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**WAREHOUSING  
FORUM**

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to helping warehouse managers and their bosses improve productivity  
and manage more profitably with tips, comments and articles written  
by practicing professionals.*

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## ***Five Ways Legal Knowledge Helps Warehouse Operators***

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Whether you are a warehouse operator, a wholesale distributor, or a buyer of logistics services, you are faced with the challenge of maximizing opportunities while controlling risk in a difficult economy. The law can help in five ways:

- Know thyself
- Update contracts
- Protect your revenue
- Monitor your customers and vendors
- Nurture your workforce

Let's examine all five in detail.

### ***Know Thyself!***

In a competitive business environment, the best operators offer a cafeteria of value-added services, ranging from transportation brokerage and trucking to air freight forwarding and more. Some operators do not manage these services strategically because they are too busy focusing on operations issues to plan for the future.

Some choose to mimic the offerings of a competitor. Others offer a new service without considering consequences. Either approach carries risks that can be avoided by careful planning.

For instance, a warehouse operator who brokers freight to a motor carrier, who causes a highway accident with a catastrophic loss of life or property, could be found liable for the outcome under certain circumstances. If you plan to offer transportation brokerage, you should follow these steps:

- Offer those services only through a distinct, limited liability company.
- Obtain federal operating authority.
- Establish protocols for motor carrier selection.
- Educate your customers and your sales force about exactly what a transportation broker does (arrange for transportation), and what it does *not* do (perform transportation).

Offering a new service line need not be complex; however, you should consider how the new service merges with your existing strategy. Take appropriate steps to appraise the risk and to give the new initiative an appropriate structure.

### ***Update Contracts!***

Just as good fences make good neighbors, good contracts make good business partners. Discuss every one of the issues in advance, rather than after a disagreement occurs. A clear contract will usually deter customers from pressing dubious claims.

Some warehouse operators and their customers retain obsolete contracts that no longer address the parties' relationship. A contract that at one time was valid can become dangerously inadequate as a result of scope creep, changes in the law, poorly crafted amendments, or unwritten practices that now are part of the operation.

First, verify that all of the services currently provided are described accurately in your contract. Then, analyze the following contractual provisions that deserve special consideration:

- **Limitations of Liability.** Higher limits of liability should raise both the cost and price of warehouse services. As customers' products change over time, adjustments to limitations of liability and rates will be necessary.
- **IWLA "Standard Terms and Conditions."** Terms and conditions have been published by the trade association for many decades. Recently, they have been revised; so if you rely upon the IWLA's standard terms and conditions, be sure to use the latest version.
- **Indemnification.** A poorly crafted indemnification provision can impose radical liability upon a warehouse operator. An operator who broadly promises to indemnify the customer might be dragged into a product liability suit arising from that customer's faulty merchandise, even if the warehouse did nothing inappropriate.
- **Liens.** In today's turbulent economy, consider the possibility that your customer is in financial trouble, or that you have a significant disagreement with that client. Your ability to hold the customer's

inventory to enforce your warehousing lien turns on the language in the contract. The ideal contract should create a "general lien" covering storage, handling, and other charges, even if the inventory related to those charges already has been shipped. Absent appropriate contractual language, you may not be able to hold current inventory in order to collect old storage and handling charges.

Periodic review of contracts should be standard practice. Performing this update need not be an extraordinary undertaking, and simple amendments may provide all of the necessary changes.

### ***Protect Your Revenue!***

Although a lien provides security, sometimes it is inadvertently waived by the warehouse operator. Beware of these typical situations that might lead to the loss of the warehousing lien:

- **Relinquishment of Possession.** The lien may be lost when the inventory is released. Do not release inventory if you have any intention of exercising your lien. You never should assume that your lien continues to encumber inventory after it has left the warehouse.
- **Subordination Requests.** A customer's lender may demand that you release your lien by signing a waiver. In other words, the lender wants its security interest in the customer's inventory to trump any warehouseman's lien that might encumber the property.
- **Agreement.** The parties may agree by contract that a warehouseman's lien does not exist, or that it is released under certain circumstances.

Compelling business reasons may exist in any relationship for releasing a warehouseman's lien. For instance, a warehouse operator may choose to subordinate its lien in order to get the business, if that is determined to be more important than being in a secured position. It is risky, but much of the world's business is done by unsecured parties. In any event, a lien should not be waived or subordinated lightly.

### ***Monitor Your Customers and Vendors!***

The current turbulent financial environment demands extreme caution in evaluating business relationships, whether with customers or vendors. Both warehouse operators and their customers need to be proactive about appraising their relationships. Consider the following four legal and business factors:

- **Insurance.** Will storing this customer's inventory raise your premiums or risk exposure?
- **Guarantees.** Should you obtain a guarantee from the parent company, if the customer appears to be a credit risk?
- **Payment Terms.** Are the payment terms clear? Are late fees imposed at a certain point in time? Should you offer a prompt pay discount? Are off-sets permitted or prohibited?
- **Capital Investments.** How will you recoup any up-front capital expenditures that you are making for this particular customer?

In your understandable desire to secure new business, do not forget to consider those legal issues when evaluating your new client. Being proactive makes sense when establishing a new business relationship.

### ***Nurture Your Workforce!***

Your employees are your lifeblood. Treating them fairly will prevent avoidable disputes. Furthermore, maintaining your record as a good employer can build tremendous goodwill in the community, as well as within your organization.

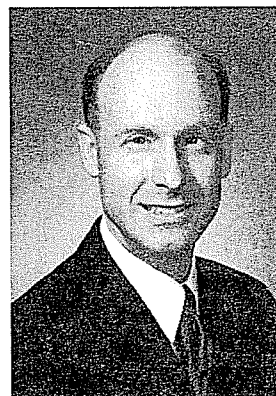
Stay abreast of the latest developments relating to employment and labor law. Keep current on the following legislative challenges:

- **EFCA.** Various versions of the Employee Free Choice Act (also known as "Card Check") continue to be debated in the U.S. Congress. Take steps now, in anticipation of the possible passage of EFCA, by doing what you normally would do during a union campaign. Both management and supervisors frequently should remind employees about the superior benefits and working conditions that you are providing. Never miss the opportunity to tell your workers that they are a great team.
- **ADA.** The U.S. Congress broadened the Americans with Disabilities Act, effective January 1, 2009. The definition of "disability" was amended to increase the range of impairments. Have you taken steps to comply?
- **FMLA.** Regulations included in the Family and Medical Leave Act were updated this year. The new regulations impose requirements relating to military caregiver leave, an employee's failure to work voluntary overtime, proper notice, and other changes. Have you recognized these changes in your employee handbooks and human resources procedures?

In addition to federal laws and regulations, your state may have laws that impose burdens on employers. Make sure that you stay abreast of changes so you can keep a strong and loyal work force in place.

### ***Conclusion***

Warehouse operators are challenged daily on a variety of fronts, and the rules constantly are changing. If you closely monitor changes in regulations, and, at the same time, consider the five ways that legal knowledge can help you, your company is likely to distinguish itself from competitors and reap long term rewards.



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