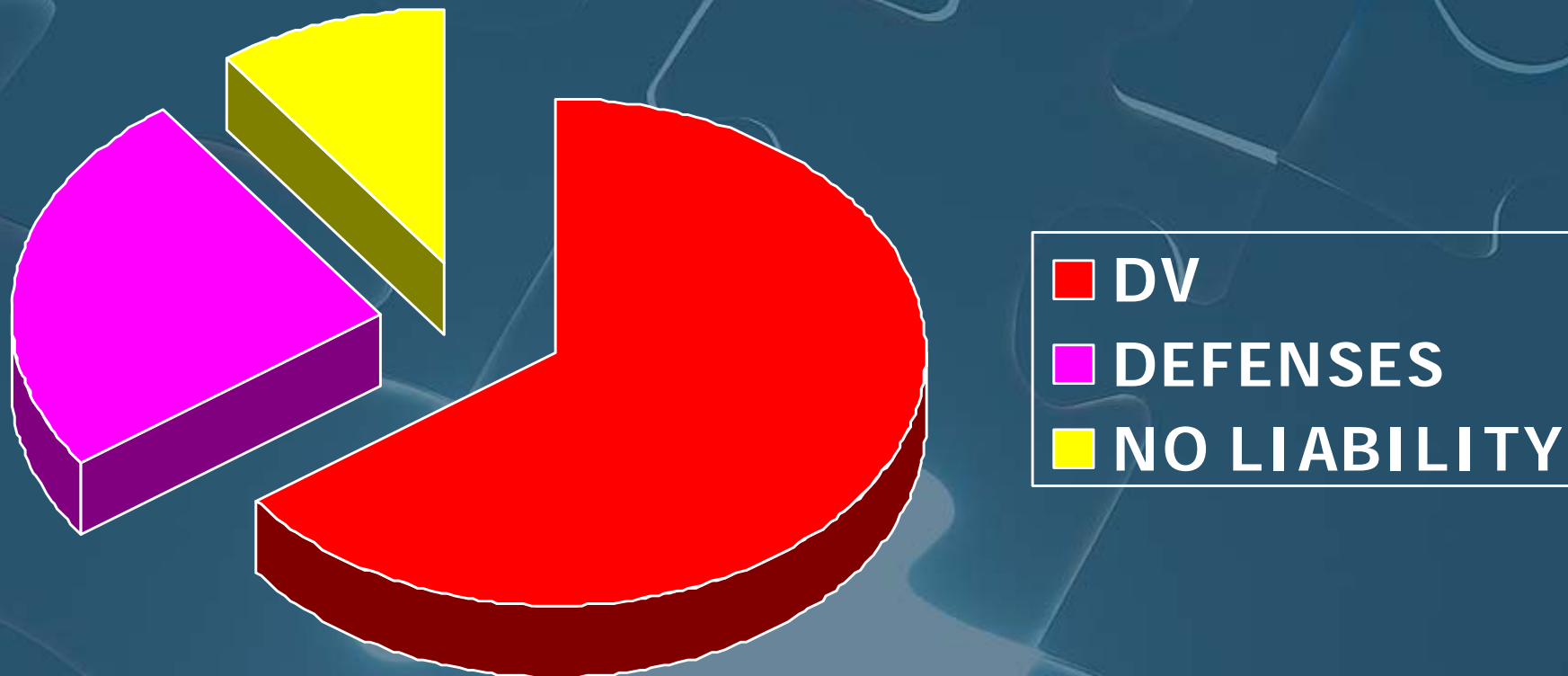


# Declared Value (DV)

- Moves the contractual limit of liability from \$ per LBS. to \$ Declared Value;
- Does not create a duty;
- Does not address carrier defenses;
- Leaves open the issue of fault / liability.

