TRANSDIGEST

Transportation & Logistics Council, Inc.

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Register NOW for TLC's 46th Annual Conference!

- **Education for Transportation Professionals**
- **China, Coronavirus and the Global Economy**
- **Employee Classification Update**
- **Truck Bottlenecks**
- **Highway Tolls**
- **FMCSA Issues UCR Final Rule**
- **Panama Canal Rate Bumps**
- **More Q & As**

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Table of Contents

EDITORIAL

EDUCATION FOR TRANSPORTATION PROFESSIONALS

By George Carl Pezold
Executive Director, T&LC

Why does the Transportation & Logistics Council, Inc. ("TLC") call its Annual Conference "Education for Transportation Professionals"? Other organizations have conventions and trade shows, but there is none other that exclusively dedicates itself to providing educational opportunities to the people that actually "make the wheels go round".

This world is changing. Whether you are an experienced veteran or a newcomer to the world of transportation and logistics, new things are happening every day that affect your business.

- Big logistics companies are acquiring competitors and smaller service providers to meet the challenges of globalization and to serve an international market.
- Federal and state governments continue to initiate new programs and to impose regulations that are intended to promote safety, protect the environment or employees, enhance national security and other worthy objectives, but many of these initiatives directly or indirectly impact the movement of goods and the ultimate cost to the consumer.
- Manufacturers, distributors and retailers that once had a "traffic department" or employed experienced professionals that managed their inbound and outbound movement of freight, negotiated with carriers, audited and paid freight bills and handled cargo claims no longer do this and "outsource" these functions to third party service providers.
- The Internet has become not just a replacement for traditional methods of communication, but a new way for consumer purchasing - resulting in new strategies for logistics and transportation companies to fulfill demands.
- Entrepreneurs are launching new products and services to meet changing needs of the industry.
- Insurers and carriers, understandably, continue to create new ways to limit their exposure to claims for transit loss and damage.
- Criminals are becoming more sophisticated and hijacking, imposter and identity theft are costing the transportation industry millions of dollars every year.

These are the kind of issues TLC's Annual Conferences have focused on since it was established 46 years ago, and what transportation professionals really need to know about. We have tried to make this

Conference a rewarding educational experience with practical information and advice that you can use in your everyday business, all presented by the leading experts in the field.

And, just so it isn't all hard work, we have provided Hospitality Suites, the President's Reception and lots of opportunities to build relationships and share experiences through networking with other transportation professionals.

ASSOCIATION NEWS

REGISTER NOW FOR TLC'S 46TH ANNUAL CONFERENCE

The Transportation & Logistics Council will hold its 46th Annual Conference at the DoubleTree by Hilton at SeaWorld, 10100 International Drive, Orlando, Florida on April 27-29, 2020. Other organizations have conventions and trade shows, but whether you are a seasoned professional or a newcomer, there is no other program that exclusively dedicates itself to providing educational opportunities to the people that actually "make the wheels go round".

And, for those that want an in-depth educational experience, before the Conference on Sunday, April 26th, the Council also offers three optional full-day seminars - Contracting for Transportation & Logistics Services, Freight Claims in Plain English, and Transportation, Logistics and the Law, all presented by leading transportation attorneys.

Registration for the Conference and full-day seminars is now open, see registration form attached. The Council has also made arrangements with the DoubleTree for a block of rooms, available to registrants on a first come, first serve basis.

For Conference attendees, hotel rates are $149.00 and rooms will be held until 4/3/20 or until we have exhausted the block of rooms held for our event.

To make reservations, visit https://doubletree.hilton.com/en/dt/groups/personalized/M/MCOSRDT-TLC-20200420/index.jhtml?WT.mc_id=POG.

The group name for registration is "Transportation & Logistics Council, Inc." with a group code of "TLC". Check-in dates and rates for the Conference begin April 20, 2020 and run to May 4, 2020. For more information at the hotel, call 321-946-0651.

