

TRANSDIGEST

Transportation & Logistics Council, Inc.

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Register Now for Fall Seminars

- **FMCSA Looking at Driver Detention**
- **FMCSA Proposes to Streamline CDL Testing**
- **Large Truck Fatalities on the Rise**
- **USPS and Dimensional Weight Pricing**
- **UP to Charge for Missed Intermodal Deliveries**
- **Truck Platooning Technology**
- **CCSB “Bumping Rule” Elimination Impacts**
- **More Q&A’s**

NEW! IN A SOFT COVER EDITION!

FREIGHT CLAIMS IN PLAIN ENGLISH (4TH ED.)

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GUEST EDITORIAL

THE SELECTION AND IMPLEMENTATION OF A TRANSPORTATION MANAGEMENT SYSTEM (TMS)

By: Dan Bohlman, Butterball, LLC

The supply chain software space has continued to evolve at a rapid pace and the introduction of new technologies and software systems is ever-changing. One area of sustained growth in recent years is the adoption of transportation management systems (“TMS”). Not long ago, our company embarked on a TMS implementation and we did this for numerous reasons. Some of the reasons included a more robust load building optimization engine, upgraded reporting and analytics, improved interfacing between systems, automation of certain tasks, in-house freight pay/settlement, appointment scheduling functionality, claims management and a better user experience for our transportation team. Collectively, these would essentially allow the tool to almost pay for itself and in addition we were getting the newest technology and a system that was easier to use.

First, we assembled a team to understand an initial list of software providers in the market that would meet our business needs. We documented our business needs and reviewed how each system met these needs and how they addressed certain system or functional gaps in our current systems. After some initial research, discussing with peers in the industry and looking at high level functionality, we narrowed down the list from about ten potential vendors to three possible vendors. Next, we met individually with this small group of vendors to go through live demos, meet the operational teams and gain a deeper understanding of their specific TMS functionality. We looked at the pros/cons and weighted which attributes were more important than others. The pricing of each system, the timeline to implement and breadth of system functionality all weighted into our consideration. The final step was getting references from other companies that have used the system. Like many business cases, our end decision came down to a return on investment (“ROI”) for the solution. We did not purchase the system with all the bells and whistles but the system that best fit our needs from a pricing and functionality standpoint.

After selection of the TMS, we worked on the implementation. For the implementation, we assembled a team of people led by a project manager from our company and a project manager from the software vendor. We kicked off the project by identifying the key functional areas of the company that would be involved and having a group of key stakeholders. After our initial kickoff meeting, we went to work identifying the overall scope of the project and what were the keys to success. The two project managers put together a detailed project plan with dependencies and clear ownership of each task along the way. The main tasks included on the project plan were scope definition, interface design, gathering and inputting of master data (customers, carriers, locations, carrier rates, insurance, etc.), initial system configuration, integration testing between the systems, user training and finally implementation. From start to finish, the implementation took just over 3

months to complete but we were fortunate to have a relatively low complexity of technical interfaces and functionality.

All in all, the TMS journey we took was worth the time and energy for our company's needs and was a success. This may seem like a simple, very high-level summary, but there was a great amount of details embedded along the way. If you're on the shipper side and do not have a TMS, it may make sense to go down the exploration path, it may just pay for itself in addition to improving day to day transportation operations.

ASSOCIATION NEWS

REGISTER NOW FOR FALL SEMINARS!

The Transportation & Logistics Council, Inc. is pleased to announce that it will be sponsoring three extremely informative, full-day seminars this Fall on Freight Claims, Contracting, and Transportation Law. It's your choice – take all three or choose one or two of the following seminars. They will be held at Meijer in Grand Rapids, Michigan on September 18-20; Intelligent Logistics in Austin, Texas on October 7-9; and at the Holiday Inn in Roswell, Georgia (hosted by Nolan Transportation) on October 28-30. See the attached Registration Form for more details.

FREIGHT CLAIMS IN PLAIN ENGLISH

Presented by Gerard F. Smith, Esq.

Based on the popular 4th Edition of Freight Claims in Plain English, authored by George Carl Pezold & William J. Augello, which is often referred to as the “Bible” on freight claims. This is a “soup to nuts” seminar covering a wide range of issues and topics related to freight claims and freight claim recovery, such as the basics of carrier liability for loss and damage to freight in transit, bills of lading, burdens of proof, defenses, damages, limitations of liability, time limits, liability of freight forwarders, intermediaries, warehousemen, air and ocean carriers.

This course is highly recommended for both beginners in the field of freight claims as well as experienced claims professionals. Also, seminar attendees will receive a copy of the 2-volume CD along with their registration.

Seminar Held On:

Friday, September 20th – Grand Rapids, MI

Monday, October 7th – Austin, TX

Monday, October 30th – Roswell, GA

CONTRACTING FOR TRANSPORTATION & LOGISTICS SERVICES

Presented by Raymond A. Selvaggio, Esq.

An intensive program on the practical and legal aspects of contracting for transportation and logistics services. Learn different techniques about drafting and negotiating transportation contracts, such as the “do’s” and “don’ts” of contracting. Also included is a review of important legal principles, statutes, and regulations affecting the contracting process, as well as a “walk through,” in-depth discussion of actual contract provisions, terms and conditions.

This course is for both purchasers and providers of transportation services with a focus on the contractual relationships among motor carriers, shippers, brokers and other 3PLs. Plus attendees will have a unique opportunity to discuss their specific contracting problems and issues with a knowledgeable transportation attorney.

Seminar Held On:

Thursday, September 19th – Grand Rapids, MI

Tuesday, October 8th – Austin, TX

Monday, October 29th – Roswell, GA

TRANSPORTATION, LOGISTICS & THE LAW

Presented by Brent Wm. Primus, JD

This one-of-a-kind seminar is intended for the persons actually doing the work to be able to identify and minimize legal and financial risks in their day-to-day responsibilities. The course is designed to provide a basic working knowledge of the laws and regulations governing the supply chain and the relationships between the players -- shippers, carriers, and intermediaries.

