

Delta Nu Alpha



Alphian Connection

EDUCATING TOMORROW'S TRANSPORTATION PROFESSIONALS TODAY

Fall 2013

Message From the Vice President, Don Adams

Important call to all involved with Delta Nu Alpha ;

Your Board of Directors had been in discussions for some time about the direction and growth of our organization. The goal of our leaders is to find ways to bring value to members, to preserve the Delta Nu Alpha heritage and to provide educational and growth opportunities to our chapters and industry.

The current board of Directors has been in place for some time, and we all feel that new thoughts and ideas are needed to take us to the next level. Maybe tomorrow's Delta Nu Alpha won't look like yesterday's, maybe there are better ways or directions to guide our worthy organization along. Some other groups have outside directors, but we think someone who knows and understands DNA's history and value, will best represent our group and our future.

This is a call for nominations or suggestions for leaders. If you know of someone in your chapter who would be a good leader, let one of us know, we can discuss with them directly what the opportunity consists of. Or, if you, might be interested, reach out to me, Sally or any Board member confidentially, we would be glad to talk it over with you. All of our email addresses are on the last page of this newsletter.

This is an important time in our history... do we move forward, or just continue to exist. There is more pride in this organization than I have ever seen in any group in my life, but we need your help. Sometimes it takes one of those "stretch" moments, out of your comfort zone to spur your individual growth. This is a great opportunity for a new experience. The best part is, you would have a huge experienced group to support you in whatever position on the Board you choose.

The terms for our Officers end Dec 11, so we would want to talk to interested parties by Nov 15, please consider, this opportunity...for yourself, and for Delta Nu Alpha.

"We never fail when we try to do our duty, we always fail when we neglect to do it." Robert Baden-Powell

Table of Contents

Page 2 - Chapter/National News

Page 2 - A History of Delta Nu Alpha

Page 3 - 6 - The Good Times are Gone

Page 7 - Delta Nu Alpha International Board & Foundation Trustees

Chapter News

Derby Town Chapter (Louisville, KY)

The October meeting of the Louisville chapter will be held on Thursday, October 24, at Hotel Louisville, 120 West Broadway, Louisville, KY 40202. We will be in the Louisville Suite, 12th Floor. Networking begins at 5:30 PM, with dinner at 6:15 PM, and presentation at 7:00 PM. Our speaker will be Rick Bell, local historian and author. His topic will be "Louisville: A History of Transportation for a City on the Move". For reservations, please call Kathy Leamer by October 22 at (812) 944-9488 or e-mail her at kleamer@nclworldwide.com. Cost is \$20 (cash or check—payable at the door).

Meeting Opportunities

Below is a chapter president list. If you are interested in attending a meeting in these areas you can contact the local president for more information.

Bowling Green Chapter - Marvin Claywell mclaywell@midmark.com 270-629-1131

Chapter 750 at Large - David Riggs jasona0327@earthlink.net

Louisville, KY Derbytown Chapter 112 - Lori A Kelsey Lori.Kelsey@ky.gov phone 502-266-6084

Milwaukee Chapter 317 - Steve Rose srose@hubgroup.com

Nashville Volunteer Chapter 135 - Jim Hall Jrhall8657@gmail.com

South Florida Chapter 53 - Jim Glover Fortjimfl@aol.com

A History of Delta Nu Alpha

By James W. Glover, Past International President, 1985-'86 and Chairman of the Board

WHERE TO, DELTA NU ALPHA?

Sustaining and Advancing Proficiency In Transportation and Logistics

The heading above portrays the Delta Nu Alpha envisaged by its founders in December 1940. Of course the word "Logistics" was not in the mix for Messrs. Pancoe, Volk and Wilson to choose from but it was in the dictionary at the time. Then it defined the military techniques of providing material support to our combat troops in wartime. When we concluded World War Two a robust economy was afoot which placed new demands and opportunities on the world of traffic and transportation. By the mid 1980's terminology was needed to replace a cumbersome group of titles which had strung themselves together to try to describe what our endeavors had become. And so, we adopted the military word which in fact had become quite accurate to describe what physical distribution had become. As many as fourteen syllables would shrink to three. One of the world's largest transportation companies even now uses the word freely in its advertising. Tell the public! That's a Delta Nu Alpha kind of thing!

Fast forward to October, 2013. A Delta Nu Alpha has remained alive and well despite shrinkage to 1946 levels. A frail national economy is no help at all. But a Board of Directors comprised of the same dedicated members year after year has continued a nearly thankless task of keeping the fraternity afloat! Perhaps all or some of them will continue. We are two years away from our Seventy Fifth Anniversary. Any of our leadership group wishing a well deserved respite should have that coming with highest honors. We still have a great reservoir of talent and dedication available to us. Pete Riola, Ted Wallin, Cliff Smith, Gary Nichols, Tom Bock, Nancy Mason and more. Delta Nu Alpha needs you.

