



C3 Solutions

Understanding Chain of Responsibility in the Supply Chain

Road Safety is No Longer the Sole
Responsibility of Carriers

WHITE
PAPER

By

Gregory Braun

Senior Vice-President, Sales & Marketing
C3 Solutions

In Brief

In May 2015 Walmart settled for an undisclosed amount with US actor Tracey Morgan who was seriously injured in a crash caused by a Walmart truck driver in June 2014. Although the driver had not exceeded his Hours of Service driving time, he was speeding, and it was alleged that he had not slept for 24 hours at the time of the accident. (1)

Whether you believe Walmart did the right thing by settling Morgan’s suit or not, this case has raised in the US—and Canada by association—the issue of Chain of Responsibility. Although it has not yet been introduced into North American law, it is going to become an issue of growing importance. It will be important to learn how it might affect your supply chain and business success.

This White Paper will explain the concept of Chain of Responsibility (CoR), how it has been implemented in other jurisdictions, how it may affect your business and what you need to do to ensure you are prepared and protected.

Contents

In Brief	p.2
Chain of Responsibility	p.3
Is Truck Safety Really a Big Issue?	p.4
Existing Legislation: How it Applies	p.5
How to Prepare	p.7
Practical Changes	p.8
In Closing	p.9
About C3 Solutions	p.10
References	p.11

Chain of Responsibility

Chain of Responsibility (CoR) is the principle that all the people who influence a heavy vehicle driver's behavior and compliance should, and must, be held accountable if that influence results in non-compliance with traffic rules and laws.

The context: Highway Safety

Safety on the highways is a matter of great public concern. With increasing traffic congestion and the predominance of trucking as the main means of freight transportation in our consumer goods-oriented economy, it's no wonder that scrutiny of the trucking industry has gained in both scope and intensity.

According to the Canadian Trucking Alliance, approximately 90 percent of consumer goods and food in Canada is delivered by truck. In the US about 70 percent of all freight is carried on a truck. The industry employs more than 250,000 drivers in Canada and more than 3.5 million in the US. A few years ago you may recall the outcry prompted by numerous incidents of truck wheels flying off and injuring or even killing car drivers and passengers. The resulting safety blitz saw a marked reduction in the number of such incidents on the roads.

More recently, Hours of Service rules have been put into place in the United States and Canada to ensure that drivers are not falling asleep at the wheel as a result of putting in too many hours on the road. These rules require truck drivers to log and limit the number of consecutive hours they put in behind the wheel, as well as the number of total hours they can drive in a week.

But, as the Tracey Morgan/Walmart accident has demonstrated, even the Hours of Service regulations cannot prevent crashes from happening. In that case, the truck driver, Kevin Roper, was alleged to have dozed off at the wheel, setting off a chain-reaction collision in which Morgan and two others were seriously injured and comedian James McNair was killed. In the investigation, police found that Roper had not slept for 24 hours before he was at the wheel of the Walmart tractor-trailer. (1)

Roper should clearly not have been driving without having slept. But nonetheless, he was compliant with the HoS regulations. It's clear the rules are insufficient to prevent serious collisions that cause significant injuries and/or deaths.

While the truck driver may be immediately responsible when a crash occurs, he or she is not alone in determining the schedule on which goods must be delivered. As the Ontario Trucking Association succinctly puts it:

"The North American just-in-time inventory system is built around the truck and is the mode of choice for reliable, and efficient, time-sensitive service that manufacturers, retailers and shippers require." (2)

That just-in-time system puts a lot of pressure on each segment the supply chain to uphold their part of the schedule.

"In a fiercely competitive industry, each party in the transport chain is subject to pressure from those exercising higher control."

For example, speeding offences and hours of service violations may be a response to schedules for which little or no flexibility is allowed," says the report, *Moving Freight with Better Trucks, Improving Safety, Productivity and Sustainability*, published by the International Transport Forum. (3.p288, Ch. 10)

This is where the concept of Chain of Responsibility comes in. Walmart, by settling with the victims of Roper's dangerous actions, took responsibility for its driver, even though the company was not directly in control of the events that led to the collision.