Registration includes a 150+ page Course Handbook. The course handbook provides vital information you need for protecting revenues for your organization AND for your own individual professional growth.

Presentation topics will include:

- Motor Carriers, Brokers, and Surface Freight Forwarders: What is the difference and why does it matter?
- Update on FSMA - the Food Safety Modernization Act
- Latest on Vicarious Liability for highway accidents
- Bills of Lading and Contracts in a Nut Shell

Detailed agenda will be determined based on legal and industry developments between now and the time of the seminar.

Seminar Held On:

Wednesday, September 18th – Grand Rapids, MI

Tuesday, October 8th – Austin, TX

Tuesday, October 29th – Roswell, GA

PLAN EARLY, SAVE THE DATE FOR TLC'S 46TH ANNUAL CONFERENCE

The Transportation & Logistics Council, Inc. will hold its 46th Annual Conference at the Double Tree by Hilton at SeaWorld, 10100 International Drive, Orlando, Florida on April 27-29, 2020. Pre-conference seminars will be offered on Sunday April 26, 2020. Stay tuned!

NEW MEMBERS

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MOTOR

FMCSA LOOKING INTO DRIVER DETENTION

On June 10, 2019 the Federal Motor Carrier Safety Administration (“FMCSA”) published a request for information in the Federal Register seeking information on “existing or potential sources of data to better understand driver detention times during the loading and unloading of commercial motor vehicles (“CMVs”) and the potential impact of such delays on roadway safety.”

Specifically, FMCSA requests information that addresses the following questions:

1. Are data currently available that can accurately record loading, unloading, and delay times?
2. Is there technology available that could record and delineate prompt loading and unloading times versus the extended delays sometimes experienced by drivers?
3. How can delay times be captured and recorded in a systematic, comparable manner?
4. Could systematic collection and publication of loading, unloading, and delay times be useful in driver or carrier business decisions and help to reduce loading, unloading, and delay times?
5. What should FMCSA use as an estimate of reasonable loading/unloading time? Please provide a basis for your response.
6. How do contract arrangements between carriers and shippers address acceptable wait times? Do these arrangements include penalties for delays attributable to a carrier or shipper?
7. What actions by FMCSA, within its current statutory authority, would help to reduce loading, unloading, and delay times?

Comments must be received on or before September 9, 2019.

Visit <https://www.federalregister.gov/d/2019-12167> for the Federal Register notice and to leave comments.

LEGISLATION INTRODUCED ON TRUCK INSURANCE AND EMERGENCY BRAKING

In July, two bills were introduced in the House that would impact trucks and trucking.

On July 16, 2019 Rep. Jesus “Chuy” Garcia (D-IL) and Rep. Matt Cartwright (D-PA) introduced the “INSURANCE Act” (H.R. 3781), which would “increase the minimum levels of financial responsibility for transporting property, and to index future increases to changes in inflation relating to medical care.”

At the same time, Reps. García and Hank Johnson (D-GA) also introduced the “Safe Roads Act” (H.R. 3773) which would require that Automatic Emergency Braking (“AEB”) technology become standard features on motor carriers including large trucks.

Both bills were referred to the House’s Subcommittee on Highways and Transit.

Although the text of the bills has not been released yet, according to the press release:

“Thousands of families are suffering in silence, saddled with crippling medical care costs resulting from catastrophic crashes,” said Rep. García, “The inadequacy of the current minimum insurance requirement, left unchanged for 40 years, only further prolongs the suffering and financial strain on families that have already lost so much. The INSURANCE Act ensures that

families are adequately compensated to cope with their losses and prevents taxpayers from footing the bill for negligent trucking businesses and drivers.”

“With trucks getting bigger and highways becoming more crowded, our country has experienced too many horrific truck accidents that change Americans’ lives forever,” said Congressman Matt Cartwright. “And since the minimum liability insurance for trucks hasn’t changed in nearly four decades, we’ve seen how victims, their families, hospitals, and our strained social safety net are forced to foot the bill for irresponsible driving. This bill will raise that minimum, providing necessary relief to surviving victims and to the families whose lives are shattered by a truck accident.”

At the press conference to introduce the bill, Rep. Garcia stated that the insurance minimum “should be nearly 6.5 times higher to account for today’s inflation and healthcare costs, according to the Bureau of Labor Statistics.” If the liability insurance minimum was increased by that much, the new minimum would be over \$4.8 million, up from the current \$750,000 minimum.

According to a 2014 Federal Motor Carrier Safety Administration (“FMCSA”) report to Congress, the \$750,000 minimum liability limit set in 1985 did not “adequately cover catastrophic crashes” due to inflation and increased medical costs. In response, the American Trucking Associations (“ATA”) and Owner-Operator Independent Drivers Association (“OOIDA”) asserted that only a small percent of truck crashes exceeded the minimum. The ATA went on to assert that it did not see a correlation between insurance premiums and safety.

With regard to the AEB legislation, the press release went on to say:

“Automatic braking systems are a simple, common-sense solution to deploy proven crash-avoidance technologies. Rep. Johnson and I agree that we should always operate on a safety-first basis,” said Rep. Garcia. “Any further delays to implement this important, life-saving technology will only result in more preventable, tragic deaths and catastrophic injuries. We shouldn’t be in the business of putting a price tag on life – passing the Safe Roads Act is simply the right thing to do.”

“Tragically, the simple installation of automatic braking systems on all commercial motor vehicles – a \$500 safety feature – might have prevented these deaths and countless others across the country,” said Rep. Johnson. “America’s roads and highways should be safe for all drivers. Taking full advantage of technologies that are available and proven to anticipate and prevent crashes will save lives.”

