

Testimony of  
Dexter Okada, President  
U. Okada & Co., Ltd.  
Before the

**COMMITTEE ON CONSUMER PROTECTION & COMMERCE**

**Rep. Robert N. Herkes, Chair**

**Rep. Ryan I. Yamane, Vice Chair**

**COMMITTEE ON JUDICIARY**

**Rep. Gilbert S.C. Keith-Agaran, Chair**

**Rep. Karl Rhoads, Vice Chair**

**March 29, 2012, Committee Hearing**

**Conference Room 325**

**2:30PM**

**Senate Bill 824, SD2, HD1**

**Relating to Motor Carriers**

Chair Herkes, Chair Keith-Agaran and Committee Members:

I support SB 824,SD2,HD1.

U. Okada & Co., Ltd. is food wholesaler and distributor. We bring in food products from the mainland, Japan, Australia, and New Zealand. If there is something wrong with the product we hold our vendors responsible. If the container is improperly packed, we hold our freight consolidator responsible. If our container is damaged by our trucker, we hold our trucker responsible.

It is not fair for me to hold my trucker responsible if there is something wrong with the product. The trucker would not know what is wrong with the product. He would not be able to correct what is wrong with the product. He has no recourse with my vendor. It would be totally wrong to hold my trucker liable for something that isn't even remotely connected to him. Indemnification creates an unfair burden for the trucker.

Business should be conducted where the results are a win-win situation.

Thank you,

Dexter Okada

President

U. Okada & Co., Ltd.

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Tel: 597-1102



March 29, 2012

**TESTIMONY BEFORE THE HOUSE COMMITTEES ON  
CONSUMER PROTECTION & COMMERCE, AND ON JUDICIARY  
ON SB 824 SD2 HD1 RELATING TO MOTOR CARRIERS**

Thank you Chair Herkes, Chair Keith-Agaran and committee members. I am Gareth Sakakida, Managing Director of the Hawaii Transportation Association (HTA) with over 400 transportation related members throughout the state of Hawaii.

Hawaii Transportation Association supports this bill which seeks to correct an unfair situation where motor carriers are required to sign contracts / agreements indemnifying entities for claims or liabilities regardless of fault.

These entities are generally the motor carriers' customers, or facilities where the loading or unloading of cargo, or pick up or drop off of passengers, take place.

Motor carriers are small, locally owned businesses who cannot afford to be barred from the facilities that require indemnification. No matter how one-sided or onerous, they must sign the agreements. However, it is very unfair that the motor carriers must defend and hold harmless these indemnitees in cases where the motor carriers are not at fault in the matter.

Motor carriers in essence becomes an insurer for the indemnitees. This shifting of liability through contract completely contradicts sound public policy. One of the primary reasons for assigning liability is to persuade the offending party to change its behavior. In these instances, where another entity is at fault but is indemnified by the motor carrier, there is nothing the motor carrier can do to change the indemnitees' behavior to make things safer.

These types of provisions are against the common law tradition in the United States that each person is responsible for his or her own actions. It is simply unfair for motor carriers to be forced to cover the losses that arise through no fault of their own.

Unfortunately, motor carriers have no leverage in the matter making it next to impossible to negotiate these provisions without the assistance of state statute.

Hawaii's motor carriers are not alone in this struggle as 31 other states have recognized the injustice and passed anti-indemnity legislation. Thirteen other states are already in the legislative process to accomplish this.

All we want is fairness. If the motor carrier is negligent, then the motor carrier should pay. If another party is negligent, that other party should pay and should not be shielded from their obligations or negligence.

Thank you.



Kona Transportation  
Company Incorporated  
Established - 1939

74-5039A Queen Kaahumanu Highway  
Kailua-Kona, HI 96740  
Telephone (808) 329-4111  
Facsimile (808) 328-5546

General Hauling  
Container Service  
Moving and Storage

March 26, 2012

To: Chairman Herkes: House Committes on Consumer Protection and Commerce and Judiciary  
From: Albert Shiotsuka, President-Kona Trans  
Re: SB 824 SD2 HD1 (relating to motor carriers)

Indemnity agreements between customers and trucking companies have become more prevalent due to the increased freight movement for the "big-box" stores. As the primary carrier for Costco, Home Depot, Ross' and other large retailers on the Big Island, we are faced, at times with either accepting their terms or losing the contract. Placing the liability on parties when they have no control over the matter is unfair. SB 824 is necessary to keep the liability with the responsible parties. (us included) Your assistance in passing SB 824 will be much appreciated by my company as well as the entire trucking industry in Hawaii.

Thank you for reading my note above and thank you for the good job that you have been doing as our representative.



## **Hawaii Transfer**

March 27, 2012

Chair Herkes, House Consumer Protection & Commerce Committee  
Chair Keith-Agaran, House Judiciary Committee

I am compelled to ask that you please accept my utmost support for SB 824 SD2 HD1 relating to motor carriers.

