

# Data Overload

How Public SMS Data confuses shippers, brokers, and the courts and impacts the trucking marketplace

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» *Accelerate Your Advantage*®



**C.H. ROBINSON**

## » Who is C. H. Robinson?

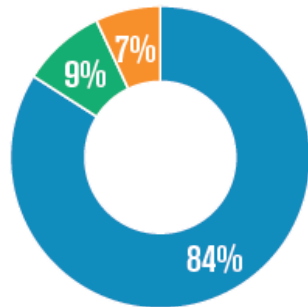
- Founded in 1905
- Largest U.S. freight broker
- Ranked as the #1 3PL by readers of *Inbound Logistics* 5 years in a row
- Carrier base of around 63,000 transportation companies worldwide
- Acquired Kansas City based Freightquote in December 2014
- Ranked #220 on the 2015 Fortune 500
- \$13.47 billion in gross revenue in 2014



# CURRENT SUPPLIER PROFILE

- Relationships with suppliers in all transportation modes

## MOTOR CARRIER RELATIONSHIPS PERCENTAGE OF 2014 TL SHIPMENTS BY CARRIER SIZE



- SMALL CARRIERS (<100 TRUCKS)
- MEDIUM CARRIERS (100-400 TRUCKS)
- LARGE CARRIERS (>400 TRUCKS)

LARGEST CONTRACTED POOL OF MOTOR CAPACITY IN NORTH AMERICA  
WITH ACCESS TO MORE THAN ONE MILLION PIECES OF EQUIPMENT



EXTENSIVE INTERMODAL COVERAGE WITH  
**DIRECT ACCESS** TO ALL **8**   
 NORTH AMERICAN RAILROADS

**TOP 10** NVOCC WITHIN THE  
GLOBAL OCEAN   
CARRIER PORTFOLIO.

**20** CORE AIR CARRIERS   
MOVE **72%** OF OUR VOLUME

ROBINSON FRESH         
MORE THAN **2,000 GROWERS**  **120 MILLION** CASES OF  
FRESH PRODUCE SOLD ANNUALLY

## » How are Shippers and Brokers impacted by SMS data?

- Desire to hire safe carriers vs. increasing trend of negligent selection lawsuits
- Contracting Confusion
  - What data is most important?
    - Examples of real policies
      - Request corrective action plan from any carrier within 20 percentile points from any threshold
      - Do not use any carrier with more than 2 BASIC's over threshold
      - Do not use carrier with higher Driver Out of Service rate than national average
      - Only use satisfactory rated carriers
- Moving Target

## » Recent Trends in Negligent Selection Cases

- Judicial confusion regarding SMS data despite data warnings
  - Owens case in TN
- Growing coordination among plaintiffs attorneys
  - Cut and paste discovery questions
  - Courses on how to use SMS data for “broker busting”
  - Rapidly expanding challenges to what constitutes a safe motor carrier
- Insurance Industry
  - Fearful of public perception of SMS data presentation



# » Recent Trends in Negligent Selection Cases

Negligent Hiring While respondeat superior theories have proven difficult to win in many cases, negligent hiring is a developing area of Broker Liability that continues to gain traction—it is the essence of “Broker Busting ‘B.A.S.I.C.s’”. The basic theory underlying the negligent hiring cause of action is that the broker had a duty to exercise reasonable care when selecting the carrier it contracted with for delivery of the load. This cause of action has become an increasingly powerful one as technology has advanced. Brokers now have real-time access to the most up-to-date safety statistics available from the Federal Government, yet many large brokers are fighting against the use of those statistics by brokers. It is easy to see, however, the power of this cause of action where, for example, a broker selects a carrier that has poor Hours of Service Safety Scores without checking the latest safety statistics, and the carrier’s driver then falls asleep and causes a wreck. Because this is such a powerful cause of action in such situations, the Broker Industry is fighting these cases and use of the safety statistics with guns blazing.

In the next article, we’ll talk more about the Alphabet Soup, specifically looking into [What is a Freight Broker and Who Else Is Involved?—the “Shipping Shell Game”](#)