This is the third time Johnson has introduced a bill to require AEB systems on trucks, following bills in 2011 and 2015.

To view the press release, visit <https://chuygarcia.house.gov/media/press-releases/garc-johnson-and-cartwright-introduce-two-truck-safety-measures-make-roads>.

FMCSA BUMPS DRIVER TRAINING COMPLIANCE VERIFICATION TO 2022

In a Notice of Proposed Rulemaking (“NPRM”) published in the July 18, 2019 Federal Register, the Federal Motor Carrier Safety Administration proposes to amend the compliance date for two key provisions in a looming federal rule that sets training standards for new truck drivers.

According to the NPRM summary:

FMCSA proposes to amend its December 8, 2016, final rule, “Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators” (ELDT final rule), by extending the

compliance date for two provisions from the rule. The date for training providers to upload entry-level driver training (ELDT) certification information into the Training Provider Registry (TPR) and for State Driver Licensing Agencies (SDLAs) to receive driver-specific ELDT information would be extended from February 7, 2020, to February 7, 2022.

It should be noted that the effective date for other training provisions remain in effect. The new curriculum and the required behind-the-wheel training established by the ELDT final rule will take effect February 7, 2020.

Comments must be received on or before August 19, 2019 and can be made at the [regulations.gov](https://www.regulations.gov) rulemaking portal via Docket No. FMCSA-2007-27748 at:

<https://www.federalregister.gov/documents/2019/07/18/2019-14956/partial-extension-of-compliance-date-for-entry-level-driver-training>.

FMCSA PROPOSAL TO STREAMLINE CDL TESTING

On July 9, 2019 the Federal Motor Carrier Safety Administration published a Notice of Proposed Rulemaking (“NPRM”) in the Federal Register that would allow states to permit a third party skills test examiner to administer the commercial driver’s license (“CDL”) skills test to applicants to whom the examiner has also provided skills training.

Under this proposal, states would have the option to permit this practice, which is currently prohibited under FMCSA rules. The FMCSA believes that allowing states to permit this practice could alleviate CDL skill testing delays and reduce inconvenience and cost for third party testers and CDL applicants, without negatively impacting safety.

Comments must be received on or before September 9, 2019.

To view the NPRM visit <https://www.federalregister.gov/documents/2019/07/09/2019-14225/third-party-commercial-drivers-license-testers>.

ELD MANDATE DEADLINE

At a recent SMC3 Connections 2019 conference Federal Motor Carrier Safety Administration administrator Ray Martinez reminded attendees of the approaching deadline for truckers using automated onboard recording devices (“AOBRDs”) to track driver hours of service (“HOS”) to replace them with electronic logging devices (“ELDs”).

AOBRDs grandfathered under the ELD mandate introduced in December 2017 must be replaced by ELDs by Dec. 16, 2019. That likely means replacing tens of thousands of older recording devices still running in US truck cabs, as well as software.

Martinez admonished carriers not to wait until the last minute to make the transition.

LARGE TRUCK CRASH FATALITIES ON THE RISE

According to the June 2019 National Highway Traffic and Safety Administration (“NHTSA”) Traffic Safety Facts, initial reports show fatalities from crashes involving at least one large truck are expected to rise roughly 3 percent in 2018. This is in contrast to the initial report showing a slight decrease in estimated traffic fatalities of about 1.0 percent to 36,750 for 2018 from 37,133 reported in 2017.

Visit <https://crashstats.nhtsa.dot.gov/Api/Public/Publication/812749> to view the summary.

SNOW & ICE REMOVAL

With the recent heat, it seems like a distant memory, but it will get cold again and much of the country will get covered with snow and ice. While pretty on the countryside, it can be dangerous on the roads and on vehicles. At least a dozen states have laws regarding the removal of snow and ice from vehicles and the fines can add up.

For example, in Pennsylvania, state law already allows police to ticket car and truck drivers for fines of \$200 to \$1,000 if the wintry precipitation causes serious injury or death. However, legislation intended to be proactive was moved forward by unanimous vote of the Senate Transportation Committee on June 19, 2019 that would require drivers to make “reasonable efforts” to remove snow or ice from all parts of their vehicles within 24 hours of a weather event. Offenders would face a maximum fine of \$1,500 if the wintry precipitation causes serious injury or death. The bill would include an additional protection allowing police to ticket drivers between \$25 and \$75 for failure to clear snow or ice before they take to the roads.

New Hampshire passed a law in 2002 after a woman died in an accident in 1999 caused by ice flying off a tractor-trailer making it illegal to leave snow and ice on a vehicle. The driver can be fined up to \$500 for a first offense and up to \$1,000 for a second offense. In New York, Vehicle and Traffic Law 1229-E requires accumulations in excess of three inches to be removed, and provides for fines of not less than \$150 nor more than \$850 for violations by “operators of non-commercial” vehicles.

Other states with snow and ice removal laws include Alaska, Connecticut, Georgia, Massachusetts, Michigan, New Jersey, Rhode Island, Tennessee and Wisconsin (this is NOT necessarily an inclusive list).

To view the pending Pennsylvania legislation, visit:

<https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=S&billTyp=B&billNbr=0114&pn=0083>

TRUCKERS AT ALL-TIME HIGH ACCORDING TO U.S. CENSUS BUREAU

According to a recent U.S. Census Bureau story the number of truckers is at an all-time high, noting that more than 3.5 million people worked as truck drivers. Discussing the economics of trucking, it stated:

Between 2012 and 2016, the number of trucking businesses grew 15.9%, outpacing total growth across all industries (8.0 percent).

This translates into an increase of 200,000 workers in the trucking industry during that time period. About four in 10 new workers are self-employed.