In fact, from the beginning, in its first statement about the crash, Walmart said the company would take full responsibility if it was found that its truck caused the accident: "Safety is our absolute highest priority, but that is no comfort whatsoever to the families and friends who are suffering today... We can't change what happened, but we will do what's right for the family of the victim and the survivors in the days and weeks ahead." (4)

This is the kind of culture of safety that CoR regulations are designed to promote.

Is Truck Safety Really a Big Issue?

You have to ask whether trucks are truly a public menace. After all, it's widely promulgated by the trucking industry that tractor-trailers are the safest vehicles on the roads.

According to Ontario Trucking Association statistics, on average, trucks represent less than three percent of vehicles involved in accidents. And they are "overwhelmingly" found to be not at fault in collisions with other motor vehicles. In US statistics, 80 percent of truck collision-related deaths are the fault of the non-commercial driver.

It's pretty remarkable, and a testament to the industry's safety, that while there are over 200,000 trucks on Ontario roads on any given day, since 1990 large truck fatalities have dropped by 33 percent. That's in spite of a 62 percent increase in large truck registrations in the same period.

Only nine percent of traffic deaths in the US were found to involve commercial vehicles, and four percent involved fatigue. (5)

Although trucks are a moving target, they are also a big target, very visible to the public and when they do have crashes they get attention. Public outcries over very visible incidents like the Tracey Morgan crash are what often start the legislative ball rolling.



Existing Legislation: How it Applies

Other parts of the world are far ahead in the recognition that CoR can contribute to highway safety. Both Australia and New Zealand have existing Chain of Responsibility regulatory frameworks.

In Australia, CoR has been part of heavy vehicle legislation since the 1990s. A National Road Freight Industry Inquiry published in 1984 found evidence that drivers deliberately broke trucking regulations, and also discovered that the “truck operator, freight forwarder, agent and broker all have a significant and proximate role to play” in ensuring compliance with regulations. (6. p10)

In 1993 it was recommended that parties other than drivers be held responsible for breaches, even when their actions did not “amount to forcing or inciting the driver to break the law” (6. p10). Consignors and owners of non-complying loads, operators who set unrealistic schedules and directors of companies involved in such activities were all identified as those with potential responsibility. In the intervening years policy and legislation evolved to include CoR provisions, and gained support from industry and government.

More recently, the Heavy Vehicle National Law (HVNL) was enacted to establish a national framework for facilitating and regulating the use of heavy vehicles on roads to promote public safety (among other objectives). Within the HVNL, Chain of Responsibility provisions require parties whose activities may influence whether vehicles and drivers comply with specified requirements under the HVNL to ensure that their actions or inactions do not contribute to or encourage breaches of the law. (6)

In the Australian legislation, the CoR takes into account that on-road behaviour and outcomes can be influenced by the actions and undertakings of parties within the transport industry other than the driver.

The CoR provisions are meant to ensure fair allocation of responsibility, taking into account that the degree of control over potential risks will vary depending on each person’s role within the chain and their activities.

According to the “Chain of Responsibility in the Heavy Vehicle National Law: Issues Paper” published in July 2013:

“The fundamental goal is to encourage greater compliance across industry by subjecting all relevant parties in the chain to potential enforcement action, depending on how they acquit their responsibilities.” (6)

In Australia, this responsibility may be apportioned across the following members of the Chain of Responsibility when it comes to offences related to speeding and fatigue: Executive officer, employer, prime contractor, operator, scheduler, consignor, consignee, loading manager, loader and unloader.

Examples of actions that may fall under CoR provisions include:



Drivers breaching fatigue management requirements or speed limits;



When instructions or demands of any party in the supply chain “causes or contributes to an offence under the HVNL” (7). This can include schedulers who put pressure on drivers that induces them to exceed driving hours or operators who do not provide drivers with an adequate sleeping environment.