I believe that this legislation is entirely an issue of fairness for small businesses, like mine. We are singularly held responsible for any of our actions or omissions regardless if it is not our fault. It is not right.

As outlined in Hawaii Transportation Association's testimony, I am in full agreement that carriers have very little leverage to deny contracts and agreements that indemnify entities for claims or liabilities regardless of fault. To do so would put us out of business as we would be denied access to vital work required in the total logistics chain process.

It seems logical for Hawaii to join so many states that have recognized the inequities caused by unconditional indemnification. Please consider that we need your help in achieving equity and fairness in this matter.

Thank you

Gordon Okumura

President

Hawaii Transfer Co., Ltd.

March 22, 2012

**TESTIMONY BEFORE THE HOUSE COMMITTEES ON  
CONSUMER PROTECTION & COMMERCE, AND ON JUDICIARY  
ON SB 824 SD2 HD1 RELATING TO MOTOR CARRIERS**

Mahalo Chair Herkes, Chair Keith-Agaran and committee members. My name is Jowell Rivera and I am the Vice President of Hawaii Logistic Services based out of Campbell Industrial Park.

I stand in support of this bill and hope you truly see the relevance of how important it is to our community, many small trucking companies, their employees and business in general.

Many times we are required to sign contracts-agreements indemnifying entities for claims or liabilities regardless of fault. We do so reluctantly so that we can do business, keep our employees working and that allows them to support their families. We cannot do any of that if we are not somewhat profitable and to be profitable, we need to operate.

If find this practice very unfair in a sense that we must defend and hold harmless these indemnities in cases where the motor carriers are not at fault. We should not bear this burden alone. I would like to think that each of you would want a sense of fair play and hold whoever is responsible for their actions or in actions liable.

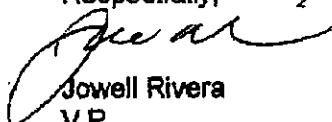
While others say this is common law tradition in the United States, I say this is **just pure common sense**. Many other states have passed this type of bill and many others are seriously looking at it and probably will pass them. Let Hawaii get on board.

We are merely asking that you allow fair play to be, fair play. If motor carriers are at fault, so be it. If another party is at fault, so bit it also. Neither of us should hide behind a law or contract if we are at fault.

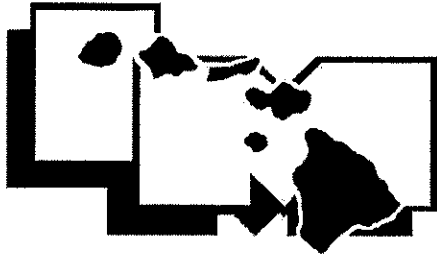
If we do not create a field of fairness in the arena of business and liability, then where are we heading in our Hawaii? What are we teaching our young people of our community? Our won children. Please consider those questions.

Thank you for your time and consideration.

Respectfully,



Jowell Rivera  
V.P.  
Hawaii Logistic Services



# ISLAND MOVERS **INC.**

TOTAL TRANSPORTATION SERVICE

March 29, 2012

## TESTIMONY BEFORE THE HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE, AND ON JUDICIARY ON SB 824 SD2 HD1 RELATING TO MOTOR CARRIERS

Thank you Chair Herkes, Chair Keith-Agaran and committee members. I am Donald Takaki, Chairman & CEO of Island Movers, Inc.

Island Movers, Inc. supports this bill which seeks to correct an unfair situation where motor carriers are required to sign contracts / agreements indemnifying entities for claims or liabilities regardless of fault.

These entities are generally the motor carriers' customers, or facilities where the loading or unloading of cargo, or pick up or drop off of passengers, take place.

Motor carriers are small, locally owned businesses who cannot afford to be barred from the facilities that require indemnification. No matter how one-sided or onerous, they must sign the agreements. However, it is very unfair that the motor carriers must defend and hold harmless these indemnitees in cases where the motor carriers are not at fault in the matter.

Motor carriers in essence becomes an insurer for the indemnitees. This shifting of liability through contract completely contradicts sound public policy. One of the primary reasons for assigning liability is to persuade the offending party to change its behavior. In these instances, where another entity is at fault but is indemnified by the motor carrier, there is nothing the motor carrier can do to change the indemnitees' behavior to make things safer.

These types of provisions are against the common law tradition in the United States that each person is responsible for his or her own actions. It is simply unfair for motor carriers to be forced to cover the losses that arise through no fault of their own.

Unfortunately, motor carriers have no leverage in the matter making it next to impossible to negotiate these provisions without the assistance of state statute.

Hawaii's motor carriers are not alone in this suffrage as 31 other states have recognized the injustice and passed anti-indemnity legislation. Thirteen other states are already in the legislative process to accomplish this.

All we want is fairness. If the motor carrier is negligent, then the motor carrier should pay. If another party is negligent, that other party should pay and should not be shielded from their obligations or negligence.

With regards,

Donald M Takaki  
Chairman & CEO

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