Trucking provides a critical infrastructure for economic activity. Trucking business revenues mirror the seasonality of the goods they transport, hitting a peak typically during the third quarter as retailers prepare for the holiday season.

In 2018, revenue for trucking firms rose to \$77.0 billion in the third quarter before falling 2.7% to \$75.0 billion in the fourth quarter. (These data are not seasonally adjusted.)

Visit <https://www.census.gov/library/stories/2019/06/america-keeps-on-trucking.html> to view the full article.

PARCEL EXPRESS

USPS JUMPS ON DIMENSIONAL WEIGHT PRICING BANDWAGON

by Tony_Nuzio, ICC Logistics Services, Inc.

The United States Postal Service (“USPS”) is implementing a reduction in the Dimensional Weight Factor for several of its parcel shipping services which is scheduled to be implemented on June 23, 2019. Anytime there is a reduction in the Dimensional Weight Divisor the result will be an increase in the cost to ship packages that are subject to that change. This new pricing change will affect Priority Mail, Priority Mail Express, as well as some other parcel services offered by the Postal Service.

The pricing change however will only affect packages that exceed one cubic foot. So, shippers who have the ability to ship their products in packages of one cubic foot, (1728 cubic inches) or less would be wise to continue to ship in those packages to avoid this increase. USPS will continue to charge based on actual weight for all packages shipped that are less than one cubic foot.

The change USPS will be implementing on June 23rd moves the Dimensional Weight Factor from the current divisor of 194 to a divisor of 166.

Here is an example of how this pricing change will affect a Priority Mail Package whose actual weight is 5 pounds, where the package dimensions total 2340 cubic inches. Remember this is just one example of how this pricing change will affect USPS parcel shippers.

Priority Mail

Actual package weight 5 lbs.

Package dimensions of – 15 x 13 x 12 = 2340 cubic inches

Dim factor of 194 chargeable weight 13 lbs. = \$32.80

Dim factor of 166 chargeable weight 15 lbs. = \$36.90

Chargeable weight increases by 16.6%

Net charges increase by 12.5%

The message here is that parcel shippers need to constantly evaluate all of the continual changes all parcel carriers implement throughout the year. Shippers must fully understand the changing pricing structures of the parcel carriers they utilize and how these pricing changes will ultimately impact their businesses bottom line. Ignoring these changes without performing on-going benchmarking and target pricing analyses for their businesses will only serve to lessen profit margins which no business can afford in these very competitive times.

QUESTIONS & ANSWERS

By George Carl Pezold

FREIGHT CLAIMS – LOSS IN MEXICO

Question: Our company operates strictly as a broker in the U.S. and we are sensitive to the issue of behaving in any way like a carrier...or forwarder.

On the other hand we handle freight into Mexico with a forwarder's authority, and have our first serious cargo claim on a series of machinery moves from the U.S. into Mexico (the damage occurred in Mexico).

I'm going on the premise that because we are a forwarder in this case that we need to take an assertive approach and we are sending our company personnel to Mexico to take part in the inspection.... whereas a broker we would likely not do so.

Can you confirm for me that I am making the right assumption regarding our liability being as a forwarder in this?

Answer: I assume that your company, as a forwarder, issued your own bill of lading to the shipper and unless you have a liability limitation in your tariff or a transportation contract, probably have full liability to the shipper for any loss or damage.

Even though the carrier is liable to your company for loss or damage to the goods while in its possession, if it is a U.S. carrier on a through bill of lading it probably has little or no liability for a loss in Mexico (check its tariff), and if it is a Mexican carrier (from the border) its liability is very limited under the "talon" (bill of lading) and Mexican law. (See *Freight Claims in Plain English*, Section 20.) In other words, you will have difficulty in recovering from the responsible carrier.

I would certainly advise you to take part in the inspection, since the shipper will most likely file a claim against your company.

FREIGHT CLAIMS – VALUE OF LOSS AS CUSTOMS DECLARATION OR INVOICE

Question: We have a shipment that originated in the United States and was shipped to Canada. We have the original vendor's invoice with a cost of \$3,000.00 and the customs paperwork that the shipper declared the value at \$60.00. The Canadian carrier only wants to pay \$60.00 relying on the customs paperwork.

We have researched this in the *Freight claims in Plain English* book and it appears that they would be liable for the original invoice cost, however, the Canadian carrier states that this only refers to air freight and not ground. Please advise your thoughts

Answer: If the shipment originated in the U.S. the carrier's liability would be governed by U.S. law. Unless otherwise provided in a transportation contract or some rule in the carrier's tariff, under the "Carmack Amendment", 49 USC 14706, the carrier is liable under the bill of lading for the "actual loss". Since the goods had been sold by the U.S. vendor to a customer in Canada the measure of damages would normally be the invoice price to the purchaser.

FREIGHT CHARGES – CONSIGNEE LIABILITY IF SHIPPER FAILS TO PAY CARRIER

Question: I recently received an invoice from a carrier billing me for freight on which I had paid in full to a cabinet manufacturer in Pennsylvania. The cabinet manufacturer closed its doors several months ago looking for a buyer and is still closed, but has not filed chapter 11 or 13, and never paid the carrier. Am I liable to pay this invoice when I did not arrange for the carrier and paid the shipper in full?

Answer: The consignee's liability for freight charges may depend on whether the freight charges are "prepaid" or "collect" since the bill of lading is a "contract of carriage" between the shipper and the motor carrier.

On a "prepaid" shipment, a consignee may be liable for freight charges on the theory that it has received the benefit of the transportation services. However, there is a well-established line of court decisions in which the principle of "estoppel" has been applied. Where goods are shipped on a "prepaid" bill of lading, and the

consignee-purchaser has paid the shipper-seller for the goods (including the transportation charges), this principle protects the consignee against "double payment liability for the freight charges."