All those in the chain are required to ensure that terms of work will not “result in, encourage, reward or provide an incentive for the driver or other party in the supply chain (e.g. a scheduler) to break the HVNL.” (7) In addition, any contract that requires a driver to break the law is illegal.

When prosecuting breaches, Australian courts can consider the actions of all parties in the chain of responsibility. Each is required to take “all reasonable steps to ensure a heavy vehicle driver can perform their duties without breaching the HVNL.” (7)

Since the CoR rules have existed for some time, Australia has access to statistics on their application. And, although heavy vehicle operators continue to bear the majority of charges in CoR investigations, the number is said to be falling. Between 2005 and 2012, 33 percent charged were operators, 24 percent were consignors and nearly 11 percent were directors. (6.p28)

North America

Although legislation enacting CoR responsibilities has not yet been introduced in North America, it is likely coming.

In 2008 a US freight broker was held negligent following a fatal crash between two heavy vehicles.

The court held that the broker had a “duty to investigate the fitness of the transport operator prior to engaging it to carry a load on a public highway.” (3.p289) Federal Motor Carrier Safety Administration (FMCSA) safety ratings were publicly available, and the broker should have been used them to determine if the operator was compliant. According to a report by the International Transport Forum, “this could be seen as a civil law equivalent of the chain of responsibility approach.” (3.p289)

More recently, it has been recommended to the FMCSA by its Motor Carrier Safety Advisory Committee that anyone using the services of either passenger or property carriers be “on the hook” if those carriers engage in dangerous behaviour. This would include shippers, receivers and brokers, and the committee envisioned provisions whereby the FMCSA could a) “pursue avenues to ensure that when a truck is held up by shippers, the carrier and the driver are paid;” and b) “Prohibit penalties for carriers or drivers for being late with a shipment.” (8)

US legislators are facing a slew of proposals at present, many of which will have CoR impacts if they are passed into legislation.

These range from reform of the trucking safety program, Compliance, Safety and Accountability (CSA), to modifications to the way truck drivers are paid, with a shift from compensation by the mile to hourly wages. (With such initiatives possibly coming in 2015, all those in the supply chain will need to pay close attention to changes in their duties and responsibilities.)

Consequences

Fines for CoR violations in Australia range between A\$4,000 and A\$15,000. Although these are not massive penalties, there is a review underway to establish parallels with the fines levied in violations of the Work Health and Safety Act. These are much more significant, with maximums of A\$3,000,000 (corporate) and A\$600,000 (personal) with jail terms of up to five years. (6.p44)

Clearly, the consequences of a finding of liability in a CoR case can be serious. And corporate directors need to be particularly vigilant. With the level of control they exercise over corporate activities they bear “significant personal responsibility for their conduct and decisions. Directors are required to exercise their power with the level of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. They must also act honestly, in good faith, and in the best interests of the corporation.” (10)

In Canada, at present, directors can be held liable for numerous offences, including contraventions of dangerous goods and transportation legislation; and numerous provincial offences including violations of health and safety laws.

A recent Ontario Provincial Court decision tells employers and corporate directors that the court will not only levy a heavy fine against employers for Occupational Health & Safety Act violations, but will also impose prison sentences on corporations’ directors. The judge fined an importer and retailer \$250,000, and sentenced two of its directors to 25-day prison sentences, following the 2013 death of a forklift operator. A Ministry of Labour investigation found multiple violations of Ontario’s Occupational Health & Safety Act at the workplace, including failure to provide health and safety training to workers, lack of fall-protection equipment and safety harnesses, and multiple other health and safety hazards. (10)

Laws such as Ontario’s Occupational Health and Safety Act are already on the books and might be adapted to include CoR provisions.