The Good Times are Gone

By Delta Nu Alpha Board Member, Henry E. Seaton, Esq.

There are three primary issues which concern shippers, brokers and carriers with respect to for-hire truck transportation. These are:

1. Who pays the freight?
2. Who is responsible for the safe operation of the commercial motor vehicle?
3. Who is responsible for the cargo claims?

I was fortunate enough to practice transportation law during much of the second half of the last century when these three issues were well established by statutes and regulations which served all parties well. Unfortunately, this is no longer the case.

1. Payment Obligation. The payment obligation for payment of freight charges was based upon the bill of lading and in the absence of contract carriage, the carrier looked to the consignor on prepaid and the consignee on collect for its freight charges. Carriers were free to enter joint line agreements with other carriers to interline freight or to convenience interline shipments which were often accomplished through bureau tariffs and concurrences.

The origin carrier typically collected the payment of freight charges from the consignor, received the money in trust and transmitted the payment to the delivering carrier upon receipt. That mechanism called “the interline trust theory,” was grafted into truck transportation from the railroads, and served the industry well to ensure that payments from the shipper were earmarked upon receipt and were passed on to the carrier who provided service subject to established rate agreements or “pro rate splits.”

This idea of a constructive trust found its way into both passenger and property broker regulations and is the reason that the current broker regulations set forth accounting requirements that the broker keep records of who it bills, when it is paid and when it transmits the payments to the carrier.

In the advent of deregulation, federal regulators at the U.S. DOT paid little attention to the rules of commerce and since the creation of the FMCSA have had as their “north star” dealing almost exclusively with safety issues. As the number of truckload carriers rapidly increased, a robust transactional market developed and the number of property brokers proliferated with the need to efficiently match empty equipment with available return freight.

As the brokerage industry developed, two unfortunate changes occurred. First, with respect to payment of freight bills, brokers abandoned the trust accounting which the broker regulations infer, contractually promising to pay their carriers regardless of whether the shipper funded the transaction.

Rather than looking at freight charge receivables as monies due and owing to carriers, many brokers consider motor carrier payables as simply another unsecured debt which they are free to subordinate to a secured lender that finances their cash flow.

Continued on page 4

Continued from page 3- The Good Times are Gone

Second, the problem of uncreditworthy middle men who obtained broker's licenses and posted the meager bond only to intentionally violate the broker accounting regulations and abscond with the carrier's money was recognized as early as 1986. It was not until 2102 that three major trade associations were instrumental in passing new regulations to impose a higher bond level to address the freight payment issue.

Yet, in MAP-21, brokers and forwarders are not only required to obtain a \$75,000 bond, the whole concept of convenience interlining is dealt a fatal blow. To continue to augment their fleets by hiring other motor carriers, every carrier which wants to arrange for truckload transportation must obtain broker authority in a separate docket. How this will work is left to be determined as over half the state trucking associations, three divisions of ATA and four other small trucking associations have rebelled and are seeking both congressional and administrative guidance.

2. Liability for Cargo Loss or Damage. Under the Carmack Amendment, carriers and freight forwarders are, with few exceptions, liable for the destination market value of shipments lost, damaged or destroyed in transit. Where an originating carrier participates in interlining or convenience interlining, Section 14706(b) provides that the beneficial owner may sue either the origin or the destination carrier and that any carrier required to pay a claim has the right of indemnity against the carrier which was in possession of the goods at the time the damage occurred. Unlike carriers and freight forwarders, property brokers have no liability under the Carmack Amendment and, like an insurance agent, act as an intermediary which brings together contracting shippers and carriers.

Yet, the simple general principle of federal transportation law that carriers are liable for cargo loss or damage, brokers are not, is under attack. Over the objection of 29 of 31 commenters, the FMCSA deleted the requirement that carriers file evidence of cargo coverage coextensive with Carmack. A proactive agency that listened to industry would have raised the bond. Instead, the agency said that every shipper and broker could simply read the carrier's cargo policy to determine if there were loopholes.

Although the regulations do not place the responsibility on a broker to read every carrier policy, shippers do not want any hidden surprises when a carrier they did not select fails to pay a claim because of a policy deficiency. As a result, shippers by contract frequently require brokers to indemnify them for cargo loss or to accept direct cargo liability – a risk for which there is no primary coverage.

The new broker regulations, making every carrier become a broker to conduct convenience interlining, only further compounds the confusion surrounding cargo liability.

Will Section 14706(b) have any implication in the future when the relationship between the two carriers is not a through bill interline but some kind of undefined hybrid brokerage arrangement? Undetermined is whether shippers in the future have a legal cause of action against the carrier it retained when that carrier acting as a broker retains another carrier. Will the originating carrier's insurance company deny the claim because the load was brokered and brokerage is excluded from origin carrier's policy?