I would note that the cases specifically turn on the bill of lading - whether it actually says "prepaid" on the face of the bill of lading and/or the appropriate box has been checked.

FREIGHT CLAIMS – COST OF DISPOSAL OF DAMAGED PRODUCT

Question: We are a contract carrier that was delivering food related product (raw material) that was refused by the consignee due to an open lid on one of the totes (1 pallet with 4 totes and only one tote had an open lid and there was a spill).

The driver was not allowed on the shipper's loading dock and the seal on the trailer was intact at delivery. It is my understanding that the consignee was the owner/buyer of the product.

Who is responsible for the disposal of the product and associated charges?

The third party logistics provider that arranged the shipment didn't want to send us instructions on the confirmation on how to proceed, claiming it's our responsibility to dispose of the product. Can you please clarify the legal implications of the situation as we don't have sufficient information?

Answer: There are a few questions here.

First, it is not clear whether the damage (open lid - possible contamination, etc.) was the fault of the shipper or the carrier. This is a factual question that needs to be investigated and determined. If the damage is the fault of the shipper, such as improper securement of the lid of the tote, the carrier should not be liable for the product or for the disposal costs.

If the carrier is at fault, then the shipper or consignee would normally file a claim for the value of the product (less any salvage) and the carrier would also be responsible for the disposal costs.

CARRIERS – TRANSPORTING A CAR HIRING BASICS

Question: I'm thinking of hiring a car moving company to move my car from NJ to AZ. What is the usual practice for payment? Should you pay ½ deposit and ½ upon delivery and what should I look for to protect myself in the contract?

Answer: The first recommendation that I have is to avoid a BROKER that is not an actual motor carrier specializing in auto transportation (check the FMCSA website -- SAFER system -- to verify that they have motor carrier authority: <https://safer.fmcsa.dot.gov/CompanySnapshot.aspx>

Make sure you get a rate quotation in writing.

Ask them (before shipping) for their limitations of liability in the event of loss or damage.

Make sure the carrier gives you a Bill of Lading, signed by the driver, when they pick up the car.

Note: If there is any damage to the car when it is picked up it should be noted on the bill of lading.

LIABILITY – DOUBLE BROKERING

Question: If a load was double brokered, is the carrier still liable for any cargo damage that happened during transit? Since double brokering is not illegal any more, are the brokers liable for any damage if they do it?

Answer: “Double brokering” does not affect the liability of the carrier. If the loss or damage occurs while the goods are in the possession of the carrier, its liability is governed by federal law (the “Carmack Amendment”, 49 USC 14706).

The only way a broker could be liable (to the shipper) is if it had contractually assumed liability - typically under a "shipper-broker" contract.

FREIGHT CLAIMS – DELAYED RETURN AND STATUTE OF LIMITATIONS

Question: A shipment was delivered on a drop trailer with a delivery notation of xx returned as no purchase order, with no other notation or explanation, such as refused. Returned goods are ultimately sent back from the consignee without paperwork and left to sit on the carrier’s trailer at its yard. A good amount of time passes and the goods are found. Carrier seeks disposition which is provided as “return to shipper”.

There was a breakdown of that communication causing yet further delay. The goods were returned about six months later. About four months after the return, the carrier is presented with the claim from the third party stating 100% loss due to expiration date as goods are food product. Carrier’s position is the shipper duplicated the order per the packing slip and evident as 50% of the original shipment’s quantity was returned. The original contract of carriage provided a nine month statute of limitations and the claim was denied accordingly. Claimant believes carrier’s conclusion is erroneous and remains liable. What are your thoughts?

Answer: Based on your description of the fact there are a number of issues.

First, although no reasons are given why the shipment was refused, there was a “non-delivery” and a substantial delay before the goods were “found”. This is similar to the situation in *Paper Magic Group, Inc. v. J. B. Hunt Transport, Inc.*, 318 F.3d 458 (3rd Cir. 2003) which involved a delayed shipment of boxed Christmas cards. J. B. Hunt had picked up the shipment on October 16, 1998 in Danville, PA to be delivered to Target Stores in Oconomowoc, WI. The shipment was misplaced by Hunt and not found until February 5, 1999, almost four months later, at the carrier's Chicago, IL terminal. The court awarded the invoice value of the shipment (less salvage) to Paper Magic. In your case, the shipment involved a food product, which is subject to a very high standard of care, and if the delay resulted in exceeding the expiration date, the product would be considered worthless.

The second question apparently is whether the shipper filed a timely claim. If the bill of lading properly incorporated the terms and conditions of the Uniform Straight Bill of Lading in the National Motor Freight Classification (“NMFC”) (carrier must be a participant), or similar language in the carrier’s rules tariff, failure to file a claim in writing within 9 months would bar recovery.

Whether “the shipper duplicated the order per the packing slip and evident as 50% of the original shipment’s quantity was returned” is not relevant to the liability of the carrier for the loss or damage to this shipment.

FREIGHT CLAIMS – DAMAGE TO PACKAGING AND DANGERS OF ARBITRATION

Question: Our truck delivered a load of aluminum sheets that was packaged in plastic and cardboard. It was pouring rain and although the driver loaded inside a facility, his tarp was wet from the rain. The wet tarp caused water marks on the cardboard resulting in the load being rejected for wetness. When asked for documentation of damage, the plastic or cardboard was never removed therefore the product or damage to it was never visible. I sent someone at a later date to document the damage and he was not able to see any damage due to the products remaining wrapped in plastic and cardboard. When my insurance adjuster visited to value the damage, he was also denied removal of the wrapping to see any damage. He protested to management, however he still not allowed to open packaging to value the damage.

Are we, as the carrier, legally required to pay the claim of \$36,000 even though no one, including the receiver has ever opened the packaging to view the damage? Is there any provision for proof of damage?