How to Prepare

Although there are no statutory obligations imposing CoR on North American companies at this time, those involved in the supply chain should consider what might be involved. Having policies and procedures in place that work to keep freight transportation safe, regardless of potential legal liability, amount to good, ethical business practices.

In Australia, when CoR was implemented “the road transport industry made significant changes in anticipation of proposed CoR obligations...Customers cited concern about their potential liability under occupational health and safety duty of care provisions and proposed CoR provisions, and heightened awareness of risks to drivers, as the primary motivations for change.”(6)

Closer to home, the fact that Walmart chose to settle the lawsuit brought by Tracey Morgan and his co-complainants suggests that the retailer felt a responsibility for the actions of its driver, whether the company would have been held legally responsible or not.

Think about the ways in which your company—be it a manufacturer, retailer, trucking operator, third-party logistics provider, freight broker or distributor—affects the way freight shipments are handled. The simple act of hiring a carrier, directly or indirectly, gives you influence over the pricing, routing and timing of the delivery. All of these have a trickle-down effect on the safety of each individual road transportation move.

And within your own enterprise, responsibility lies in various areas. As noted above, under Chain of Responsibility, in the Australian example, liability can be assigned from company directors on down to the individual truck driver. Remember, CoR holds that “... all who have control, whether direct or indirect, over a transport operation bear responsibility for conduct which affects compliance and should be made accountable for failure to discharge that responsibility.” (3. p288) This means everyone from the consignor who demands unreasonable delivery windows to the manager of a distribution centre who keeps drivers waiting to load or unload, to the director of a company who encourages cost-cutting measures with no regard for the downstream consequences.

It's clear that you need to have very good oversight of your company's operations in order to manage the risk involved in Chain of Responsibility.

As senior management it's your job to ensure the company's policies and values align to best practices that help ensure compliance with any regulations. Of course, it's always easier to say than to do, but taking a close look at how your organization might improve before an incident can take place is easier than waiting until something bad happens and having to accept liability.

In a recent blog (11), Human Resources Inc (HRi) offered a few tips for senior managers. They suggest the best way to manage the risk is to focus on accountability—individual and corporate.

Although there may be an individual at fault, that person is not acting alone. Take a look at how the corporate culture values safety. Is there an emphasis on getting things done at any cost, or are individuals empowered to step up and speak up to ensure that accident prevention is always part of the analysis in assigning work and designing processes and procedures.

Another tip is to make safety a core value, not a priority. This may sound like a distinction without a difference, but HRi notes that priorities are constantly shifting, being managed on a daily basis. Values, however, are the foundation upon which a business operates; they never change and they drive all behaviour.

“Leaders who truly want to prevent deadly disasters must actively engage in promoting a culture of prevention. Safety—and safe behaviours—must be non-negotiable values and managers must live, breathe and communicate these values.” (11)

Managers must constantly promote the culture of safety, encourage employees to hold each other accountable and empower them to make safety-first decisions.

Practical Changes

On a practical level there are numerous ways operations can be improved to help prevent accidents.

The province of Quebec's Societe de l'assurance automobile (SAAQ) has provided guidelines to help companies involved in the transportation sector prevent accidents caused by driver fatigue. (12)

Some of the actions it suggests to prevent fatigue-related accidents include:

- 1 Shippers should offer flexible pick-up hours, a place for drivers to rest who may be coming up against the end of an Hours of Service work period, and eliminate indirect financial pressures that take precedence over driver fatigue.
- 2 For vehicle operators, routes and schedules should be carefully planned; drivers, dispatchers and schedulers must be adequately trained; there should be a place to rest for drivers; and consideration should be given to ergonomic vehicle design.
- 3 Drivers also have to take responsibility for route and schedule planning; they must be aware of and use fatigue management techniques; they need to know to avoid heavy meals and drugs, and alcohol; they should be discouraged from holding two jobs, which limits free time and sleep time; and they should be screened for sleep disorders (like sleep apnea).
- 4 Consignees, like shippers, must allow for flexibility in receiving and unloading trailers; they need to keep **delivery schedules** reasonable; and provide rest areas for waiting drivers

No matter which type of supply chain organization you represent, there are tools available in the marketplace to help implement these suggestions. Technology is part of the reason that CoR has become an issue in supply chain operations.