What to Do: Orlando Attractions

Orlando, the "Theme Park Capital of the World", is home to a number of world class theme parks and numerous other attractions suitable for all ages and interests. The major theme parks include Walt Disney World Resort, Universal Orlando Resort, SeaWorld Orlando, and LEGOLAND Florida Resort.

Visit https://www.visitorlando.com/en for more information and details of what is available in the area.

RAUL ALFONSO TO SPEAK AT ANNUAL CONFERENCE

The Transportation & Logistics Council, Inc. is pleased to announce that Raul Alfonso, Executive Vice President & Chief Commercial Officer of Port Tampa Bay will be the featured luncheon speaker for its 46th Annual Conference on Tuesday, April 28th.

Since joining the port in 2013 as Chief Commercial Officer, Raul has led the port's commercial activities, with responsibilities for the areas in Real Estate, Planning, Marketing, Business Development and Branding. In 2014, Raul was promoted to his current position, as Executive Vice President & Chief Commercial Officer, assuming additional responsibilities as second in command to the Port's President and CEO.

During the past five years (2013-2018), Port Tampa Bay's commercial activities have enjoyed record performance across its diverse lines of business, with growth in cargo tonnage, cruise passengers, revenues, and Real Estate activity for new and existing tenants.

Also during this time, Port Tampa Bay has embarked on implementing its visionary Strategic and Master Plans (Port Vision 2030), focusing on achieving the port's long-term goals, and securing its future, as West Central Florida's principal economic engine.

Raul came to Port Tampa Bay with over 31 years of Port industry experience, involving diverse leadership roles that have resulted in commercial and business development successes at the ports of Miami (PORTMIAMI) and Jacksonville (JAXPORT) in Florida, and the ports of Freeport, Bahamas, Balboa and Cristobal in Panamá. A common thread over Raul's career has been the successful creation of new shipping and transportation networks for his ports and customers they serve.

Raul is a proud graduate of Florida International University, in Miami, FL. He is fluent in Spanish, English and Portuguese. Throughout his career, Raul has served as port/maritime and logistics expert, as speaker at numerous domestic and international trade conferences.

SUPPORT THE CONFERENCE

In addition to the benefits of great educational sessions and networking opportunities, we thought that you might want to get your company's services and/or products out to others in the industry. There are 3 ways you can do this:

Be a Sponsor:

Among the traditional amenities of the Transportation & Logistics Council's Annual Conferences are the Hospitality Suites on Sunday and Monday night of the Conference. Complimentary hors d'oeuvres and cocktails help create a welcoming atmosphere for attendees, an opportunity to meet both old and new friends, and to network with other transportation professionals.

These Hospitality Suites are funded entirely by contributions from our sponsors, and we would like to ask you make a contribution. We have three sponsorship levels:

- Bronze $300
- Silver $500
- Gold $1000

Your company name will be prominently displayed at the entrance to the Hospitality Suite area, and will be published in the conference program, the TransDigest and on the website. See Sponsorship form attached.

Be an Exhibitor:

Each year we invite companies that may be interested in exhibiting their products and services to our attendees. This is an excellent opportunity for companies to show off their products and services to a select group of attendees representing shippers, carriers, intermediaries and related transportation service providers. See Exhibitor information attached.

Donate Door Prizes:

A door prize can be anything with your company logo on it or something that represents your company. Door Prizes can be sent directly to the hotel. Please have them arrive on or shortly before April 24th, 2020. Examples: company products, pens, mugs, T-Shirts, keychains, etc.

Name of person to receive the package c/o
Transportation & Logistics Council, Inc.
10100 International Dr.
Orlando, FL 32821
HOLD FOR ARRIVAL: 04/24/2020
407-370-8608 Phone
407-352-6451 Fax
STORE6403@THEUPSSTORE.COM

Please call Diane or Katie in the office if you are sending an item so you can be properly acknowledged or if you have any questions: 631-549-8984 or email at diane@transportlaw.com.

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INTERNATIONAL

CORONAVIRUS HIGHLIGHTS GLOBAL DEPENDENCE ON CHINA

Last month we noted that it was too early to know the outcome of the coronavirus outbreak. Now, a month later, while we still don't know how wide ranging the impacts will be, there are real world metrics that are beginning to manifest. This is a rapidly moving target.