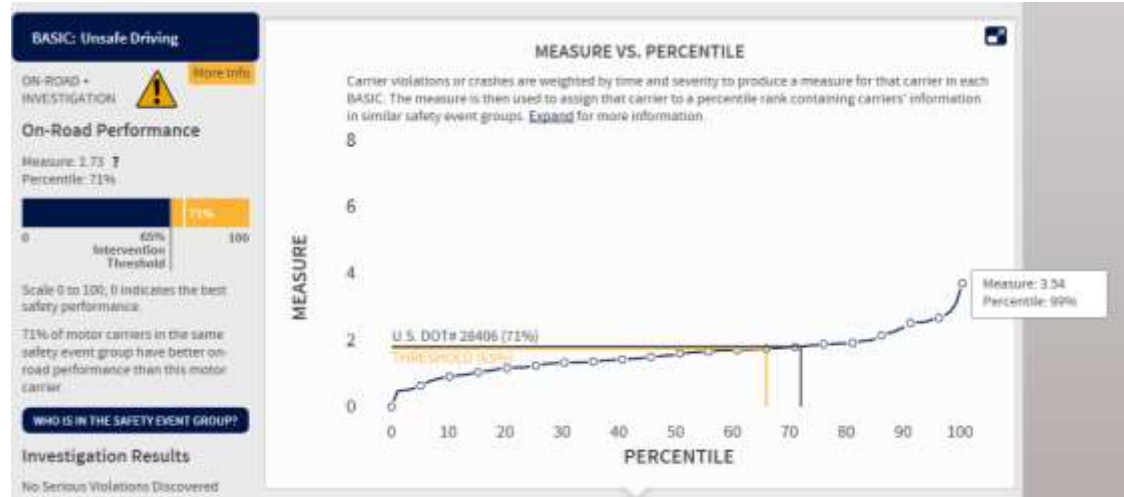
The screenshot shows the website for Keith Williams Law Group. At the top, there is a navigation bar with links for HOME, PRACTICE AREAS, ATTORNEYS, CASE RESULTS, and WHAT OUR. Below the navigation bar is a video player featuring a man in a suit, with the Keith Williams Law Group logo and phone number 866.820.4457. Below the video player, there is a headline: "Keith's first article in a series about busting brokers - holding those responsible for negligent hiring practice that result in trucking accidents, injuries and deaths." Below the headline, there is a paragraph of text: "We are going to do a series of articles on Broker Busting over the next few months. These articles will be based on the best practices Keith Williams has learned in his successful career of holding brokers responsible for their negligent hiring practices that result in trucking accidents on our roads. Keith believes our highways, interstates and roads can be made safer if these 'hidden' businesses are held responsible for their actions and that trucking cases should be taken, if appropriate, beyond the driver and motor carrier to the brokers themselves."

## » Unintended Consequences of Data Confusion

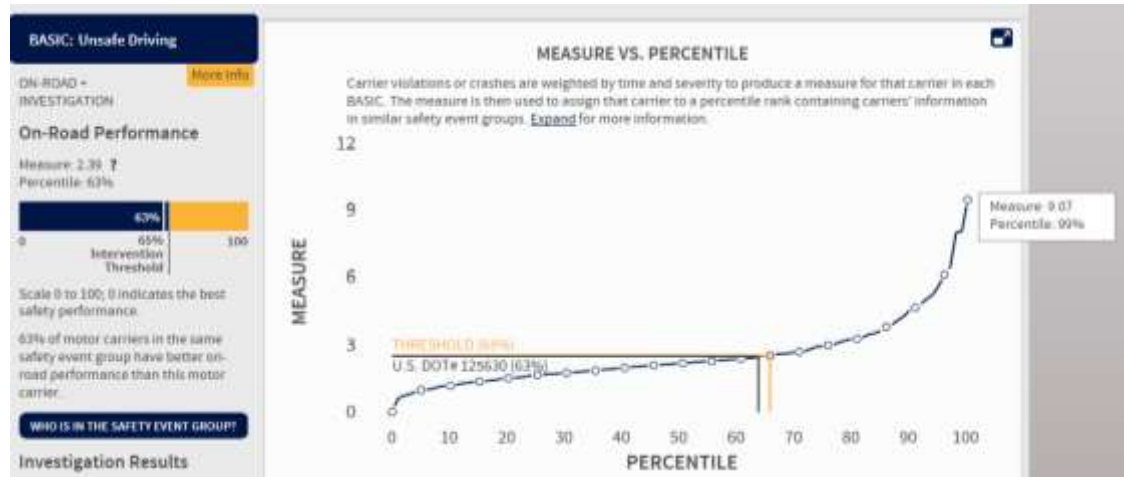
- Intra peer group competition
  - Vastly different “measure” ranges from peer group to peer group impacting hiring environment
  - Incentive to inaccurately report MCS 150 data
- Carriers being excluded from freight opportunities
  - Leads to pressure on local FMCSA offices for CR and DataQ’s
- Shippers and brokers bearing virtually all risk
  - Many are one lawsuit from catastrophe
- Confusion on important FMCSA enforcement actions
  - Imminent Hazard designations ignored
- Entrenched interests invested in current state confusion

# » Intra Peer Group Competition

- Mega Carrier
- Measure Range 0-3.54
- 1.73 Measure places carrier in 71<sup>st</sup> percentile



- 400 Truck Carrier
- Measure Range 0-9.07
- 2.39 Measure places carrier in 63<sup>rd</sup> percentile





## » Many proposed remedies

- Congressional Action
  - National Hiring Standard (HR 1120 and S 1454)
  - General CSA reform including removal of BASIC data from public view
- Calls for FMCSA to remove BASIC data from public view
  - Letters from ATA, OOIDA, TIA, CVSA, etc
- Safety Fitness Determination

# Thank You



**C.H. ROBINSON**