With sophisticated GPS tracking systems and fleet management software relatively inexpensively available, every little action taken by a truck driver can be monitored.

Driver logs and telematics tracking devices make the implementation of Hours of Service regulations possible.

With all that data theoretically available, it's not just the trucking operators who can ensure their drivers are compliant. Shippers and brokers and 3PLs can also request that information as part of their due diligence in ensuring CoR obligations are met. It's a powerful tool that lets you decide if a carrier demonstrates the kind of safety values that meet with your own.

Routing and Scheduling software, as well, has an important role to play in ensuring that drivers are making the most efficient use of their time, on the road, on arrival with a load for delivery, or at the dock door for a pick-up.

You cannot prevent events that are beyond your control like weather, traffic congestion and unforeseen delays, but scheduling software allows you to make the best possible decisions with the information you have, so as not to unduly hinder truck drivers who need to keep moving in order to make a living.

There are also simple policies you can implement, such as empowering your inbound or outbound shipping staff to offer hotel rooms to drivers in the event of delays caused by your organization.

No doubt, when the attention to CoR intensifies and it looks to become regulated in Canadian jurisdictions, there will be a host of new products and services designed to help companies improve compliance and prevent significant incidents.

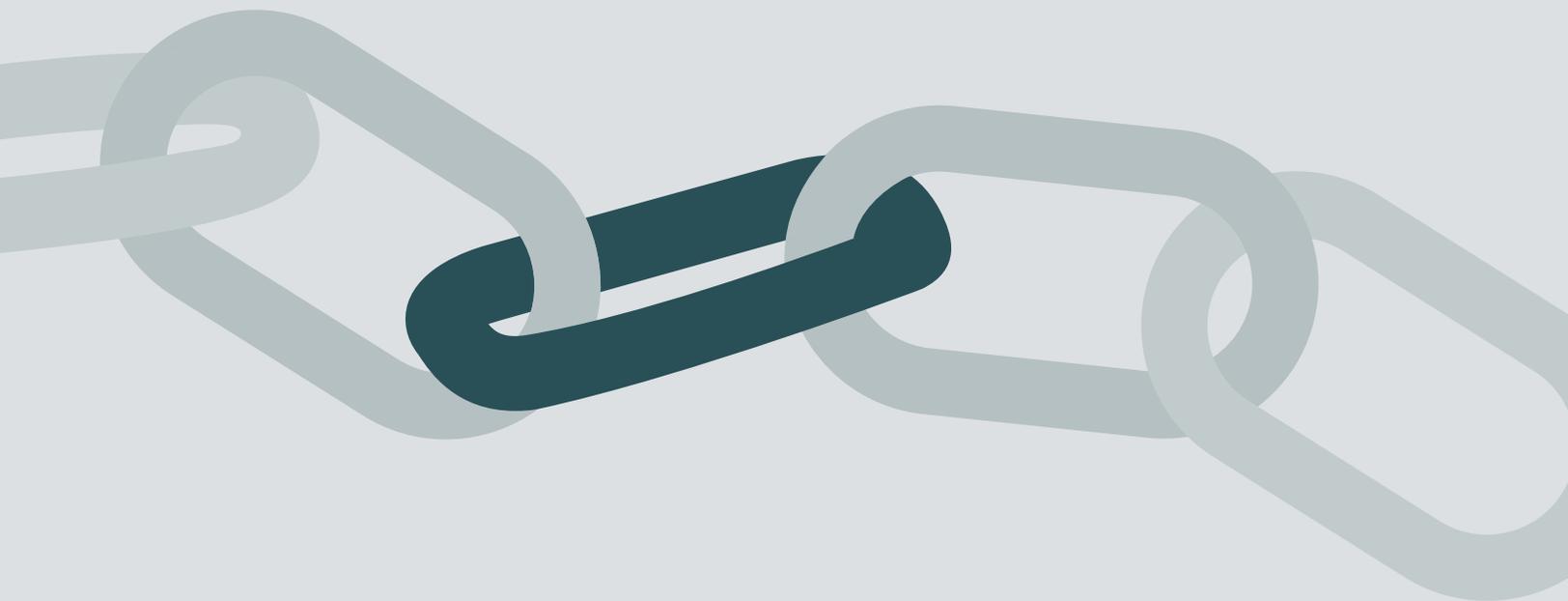
In Closing

As a part of the supply chain in North America, you can be fairly certain that Chain of Responsibility provisions will become part of our regulatory landscape. Although legislative change is not imminent, the significance of the introduction of CoR to the logistics landscape in this country should not be ignored.

Complying with Chain of Responsibility obligations will be a choice your organization needs to make, whether a legal requirement is imposed or not.

Ensuring your company is doing all it can to eliminate preventable incidents caused by heavy vehicles—whether due to fatigue or other controllable influences like alcohol, drugs or speeding to meet impossible deadlines—is already the ethical business choice.