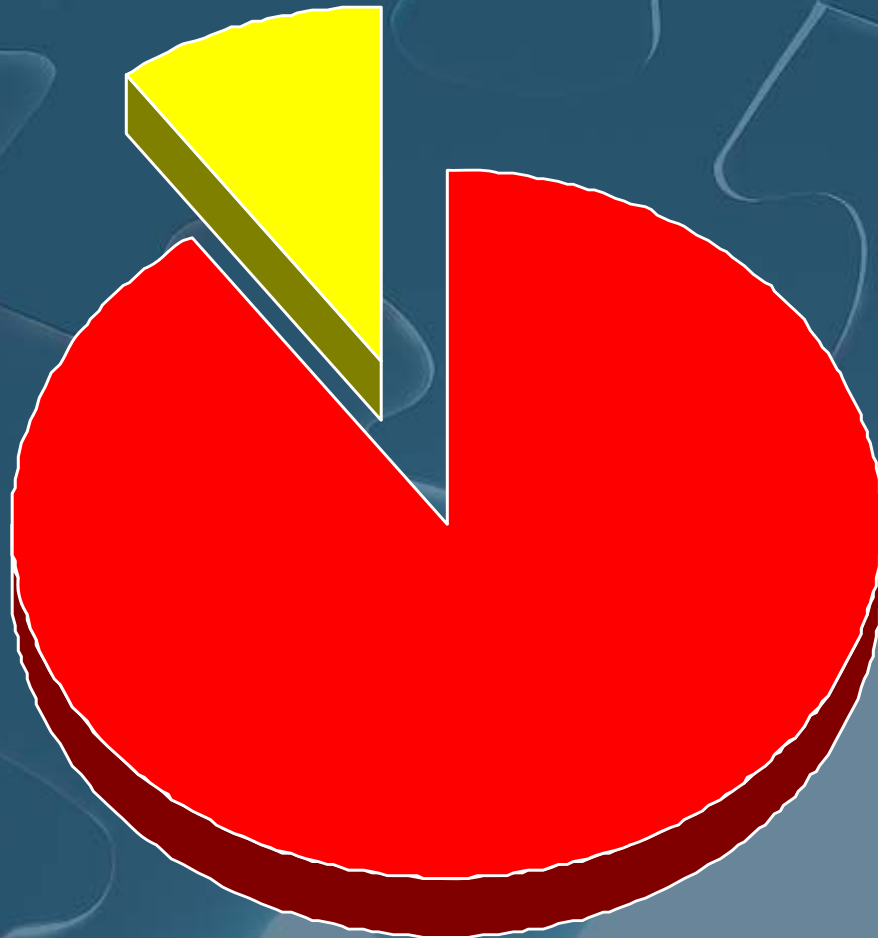


# DV & Risk Universe





# Insurance & Risk Universe



**■ Insurance**  
**■ No Coverage**



# ***SHIPPER, BROKER, CARRIER LIABILITY REPORT 2006***

- Solving the liability puzzle involves:
  - The right team;
  - Appreciation for the risk;
  - Actively managing the risk, and
  - Collecting the five pieces of the puzzle.



# Cargo Insurance

- Covers a greater spectrum of risks;
- Can create a duty to the insured;
- Can eliminate the issue of fault / liability;
- Can provide a profit center;
- Can eliminate subrogation claims.



# Competing Policies of Cargo Insurance

- Two policies of insurance for the same risk;
- Coordination of benefits clause;
- Interference with indemnity, and
- Unexpected complications and costs of defense and legal liability deductibles.



# Contingent Auto and Cargo

- Following forms may exclude coverage;
  - Unattended vehicle;
  - High value commodities;
- No coverage for negligent selection means
  - No claims handling;
  - No duty to defend, and
  - No claim payment.



# Errors and Omission Policies

- Covers negligent selection claims
  - Failure to declare a value or declaring a value to a carrier with inadequate insurance;
  - Failing to check safety records;
  - No insurance;
  - Wrong equipment;
  - No authority or improper authority;
  - Failure to follow shippers instructions –
    - Packing
    - Securing
    - Tarping



# What is an error or omission?

- Negligent Act;
- Breach of Duty;
- Mistake;
- Misstatement;
- Misrepresentation (of an Unintentional Nature), and
- Failure to perform.



# Recent Trends

- **Ambiguity = Litigation;**
  - Who has Care, Custody and Control;
  - How are you holding yourself out – “one call does it all” or a “single point” of contact;
  - One company – multiple authorities;
  - An industry wide desire to be everything to everyone.



# The Cost of Defense

- Attorney fees and court costs;
  - Average defense cost for a single claim is \$7,500 to \$10,000
- Trial v. Motion Practice;
  - Average trial cost is \$35,000 to \$75,000
  - Average motion cost is \$10,000 to \$25,000




# Examples of E & O Claims

- Shipment of potato chips
  - Shipper advised altitude constraint
  - Broker's dispatcher assumed for air shipments
  - Chips railed over Rockies & burst
  - Railroad denied claim
  - Broker held responsible + \$50,000
- Property Broker arranged for \$100,000 shipment of ski bindings from Washington State to Vermont.
  - Shipment was loaded into the trailer (FTL).
  - Empty trailer was later found abandoned




# Broker, Freight Forwarder or Carrier?

- The term broker, “means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation. 49 U.S.C. § 13102(2).