The broker later sold the aluminum back to the shipper for scrap value.

Answer: As the Supreme Court stated in *Missouri Pacific Railroad Company v. Elmore & Stahl*, 377 U.S. 134 (1964), “Accordingly, under federal law, in an action to recover from a carrier for damage to a shipment, the shipper establishes his prima facie case when he shows delivery in good condition, arrival in damaged condition, and the amount of damages.”

Clearly the claimant has an obligation to prove that there was actual damage to the aluminum. Unless there was some other actual inspection when the goods were delivered, I don't see how the claimant can meet its burden of proof to support the claim.

Editor's Note: The questioner provided the below follow-up:

I thought you would be interested in the outcome to this question I asked you earlier. Based on the problem of never being allowed to open the packaging to see any damage to the aluminum sheets, I hired a lawyer and the case went through arbitration in May. The only proof of damage submitted in arbitration were the same two pictures of stained cardboard packaging that I received when the driver delivered the load.

The arbitrator ruled the cardboard was not packaging but was the actual load and I am required to pay the claim in full plus the other side's legal fees. Pretty steep price for damages that neither we nor the arbitrator have ever seen.

Just thought you might be interested. After the other side's legal fees over \$11,000 plus my legal fees of over \$12,000, plus payment on the claim, I'm fighting a losing battle. Still, I can't believe it is legal to deny inspection of product and award damages based on packaging.

Thank you for your help in this matter.

Response:

This result is surprising and appears to be contrary to well established law. It is not clear whether or not the attorney handling the arbitration was a specialist in transportation law, but selection of counsel can be critical. The role of an attorney is often to educate the trier of fact (judge, arbitrator, etc.) of the facts and law regarding a matter, as the trier of fact often has no knowledge or experience in specialized areas of practice. It seems inconceivable that anyone could reach that decision without proof of damage to the product.

Whether or not to pursue the matter further (and risk additional costs) is a difficult decision and would depend on the arbitration agreement terms (whether the decision is final and binding) and whether there is any basis or procedure for reconsideration or appeal. It is often very difficult to set aside arbitration awards as you must prove fraud or collusion in order to do so.

RAIL

UP TO CHARGE FOR MISSED INTERMODAL DELIVERIES

In recent announcements Union Pacific Railroad (“UP”) informed customers that it would start to charge shippers fees for missing intermodal terminal appointments while also cutting free in half storage time in smaller rail ramps beginning in September.

According to the June 27, 2019 Announcement Number IM2019-140:

As part of Unified Plan 2020, Union Pacific will be implementing changes to its intermodal terminal storage policy. Effective **September 3, 2019**, we are eliminating the two-tiered storage structure for Domestic terminals. All Domestic traffic will be given 24 hours free time. At this time, there are no changes to storage escalation days or charges, and International traffic storage rules remain unchanged.

Following are the revised storage matrices:

**MITA ITEMS 810 and 811: STORAGE FREE TIME AND CHARGES
EFFECTIVE SEPTEMBER 3, 2019**

	DOMESTIC	INTERNATIONAL
Free Time	24 Hours	48 Hours
Notify Time	Prior to 1700: Day of Notification At or after 1700: Following day is Day of Notification	Prior to 1700: Day of Notification At or after 1700: Following day is Day of Notification
Sundays	Chargeable	Chargeable
Holidays	Free if chargeable days have not started	Free if chargeable days have not started
Charges Days 1-5	\$100 per day	\$100 per day
Charges Days 6+	\$200 per day	\$200 per day
Terminals	All	All
Intermodal Service Code	ISC 25, 40, 42, 45, 47, 60, 62, 65 or 67	ISC 80, 82, 85 or 87

**MITA ITEMS 810 and 811: STORAGE FREE TIME AND CHARGES
EFFECTIVE SEPTEMBER 3, 2019**

DOMESTIC - 24 HOURS

All UP Intermodal Ramps

Notify occurs prior to 5:00 PM on:	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Sunday	N	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200	\$200	\$200	\$200	\$200	\$200	\$200
Monday		N	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200	\$200	\$200	\$200	\$200	\$200
Tuesday			N	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200	\$200	\$200	\$200	\$200
Wednesday				N	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200	\$200	\$200	\$200
Thursday					N	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200	\$200	\$200
Friday						N	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200	\$200
Saturday							N	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200

INTERNATIONAL - 48 HOURS

All UP Intermodal Ramps

Notify occurs prior to 5:00 PM on:	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun
Sunday	N	F	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200	\$200	\$200	\$200	\$200	\$200
Monday		N	F	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200	\$200	\$200	\$200	\$200
Tuesday			N	F	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200	\$200	\$200	\$200
Wednesday				N	F	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200	\$200	\$200
Thursday					N	F	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200	\$200
Friday						N	F	F	\$100	\$100	\$100	\$100	\$100	\$200	\$200
Saturday							N	F	F	\$100	\$100	\$100	\$100	\$100	\$200

<https://www.up.com/cs/groups/public/@uprr/@customers/@announcements/@intermodal/documents/ms-nativedocuments/wcccon1045421.pdf>

Visit <https://www.up.com/customers/announcements/intermodal/allintermodal/IM2019-143.html> to view UP's 7/2/19 announcement on the Intermodal Terminal Reservation System ("ITR") and visit <https://www.up.com/customers/announcements/intermodal/allintermodal/IM2019-140.html> to view the 6/27/19 announcement regarding changes to UP's intermodal terminal storage policy.

TECHNOLOGY

“AUTOMATED FOLLOWING” ALLOWS ONE DRIVER FOR TWO VEHICLES

Peloton Technology has taken a different approach to autonomous vehicles by working on a platoon set-up with a lead and follow truck.

