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More double-brokering ups threat to US truck shippers

Ari Ashe, Associate Editor (</users/ari-ashe/>) | Mar 28, 2018 2:55PM EDT

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A truck travels on a US road. Photo credit: Shutterstock.com.

A potentially dangerous type of freight brokering is on the uptick as capacity tightens, a practice that can expose shippers to liabilities ranging from cargo loss to deadly accidents, third-party logistics providers (3PLs), and truckers warn.

Some use the term co-brokering, which is legal, while others say it is double brokering, which is illegal.

Regardless of the terminology, it is the act of a broker giving a shipper's load to another broker instead of a motor carrier. In the most controversial form, one broker may unwittingly hand a load to a second broker thinking it was booking a carrier.

The difference between legal co-brokering and illegal double brokering comes down to commissions and communication. In co-brokering, the two brokers will split one commission and work as a team to vet the driver sent to the shipper's dock. The co-broker also often has the blessing of the shipper.

In double brokering, each broker gets a separate commission by lowering the rate to the driver twice to build in two margins. Often the transparency is lacking between the two brokers, and communication between the brokers and the shipper is virtually non-existent.

But with some due diligence and a hands-on approach, shippers can mitigate some of the chances this activity will occur with their loads.



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Tight US truck market increases phenomenon

Although no one tracks the frequency, anecdotal evidence suggests the practice is increasing — a repercussion of tight US capacity and rising truck rates fueled by the [electronic logging device](https://www.joc.com/special-topics/electronic-logging-device-mandate) (<https://www.joc.com/special-topics/electronic-logging-device-mandate>) mandate that prevents truckers from misrepresenting how long they drive and a strong US economy. US shipments soared 11.4 percent and the cost to move them jumped 14.3 percent in February on a year-over-year basis, according to the Cass Freight Index. Spot market rates rose between 25 and 35 percent over the last three months versus the same period in 2017, according to DAT. Contract truckload rates are about 8 percent higher than a year ago, according to DAT.

Talk of the practice has picked up on discussion boards and on load boards where brokers include statements such as “No Landstar calls please” on posts. [Landstar System](https://www.joc.com/trucking-logistics/truckload-freight/landstar-system) (<https://www.joc.com/trucking-logistics/truckload-freight/landstar-system>), which is one of the largest for-hire motor carriers and truck freight brokers in the United States, defends its activity as co-brokering while truckers and brokers use the term double brokering, leaving a murky area of what are acceptable and unacceptable business practices.

“We [Landstar] strongly encourage open communication, transparency, and honesty by our independent agents, so that they may build trusting relationships as they build their businesses,” Joe Beacom, Landstar’s vice president and chief safety and operations officer, told JOC.com “In any freight operation arranging the movement of significant volumes, there will be isolated issues that arise from time to time. Where issues are identified, we stand prepared to find the root cause and take corrective action.”

Some truckers are unhappy because re-brokering often drives down per mile rates on the spot market with each broker charging a commission.

“We see it more often in these times because motor carriers are sometimes biting off more than they can chew,” said Tracy Meetre, vice president of sales and marketing at St. Louis-based logistics provider Sunset Transportation. “Particularly some of the small folks are leading with their asset side but don’t always have the assets available for a job, so they broker it out a second time.”

In general, the practice in question involves two brokers each charging a commission to move the same load with one motor carrier. For example, a large shipper tenders freight to a broker for \$1,150 to arrange a 400-mile haul. Broker A posts the load on a load board and books the job for \$1,000 with a motor carrier that also has brokerage authority. That motor carrier, in turn, hands the load over to the subdivision — Broker B — without informing the shipper or original broker. An agent for Broker B finds an independent trucker willing to accept \$875.

Broker A makes \$150, or 15 percent, off the shipper, broker B nets \$125 or 14.3 percent, and the trucker is forced to accept the lower rate. The shipper is paying two commissions.

In some extreme cases, there might even be triple or quadruple brokering in which the shipper’s load goes from the original freight broker to two or three other brokers until a trucker gets the job with each step including a commission.

With transportation costs on the rise, freight brokers struggling on tighter margins might be more prone to resort to this practice to make a quick buck, according to logistics executives. This practice exposes the shipper to several potential land mines, including delays, cargo loss, issues with payment, and legal problems.

For example, if one of the trucking companies is fraudulent, then a shipper might have to pay the bill on [freight being held hostage](https://www.joc.com/international-logistics/how-avoid-confusion-freight-payment-20180303.html) (<https://www.joc.com/international-logistics/how-avoid-confusion-freight-payment-20180303.html>).

Shippers may also end up in court, suing a broker or carrier to recoup a loss or being sued as a co-defendant after a serious accident.