*Just Take Action, Inc. v. Central Transport  
International, Inc.* (Minn. 2005):

- Just Take Action hired GST to arrange for transportation of the tanks with the understanding that the tanks would be shipped with full coverage. In doing so, Just Take Action expanded its duty beyond merely finding a reputable carrier to ensuring the tanks would be shipped with full coverage . . .  
. . . As a result, Just Take Action's negligence claim against GST survives summary judgment.



*Schramm v. Foster*, 341 F. Supp. 2d  
536, 551 (2004):

- This duty to use reasonable care in the selection of carriers includes, at least, the subsidiary duties (1) to check the safety statistics and evaluations of the carriers with whom it contracts available on the SafeStat database maintained by FMSCA.



*Schramm v. Foster*, 341 F. Supp. 2d  
536, 551 (2004):

- and (2) to maintain internal records of the persons with whom it contracts to assure that they are not manipulating their business practices in order to avoid unsatisfactory SafeStat ratings.



*Hewlett-Packard Co. v. Brother's  
Trucking Enterprises, Inc.*, 373 F. Supp.  
2d 1349, 1353 (S.D. Fla. 2005):

- [F]ailure to follow Danzas' specific instructions in : procuring a team of premium drivers, with certain specified security requirements:



# Security requirements:

- GPS tracking;
- two-way radio communications;
- team drivers with one always in attendance at the vehicle and
- direct point-to-point routing without authorized stopovers.
- FAILURE created a foreseeable zone of risk, particularly in light of Mr. Investor's familiarity with Compaq loads . . . as such, the negligence claims survives the Defendant's Motion for Summary Judgment.



## *Gary Puckrein v. ATI Transport, 186 N.J. 563 (2006)*

- The court held that if the shippers core purpose was the collection and transportation of materials on the highway it had a duty to:
  - Make an inquiry into the truckers ability to travel legally on the highways.



# *Gary Puckrein v. ATI Transport, 186 N.J. 563 (2006)*

- BFI – shipper hired World and required World to:
  - Comply with state and federal law.
- World warranted:
  - Federal, state and local permits;
  - Insurance;
  - Indemnity, and
  - No subcontracting!



# *Gary Puckrein v. ATI Transport, 186 N.J. 563 (2006)*

- The business reality:
  - ATI picked up the cargo, not World;
  - World's insurance expired 2 months before the accident, per the Accord certificate provided to BFI;
  - ATI's tractor and trailer registration were suspended and AIT/driver did not have any insurance, and
  - The brakes were defective – 54% of required braking.



# ***Gary Puckrein v. ATI Transport, 186 N.J. 563 (2006)***

## THE RESULT

- Judgment against:
  - The Stangle's, the owners of ATI and World;
  - ATI and World, the "corporation" truckers and
  - The driver.
- The amounts:
  - \$800,000 – wrongful death and
  - \$1,000,000 punitive – Stangle



# How can you protect yourself if?

- Exclusive use of SafeStat rated carriers is impossible or impractical;
- You cannot contractually limit your liability to accident victims?



# Transportation intermediaries need five pieces of the puzzle

- A five pieces should include:
  - Contingent auto and cargo insurance that is not a following form;
  - Errors and omission insurance that covers your negligence;
  - The ability to offer all risk cargo insurance, when there is no competing policy;
  - Require private industry safety compliance, and
  - Contracts with indemnity and limits of liability.



# Conclusions

- Define who you are and how hold yourself out;
- Beware of claiming to be everything to everyone;
- Each coverage form has its purpose – use all parts of the puzzle to managing your risk;
- Require the carrier to provide evidence of safety compliance, and
- Cover the claims universe by putting the pieces of the puzzle together.

A large, intense fire with bright orange and yellow flames, filling most of the frame. The fire appears to be burning in a confined space, possibly a vehicle or a small structure, as some dark, rectangular shapes are visible in the lower portion of the image. The text "BUCKLE UP" is overlaid in the center of the image in a white, bold, sans-serif font with a black outline.

**BUCKLE UP**



# THANK YOU!

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