Platooning, where one vehicle follows very closely behind another, provides fuel savings due to reduced drag from wind resistance. Peloton states their system has proven savings of more than 7% when platooning using industry standard tests: 4.5% for the lead truck, and 10% for the following truck.

With the new “Automated Following” system, a human driver is in the lead truck. But this time, the follow truck won’t have a human driver. The system combines vehicle-to-vehicle communication with radar-based active braking and software. Together, the human driver in the lead vehicle is able to guide the steering, acceleration and braking of the follow truck and connects the safety systems between the trucks with minimal latency, according to Peloton Technology.

While this single driver Automated Following system may still be a few years away, Peloton has a similar system, called “PlatoonPro”, which utilizes a driver in the second truck and is already being operated by fleets of six customers.

PlatoonPro is classified as a SAE Level 1 automation system, whereas the Automated Following system would be a SAE Level 4 system.

CCPAC NEWS

CCPAC

Established in 1981, CCPAC is a nonprofit organization comprised of transportation professionals with manufacturers, shippers, freight forwarders, brokers, logistics, insurance, law firms and transportation carriers including air, ocean, truck and rail. CCPAC seeks to raise the professional standards of individuals who specialize in the administration and negotiation of cargo claims. Specifically, CCPAC gives recognition to those who have acquired the necessary degree of experience, education, expertise and have successfully passed the CCP Certification Exam covering domestic and international cargo liability to warrant acknowledgment of their professional stature.

The next CCP Exam will be given Saturday morning, November 2, 2019, in most major cities nationwide in the USA and Canada. Exact locations will be determined based on applications submitted. Prior application, registration and approval are required to sit for the exam. On-line registration for the November exam is now open on the website www.ccpac.com.

The 2020 CCP Exam Primer Class will be April 26, 2020, in Orlando, FL. The CCP Exam will also be given in Orlando on Wednesday, April 29, 2020.

For more information about CCPAC visit www.ccpac.com for general information and membership in CCPAC.

CLASSIFICATION

CCSB ELIMINATES “BUMPING”

Last month in reporting on the CCSB’s Notice of Disposition for Docket 2019-2 we mentioned that the CCSB decided to cancel all references to Item 171, the so-called “bumping” rule. The following article provides a more in depth explanation of the rule and the ramifications of its elimination:

NMFC Commodity Classification Standards Board Eliminates Item 171, The Bump Rule

By Paul Benfer - Managing Partner, Kinetic Supply-Chain Services, LLC

At their meeting on June 11th, the CCSB elected to eliminate Item 171. Known as the bump or class bumping rule, Item 171 allowed a shipper to artificially increase the density of a shipment to lower the class. The net result of the elimination of the rule is higher costs for shippers.

How Item 171 worked was simple. In the body of the bill of lading, a shipper would increase the weight per cubic foot to reach the next lowest class. As an example, a shipment that is 190 cubic feet and weighs 570 lbs. has a density of three (3) pounds per cubic foot or class 250. To move the shipment to class 175 simply multiply 190 cubic feet by 4 lbs. to change the class to 175 with a billed weight of 760 lbs. You would need to reference Item 171 in the body of the bill of lading for it be applicable and legal.

Please keep in mind that the difference in rates increased as the density approached the next break. You did not see a savings if a shipment was 2 lbs. per cubic foot and it was increased to 4 lbs. per cubic foot. You did see significant cost savings if the shipment was less than one pound from the next class break. Savings could range as high as thirty-six percent or more, depending on length of haul and cube.

The elimination of Item 171 is another example of domestic LTL carrier’s attempt to wring every possible drop of revenue out of their customers’ freight budgets. Add the cancellation of Item 171 to the carrier incentivized dock weight and inspection programs, the attempt to make every non-dock delivery limited access and the addition of myriad and unspecific rules to carrier rules tariffs. The best way to avoid surprises and unexpected freight surcharges is through a contract. Unfortunately, many shippers do not have the volume to demand one. The other way to reduce exposure is to know your freight characteristics and customer base. Mastery of those two things will allow you to negotiate carrier rules tariff items that could negatively impact freight costs.

FUTURE COMMODITY CLASSIFICATION STANDARDS BOARD (“CCSB”) DOCKETS

	Docket 2019-3	Docket 2020-1
Docket Closing Date	August 22, 2019	November 27, 2019
Docket Issue Date	September 19, 2019	January 9, 2020
Deadline for Written Submissions and to Become a Party of Record	October 10, 2019	January 31, 2020
CCSB Meeting Date	October 22, 2019	February 11, 2020

Dates are as currently scheduled and subject to change. For up-to-date information, go to <http://www.nmfta.org>.

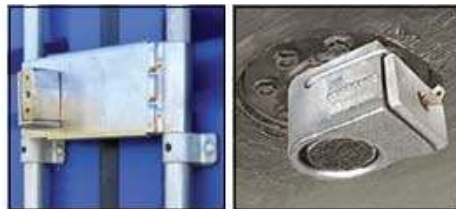
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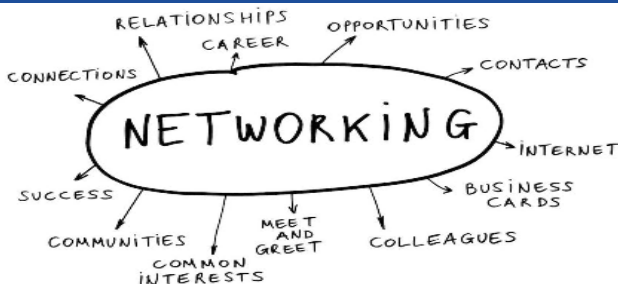


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TRANSPORTATION & LOGISTICS COUNCIL 2019 FALL SEMINAR REGISTRATION FORM