Continued on page 5

Continued from page 4- The Good Times are Gone

3. Responsibility for the Safe Operation of Commercial Motor Vehicles. Federal motor carrier safety regulations have always made clear that the licensed, authorized and insured motor carriers were solely responsible for the safe operation of the truck and that the federal regulators were the sole arbiters which made the safety fitness determinations.

Under the Commerce Clause, the Federal Government has exercised field preemption, establishing a uniform safety regime which places responsibility solely on carriers, makes the shipping public a third party beneficiary of the resulting uniform rules of commerce, and requires of property brokers only that they use licensed and authorized carriers.

Oh, that the above stated general principles of federal transportation law had survived in the 21st century! When the federal government began deregulating the motor carrier industry in 1980 and abolished the Interstate Commerce Commission in 1993, it sought to allow for greater competition in the industry, and a more vibrant and open marketplace, but there is no evidence that Congress ever intended to abandon the general principles of federal transportation law above. In fact, the regulations which established the accepted rules of commerce remained unchanged, were merely recodified and given new Code of Federal Regulation citations and republished unchanged.

Yet plaintiff's bar, since 2003, has aggressively sought to use state law tort and negligent selection criteria as a predicate for racing up the supply chain to deep pockets. The FMCSA has facilitated this increase in liability by declining to affirm the preemptive effect of its safety fitness determination. In fact, it has given support to the plaintiff's bar by labeling shippers and brokers as "stakeholders" which must make "safety based decisions." By publishing and advocating an untried system of percentile rankings the agency strongly suggests that over half the carriers it ranks as safe to operate are actually unsafe to use! Shippers and brokers have been slow to respond and great turmoil over carrier selection has ensued. The future of the competitive marketplace promised by deregulation is being undermined in the name of safety.

In sum, much uncertainty faces the trucking industry as traditional rules of commerce are under serious attack. No longer will carriers be able to contract one with another to provide substituted service with the assurance that the collecting carrier will receive payments in trust from the actual service provider. No longer will the shipper be able to take advantage of the Carmack Amendment and recover as a matter of law from the origin carrier it hired as well as any subcontracting carrier who was actually responsible for the damage. Brokers, by yielding to shippers' demands for exercise of greater control over the carriers they select have opened the door to vicarious liability for third party accidents.

Under principles of public utility law which underlie government oversight of any regulated industry, the consumer is entitled to rely upon the ultimate fitness determination deciding vendor competency and fitness for the intended purpose. The clarity and purpose which underlies traditional regulation of interstate trucking is neither understood nor appreciated.

The FMCSA has made clear that it does not view shippers and brokers as beneficiaries of the Federal Motor Carrier Safety Regulations that can simply continue to use carriers the agency certifies as fit to operate.

Delta Nu Alpha International Board

President - Sally Lubinski

Rite Hite

(414) 355-2600

slubinski@ritehite.com

Vice President- Don Adams

Conway Truckload

(847) 287-2268

dadams9021@comcast.net

Director - Jim Hall

Carrier Services of Tn. Inc

615-758-9757 ext 8803

Jrhall8657@gmail.com

Director - Christopher Burns

ModusLink Corporation

Christopher_Burns@moduslink.com

Director – Hank Seaton

Seaton & Husk

(703) 573-0700

heseaton@aol.com

Director - Dr. John Taylor

Wayne State University

5201 Cass Avenue, Rm 315

Detroit, MI 48202

taylorjohn@wayne.edu

Director - Jeff Wilmarth

Silver Arrow Express

(800) 397-4892

silverarrow@comcast.net

Delta Nu Alpha Foundation Trustees

Chair - Clifford Smith

(623) 414-1194

cliffsmith49@gmail.com

Vice Chair - Jeff Wilmarth

Liaison to the Fraternity

President Silver Arrow Express

901 22nd Street

Rockford, IL 61108

(815) 397-4892 Ext. 223

silverarrow@insightbb.com

Secretary - Treasurer - Gary Nichols

Director of International Sales US Xpress

3327 S. Highland

Joplin, MO 64804

gnichols01@cableone.net

Trustee - Tom Bock

Vice President - Sales

Oil Purification Systems, Inc.

4123 Apple Blossom Road

Lutz, FL 33558

bocko@mindspring.com

Trustee - Bill Lavier

General Manager

Retired/Tyme-It Transportation, Inc.

130 Heady Avenue

Louisville, KY 40297

(800) 456-4090

williamhlavier@tymeit.com

Trustee - Carol Hackett

Anna's Children's Boutique

6901 Lenox Village Drive, Suite #101

Nashville, TN 37211

(615) 554-0142

carolh24@msn.com

Delta Nu Alpha Information

Delta Nu Alpha Administrator - Laura

Phone: 414-764-3063

admin@deltanualpha.org

Reminder on Member Contact Data -

Many of you have moved, changed jobs,

changed email addresses, or maybe all three

- forward updated information to

admin@deltanualpha.org.