“In the case of casualty, the original broker needs to show that he protected the public safety by confirming valid operating authority, insurance, and safety rating. If the selected motor carrier then double-brokers the load, the broker loses the ability to make the case that it sent in a properly ‘vetted’ carrier to pick up and haul the load,” said Gavin Hill, an attorney with Dykema Cox Smith, who represents brokers in lawsuits. “That is why double-brokering should be anathema to everything a responsible property broker is about.”



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Co-brokering under scrutiny

From small brokers to large publicly traded companies, industry veterans note this practice has been going on for decades while cautioning that the vast majority of brokers are ethical and law abiding.

There are hundreds, perhaps more, engaging in this practice, although Jacksonville, Florida-based Landstar has drawn scrutiny after repeatedly being flagged on the Rate Per Mile Masters forum, a Facebook group with more than 20,000 members. Landstar is not the only company booking business through co-brokering agreements, however.

Some brokers, who have direct relationships with the shipper tendering the freight, are concerned that Landstar will promise one of their trucks but actually book it with a third-party trucker that may not be reliable. If something were to go wrong, then the relationship with the shipper may be in jeopardy.

Lawmakers sought to create more transparency for shippers and truckers in [Moving Ahead for Progress in the 21st Century Act](https://www.joc.com/america%E2%80%99s-ports-freight-system-recognized-map-21-surface-transportation-bill-reauthorization) (<https://www.joc.com/america%E2%80%99s-ports-freight-system-recognized-map-21-surface-transportation-bill-reauthorization>) ([MAP-21](https://www.joc.com/america%E2%80%99s-ports-freight-system-recognized-map-21-surface-transportation-bill-reauthorization) (<https://www.joc.com/america%E2%80%99s-ports-freight-system-recognized-map-21-surface-transportation-bill-reauthorization>)), the 2012 transportation funding law, by separating "motor carrier" functions from "brokerage" functions and requiring each to operate independently.

But David G. Dwinell, a freight broker who owns loadtraining.com, a broker training facility in Arizona, says double brokering is more prevalent now than before former president Barack Obama signed MAP-21. "Landstar paints what it does as co-brokering, but legitimate co-brokering involves Broker A with a load being approached by Broker B who has a truck. Broker A makes sure the driver has the proper authority, insurance, and safety scores and then both sides agree to proceed with the transaction. Broker A pays the trucker and sends a commission split to Broker B, not the whole value of the load," Dwinell said.

"With Landstar, they blur any distinction between carrier and broker, violating the definition of a broker in every load," Dwinell added. "Consequently, Landstar calls my brokerage and tells me they will haul my load as a carrier but can't guarantee that a Landstar authorized and insured truck will actually show up for my load. They purposely blur any responsibility when they 're-broker' [word created by MAP-21] to another broker or carrier, without shipper [consignor] knowledge or approval."

Landstar, in a response to JOC.com, says it complies with MAP-21 and referred to an August 2013 letter from Geoff Turner, CEO of Choptank Transport, published in the industry publication *Transport Topics* in response to a previous 2013 letter from Dwinell. "Co-brokering is a common practice in the freight brokerage industry and often is done under a written co-brokering contract between the two licensed property brokers," he wrote. "The intent of this language in MAP-21 was to clarify that motor carriers need separate brokerage authority and the subsequent bonding requirement to legally broker freight. Our industry is plagued by fraudulent entities that jeopardize our businesses by illegally double brokering, thus creating huge negligent hiring liability concerns."

Pete Emahiser, a broker with Tadmore Transportation and Rate Per Mile Masters administrator, says Landstar is the only company he is aware of that gets singled out on a load board.

Emahiser says Landstar once tried to broker one of his loads without notifying him, so he pretended to be a carrier and phoned the agent. "I asked him if it was still available and he told me to hang on. Moments later, I get a call on my other line from the same agent asking if my load was available. He seemed to be totally unaware he was talking to the same person on both lines," Emahiser said. "I told him my load was already booked. A few seconds later he's back on the other line telling me, 'I'm sorry sir, the load has been booked.'"

In another example, Emahiser says an agent offered to arrange the transportation of his loads with a Landstar business capacity owner (BCO; Landstar's term for an owner-operator leased onto the company). "I know enough to ask the agent whether it's a Landstar BCO. He told me, 'Yes, it's a Landstar team and it's only 20 miles away.' Turns out the driver was not part of a team and he had authority out of Canada. I have no idea whether he had dual authority to haul a domestic load in the United States, but the whole experience was horrible."