#1 - September Seminar Location

Meijer
2929 Walker Ave NW, Grand Rapids, MI 59544

		MEMBER	NON-MEMBER
Wed 09/18	TRANSPORTATION, LOGISTICS AND THE LAW Includes "Seminar Manual"	<input type="checkbox"/> \$520	<input type="checkbox"/> \$595
Thu 09/19	CONTRACTING FOR TRANSPORTATION & LOGISTICS SERVICES Includes "Seminar Manual"	<input type="checkbox"/> \$520	<input type="checkbox"/> \$595
Fri 09/20	FREIGHT CLAIMS IN PLAIN ENGLISH Includes "Freight Claims in Plain English 4 th Ed" Soft Cover Books	<input type="checkbox"/> \$550	<input type="checkbox"/> \$625

#2 - October Seminar Location

Intelligent Logistics
1100 E Howard Lane, Suite 500, Austin, TX 78753

		MEMBER	NON-MEMBER
Mon 10/07	FREIGHT CLAIMS IN PLAIN ENGLISH Includes "Freight Claims in Plain English 4 th Ed Soft Cover Books	<input type="checkbox"/> \$550	<input type="checkbox"/> \$625
Tue 10/08	CONTRACTING FOR TRANSPORTATION & LOGISTICS SERVICES Includes "Seminar Manual"	<input type="checkbox"/> \$520	<input type="checkbox"/> \$595
Wed 10/09	TRANSPORTATION, LOGISTICS AND THE LAW Includes "Seminar Manual"	<input type="checkbox"/> \$520	<input type="checkbox"/> \$595

#3 - October Seminar Location

Holiday Inn
909 Holcomb Bridge Rd., Roswell, GA 30076
Hosted by Nolan Transportation

		MEMBER	NON-MEMBER
Mon 10/28	FREIGHT CLAIMS IN PLAIN ENGLISH Includes "Freight Claims in Plain English 4 th Ed Soft Cover Books	<input type="checkbox"/> \$550	<input type="checkbox"/> \$625
Tue 10/29	CONTRACTING FOR TRANSPORTATION & LOGISTICS SERVICES Includes "Seminar Manual"	<input type="checkbox"/> \$520	<input type="checkbox"/> \$595
Wed 10/30	TRANSPORTATION, LOGISTICS AND THE LAW Includes "Seminar Manual"	<input type="checkbox"/> \$520	<input type="checkbox"/> \$595

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Registration on the next page

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Membership in the Council is open to anyone having a role in transportation, distribution or logistics. Membership categories include:

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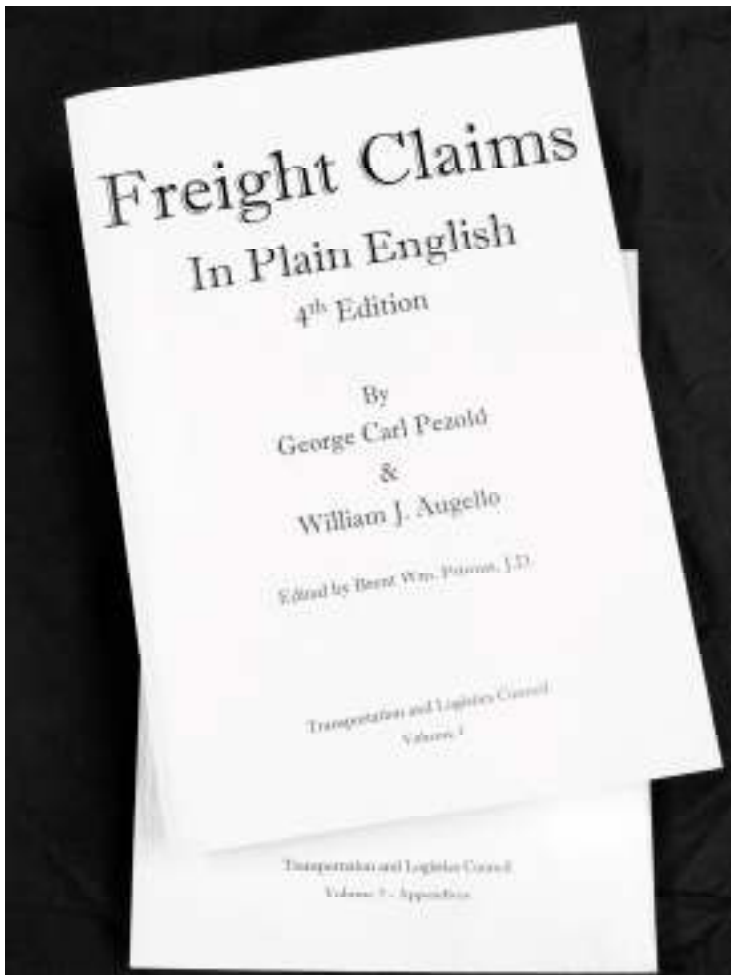
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Freight Claims in Plain English (4th Ed.)

The hard-cover edition of Freight Claims in Plain English (4th Ed.) was out of stock, so the Council has arranged to have it reprinted in a soft-cover edition.

Often referred to as “the Bible” on freight claims, as the title suggests it remains the most readable and useful reference on this subject for students, claims professionals and transportation attorneys.

The new soft-cover edition comes in two volumes in a handy 7” x 10” format. Volume 1 consists of 592 pages including full text, a detailed table of contents, topical index and table of authorities. Volume 2 consists of 705 pages with 161 useful appendices – statutes, regulations, forms and other valuable reference materials.

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What is unique about this compilation of questions and answers is that the questions reflect the real problems that actually come up every day, and that the people actually doing the work - shippers, carriers, brokers, intermediaries and even truck drivers - need help with.

The answers range from simple advice to thorough explanations of the legal principles based on the authors' extensive experience in transportation law.

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