So why wait? Look now at your role in the supply chain. Make the Chain of Responsibility a normal part of your business operations going forward. Not only will you be able to protect yourself and your business from possibly catastrophic liability, you will have the advantage when it does become a requirement.





About C3 Solutions

C3 Solutions is an information technology company specialized in yard management (YMS) and dock scheduling (DSS) systems. Since its founding in 2000, C3 has gained the confidence of clients around the world and across many industries including retail, grocery, distribution, manufacturing and parcel post. Headquartered in Montreal (QC), Canada and privately owned, C3 is dedicated to developing, implementing and supporting the most complete yard management and appointment scheduling products on the market today.

Contact

+1 (514) 315 - 3139

email: sales@c3solutions.com



[VISIT OUR WEBSITE](#)

References

- 1 <https://cbsnewyork.files.wordpress.com/2014/06/kevin-roper-criminal-complaint.pdf>
- 2 <http://cantruck.ca/freight-economy/>
- 3 Moving Freight with Better Trucks, ITF, 2011, Chapter 10
- 4 http://www.nwahomepage.com/fulltext-news/d/story/walmart-could-take-full-responsibility-for-tracy-m/25285/WBL2BUGq70anxjn_us8Rrw
- 5 <http://www.truckinfo.net/trucking/stats.htm>
- 6 <http://www.ntc.gov.au/Media/Reports/%28D6EB866C-DBB7-C6FA-ECCC-69191B709F9F%29.pdf> “Chain of Responsibility in the Heavy Vehicle National Law: Issues Paper - July 2013”
- 7 <https://www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/about-the-chain-of-responsibility> MCSAC Task 14-01: Recommendations to the Agency to be Included in the Upcoming Reauthorization of the Surface
- 8 Transportation Law, the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141)
- 9 <http://www.todaystrucking.com/special-how-new-us-trucking-proposals-affect-you>
- 10 <http://www.mmdonline.com/opinions/when-directors-go-to-jail/>
- 11 <http://www.hri-online.com/blog/what-employers-should-learn-from-tracy-morgan-s-crash>
- 12 http://www.saaq.gouv.qc.ca/en/documents/pdf/prevention/html/fatigue_management.html

Additional Sources:

- 1 <http://news.walmart.com/news-archive/2015/05/27/walmart-and-tracy-morgan-announce-settlement-of-lawsuit-regarding-new-jersey-turnpike-accident>
- 2 <https://www.nhvr.gov.au/safety-accreditation-compliance/chain-of-responsibility/roles-and-responsibilities-of-parties-in-the>