

**MOTOR FREIGHT TRANSPORTATION
CONTRACTING BASICS FROM
A RISK MANAGEMENT & INSURANCE PERSPECTIVE
ACRISURE NEW BERLIN, HOST**



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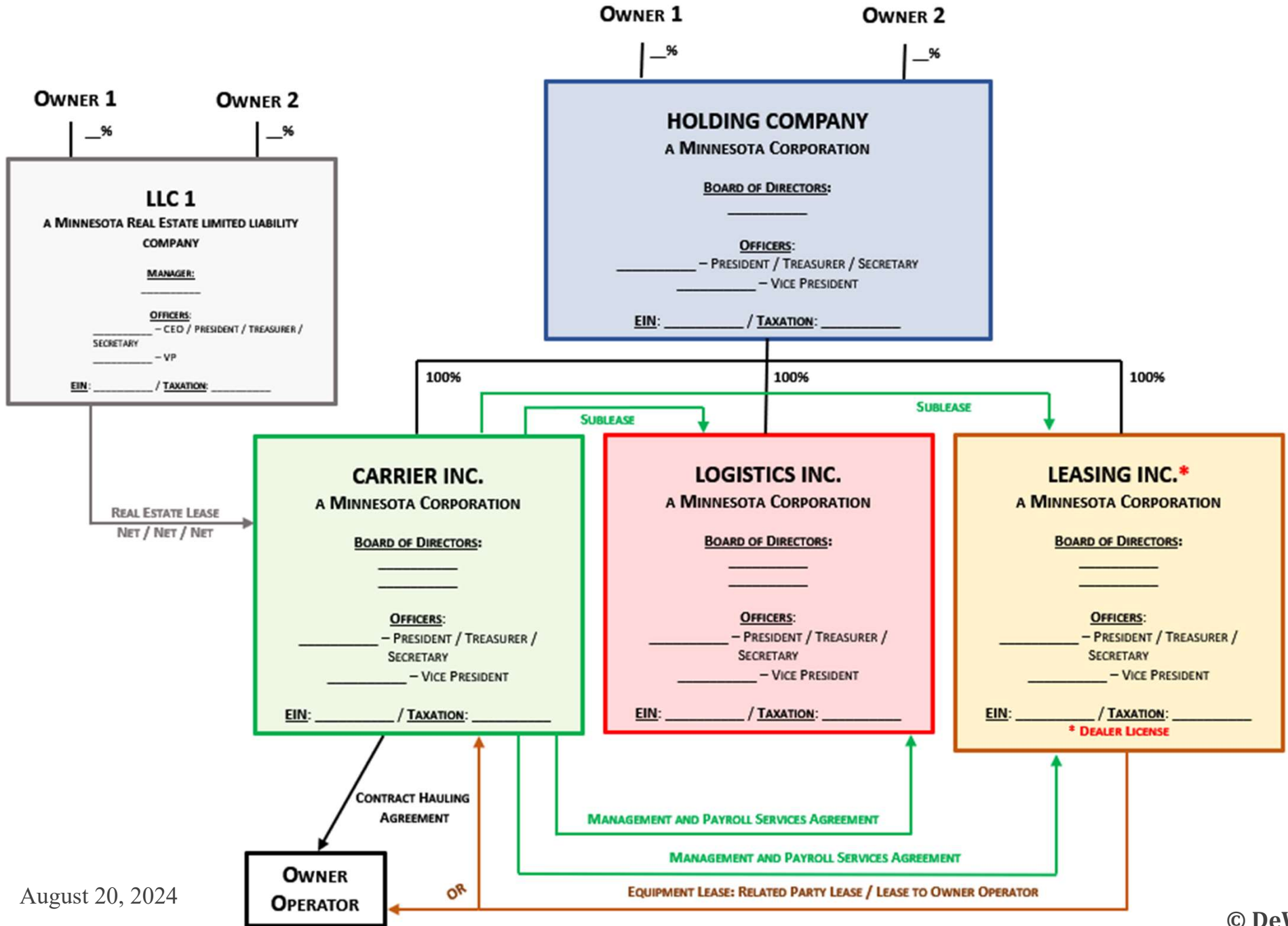
MOTOR CARRIER FREIGHT CONTRACTING AND THE INTERSTATE COMMERCE ACT

- Shipper/Broker and Carrier parties to contracts for transportation
- Bill of Lading as receipt & contract or as receipt only
- 49 USC 14101(b) contracts for transportation
 - ICA rights & remedies, waiver or no waiver
 - Governing law, venue and jurisdiction
- Long, bumpy road from pre-1980 to post ICCTA 1996 contracting
- The lowly but potentially powerful Rules Tariff survives

BIPD INSURANCE REQUIRED IN MOTOR CARRIER FREIGHT CONTRACTS

- FMCSA required BIPD \$750k, \$5mm hazmat
- How much? Goldielocks & the three bears
- \$750k not enough; \$10mm+, too much
- \$10mm+ known to promote claim inflation
- \$5mm, can buy settlements within limits
- Requires proactive carrier corp. defenses
- Begins with defensible corp. structure

SAMPLE FLOW CHART



CARGO INSURANCE DIFFERS FROM FMCSA FILED BIPD

- No FMCSA filing except for household goods
- Means no standard coverage endorsement
- Some freight cargo insurers, shell games
- Examples:
 - Diver negligence exclusion
 - Unattended vehicle (w/o caution to carrier)
 - Listed vehicles, listed drivers only
 - Double brokering not authorized, not covered

COMMON INSURANCE TERMS, CONCEPTS AUTO, CARGO, GEN. COMMERCIAL, WC

- All Risk means:
 - All losses except those specifically excluded.
- Additional Insured means:
 - Extends to added named individuals/groups.
- Subrogation means:
 - Insurer's right to pursue third party cause of loss.
- Non-Contributory means:
 - Insurer has no subrogation rights.

INDEMNIFICATION, HOLD HARMLESS DUTY TO DEFEND

- Definition of scope of indemnification
 - Breach of contract, third party claims
- Hold Harmless blocks indemnification
- Duty to defend:
 - Invocation by a party
 - Finance or reimburse cost of defense
 - Control of the defense
 - Role of insurer or insurers

MOTOR CARRIER ANTI-INDEMNIFICATION

- Carrier not liable for another's negligence
 - Precludes liability for tort claims in contracts between parties and for indemnification
 - Most states, statutes specific to the state
 - Trucking industry effort, circa 2015
 - Reach depends on state law negligence
- OOIDA state-by-state law summary
- Voids prohibited contract provision

SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES

- Carmack, full value of the goods
- Special and consequential
 - Excluded, except reasonably foreseeable
 - Hadley v Baxendale (1872), notice to carrier
 - Rules tariff, specific notice and acceptance
- Released value
 - 49 USC 14101(b) “express” waiver, signed
- SCE damages, beyond cargo?

QUESTIONS?



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THANK YOU!