

Fighting Strategic Cargo Theft: Risk Management for Rising Claims Disputes and Liability Challenges

Article

Amundsen Davis Transportation Alert

October 15, 2025

Strategic cargo theft—fraudulent schemes where criminals pose as legitimate carriers or brokers to gain possession of freight—has surged across the U.S. freight market. Since the first quarter of 2021, strategic cargo theft has risen more than 1500 percent, with the average loss per shipment now exceeding \$200,000. Although this creates mounting challenges for shippers, carriers, brokers, and their insurers, the right safeguards in contracts and protocols can help minimize the risk of a catastrophic uninsured loss.

Disputes Over Liability on the Rise

Because of strategic cargo theft, disputes over legal liability are on the rise. For instance, carriers may still face claims of strict liability under the Carmack Amendment for non-delivery and still be subject to independent indemnity and fee provisions in transportation contracts.

Liability for strategic cargo theft is not limited to motor carriers, either. Other transportation actors may also be at risk. For example, even bona fide freight brokers can face lawsuits if they are implicated in a theft, particularly when accused of negligently selecting a fraudulent motor carrier to haul the load. Yet uncertainty exists on whether such negligence claims are preempted by the Federal Aviation Administration Authorization Act of 1994 (FAAAA).

With strategic theft on the rise, the takeaway is clear: Key players in the transportation industry remain exposed to legal liability, making additional safeguards essential. The suggestions below outline some practical steps that could help reduce the risk of freight being targeted by these fraudulent schemes.

Steps to Avoid Falling Victim of Strategic Cargo Theft Schemes

As of April 7, 2025, the Federal Motor Carrier Safety Administration (FMCSA) has recommended that carriers and brokers take certain steps to protect against becoming a victim of fraud, including:

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- Confirming phone numbers of brokers and carriers match those on the FMCSA's website.
- Verify online information about brokers and carriers by confirming the information through multiple websites.
- Examine shipping documents very carefully, including insurance certificates.
- Consider establishing other protocols to verify the broker, carrier, driver, or equipment being used to haul a load.

Brokers, however, should be careful not to adopt protocols that might be viewed as exercising "control factors," which could create an agency relationship with the driver or carrier.

Carriers and brokers should also ensure clear contractual rights and limitations are in place. In broker-carrier agreements, consider including clauses such as:

- No re-brokering or subcontracting without written consent,
- Requiring immediate notice if cargo is retendered, and
- Including defense and indemnity clauses that stand apart from individual bills of lading, ensuring they survive Carmack preemption.

Although cargo theft cannot be eliminated, preparing the right contractual language and verification protocols can help reduce the risk that fraudsters turn a theft into a catastrophic uninsured loss.

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