Despite these unsavory stories, Emahiser believes 90 percent of Landstar agents are talented workers and the vast majority of freight brokers, as a whole, are also hard-working, trustworthy employees.

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Mark Hedges, a truck driver, told JOC.com that a Landstar agent called him in February to move a load from Dallas to Ohio for \$1,200. He rejected the offer and later found the same load online for \$1,400. He called the originating agent to inform her about the situation, which she was not aware of.

Landstar told JOC.com that its independent agents, in a vast majority of instances, seek to provide shippers and brokers with a capacity solution consistent with their expectations, whether it is with a BCO or independent carrier.

"With capacity as tight as it has been and rate levels rising, in many cases the shipper and/or broker may prefer a Landstar BCO, yet is appreciative of the fact that alternatively a Landstar-approved carrier is obtained for the agreed-upon rate," said Landstar's Beacom.

But Dwinell says some Landstar agents go further than simply helping shippers or brokers find capacity. He believes they search the load boards and copy and paste existing loads at a lower rate. Truckers in the Rate Per Miles Facebook group have alleged the same.

"In my class, I have students who are with Landstar and they're trying to keep their trucks running while I'm teaching. I will ask them to their face, 'Can you tell me how many loads on the Landstar load board actually are billed to shippers directly by Landstar?' And last one I can recall, something like 7,976 loads were posted and 1,206 [15.1 percent] were actual Landstar loads," he said.

Landstar reached out to DAT in response to JOC's inquiry and the load board operator expressed no concerns or issues with its load posting practices, Beacom said.

Co-brokering benefiting shippers

Without question, there are also many cases of co-brokering that are beneficial to all parties. For example, the shipper contracts with a lead logistics provider, also known as a fourth-party logistics provider (4PL), to examine its supply chain and carrier procurement. Part of that work may include subcontracting the freight brokerage to a trusted 3PL.

"The customer knows their broker is hiring other brokers. The two brokers know their roles and sometimes all the parties will meet together to define the relationship. There is complete transparency between all the parties, and in this case there would be a co-brokering agreement between Broker A and Broker B," said Jenn Wood, director of corporate risk and support at Sunset Transportation.

Another example is when a shipper offers a load to multiple freight brokers and the first to find a truck wins the prize. In some cases, the shipper will knowingly allow its preferred freight broker to hire another freight broker, if necessary.

Asked about the allegation of copying and pasting other loads at a lower rate, Landstar pointed to this scenario, "Shippers may provide the same load to Landstar as a carrier and/or broker, as well as numerous other carriers or brokers. As capacity has tightened, our experience suggests that this practice by shippers has become more common in an attempt to move their products in a challenging capacity environment and certainly could lead to the situation where the same or very similar loads are posted multiple times on a single load board," Beacom said.

The difference between ethical and unethical practices, according to Wood and Dwinell, is the transparency, honesty, and meeting of the minds between the parties, terms that Beacom also used with JOC.com.

Tips for shippers to protect themselves

There are several recommended tips that shippers can use to allow co-brokering, if it helps to unlock the scarce truck capacity, but minimize their risks while doing so.

"We normally discourage co-brokering because it adds unnecessary costs. Our customers rely on technology and information management to minimize their costs and get as much visibility as possible into the process. Shippers should be looking for providers that offer such visibility," said Jon Slingerup, CEO of American Global Logistics, an Atlanta-based 3PL and 4PL.

Wood says shippers should always address this scenario in a contract with their 3PL.

“There are many shipper contracts that I review that expressly forbid re-brokering, but it often includes the caveat ‘unless you get our advanced approval.’ So the shipper might say, ‘If you are not hiring an asset-based carrier or the carrier will not be using its own equipment, then let us know in advance and we can give you a one-off permission.’ That’s the safest route that I would take,” she said.

Dwinell suggests that shippers take a more active role in their transportation management, obtaining in writing the motor carrier number, registration, and name and address of the carrier taking possession of its cargo. The shipper should then verify the safety scores associated with the motor carrier number.

“When [the] motor carrier [arrives], at a minimum the shipper must verify that the truck that showed up at the dock is the same motor carrier contracted to do the haul. The shipper’s obligation to protect the public safety also requires verification of a valid federal [commercial drivers license], and a photocopy or smartphone [picture] of the license. Shippers need to verify that motor carriers’ insurance is current and intact, which can be accomplished verbally by an ACORD certificate of insurance featuring the current policies and expiration dates,” Dwinell said.

He also urges shippers to enforce their legal right under Title 49, Chapter 139 of the US Code (§ 13901) to get, in writing, details of the carrier actually hauling the load.

If shippers take these precautions, he explains they can limit their liability in the event of a cargo loss or even a serious crash during the delivery.

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