First, as we learn more about this highly contagious virus, it appears to have an indeterminate incubation period that ranges from 2 to 14 days according to the U.S. Center for Disease Control ("CDC")[*]. However, there is a recent report from China wherein an elderly man was infected and did not show symptoms until 27 days later[†].

Second, it appears to be contagious from asymptomatic persons, meaning persons can be spreading the virus well before any symptoms manifest that would alert them to their illness[‡].

Third, as a result of the autocratic, top down nature of China's rule, valuable weeks were lost before all-out efforts were undertaken in China to contain the outbreak, and in fact, the initial response from the local government was to censure the doctors who tried to call attention to the situation by punishing them for spreading "rumors".[§]

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[*] https://www.cdc.gov/coronavirus/2019-ncov/about/symptoms.html

[†] https://www.reuters.com/article/china-health-incubation/coronavirus-incubation-could-be-as-long-as-27-days-chinese-provincial-government-says-idUSL3N2AM01X

[‡] https://www.reuters.com/article/china-health-study/wuhan-woman-with-no-symptoms-infects-five-relatives-with-coronavirus-study-idUSL1N2AL1Z1

[§] https://www.scmp.com/week-asia/opinion/article/3051829/coronavirus-no-chernobyl-wake-call-chinas-top-down-autocratic; https://www.theatlantic.com/technology/archive/2020/02/coronavirus-and-blindness-authoritarianism/606922/

So as of February 22, 2020, while the outbreak has been largely confined to mainland China with 76,291 cases, there have been 1,677 cases reported from 31 other countries and the "Diamond Princess" cruise ship[*].

With regard to the impacts that are beginning to manifest, they are widespread and perhaps not even obvious. While domestic Chinese businesses such as restaurants, tourist venues, and anything involving public gatherings are feeling the most immediate impact, sales of goods are also suffering, with a report that China's passenger car sales tumbled 92% in the first half of February due to the virus outbreak[†]. Toyota and Honda shut down their production facilities in China.

But the impacts range far beyond the borders of China. For an interesting overview of the Chinese economy in the world, a February 19, 2020 report from the BBC notes, amongst other things, that its economy is the second largest in the world and is 50 times larger than it was it 1980; that it is the world's factory, producing a lot of our goods and the bits we need to make our goods, providing as examples that China produces 70% of the world's air conditioners, 58% of the world's shoes; and is also the world's largest printer of bibles[‡]. China also produces much of our medical supplies and medicines. In turn, the Chinese spend a lot of money as tourists around the world and purchase a lot of goods and products produced elsewhere.

And therein lies the rub. These recent events put a spotlight on our (and the world's) reliance on China. We need the Chinese economy to stay healthy. As the Chinese government seeks to control the spread of the coronavirus, it has imposed restrictions on travel, transportation, and literally closed off and quarantined entire regions, impacting the production and movement of goods. Companies around the world that rely on stuff from China for their business are facing the real risk of not having the necessary parts for production or goods to sell, highlighting the risk versus reward of global sourcing.

On February 17, 2020 Apple was one of the first major corporations to issue a warning to investors about the negative impact of the coronavirus[§]. This was an update to the company's quarterly guidance that had been issued only a few weeks earlier, on January 28, 2020. Other companies will likely follow.

Some companies had already started to shift to alternate sources due to the recent U.S. trade dispute, but many others had not or were not able to do so.

With all the uncertainty, there are some approaches that businesses can take and should consider. Author Bryce Hoffman in a February 22, 2020 article titled *Stop Lying to Yourself About the Coronavirus*[**] provided the following suggestion to:

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[*] When this was originally written 2/22/20 there had only been 1 case in Egypt and there had been no additional cases reported in Africa, and none in South America, Central America, or Mexico, along with some other areas in Eastern Europe and the Middle East. It was too early to know if this was a detection and reporting issue or that these areas simply have not been infected. For example, Iran went from nothing to first reporting two deaths and then 28 cases and 5 deaths in a matter of days. February 27, 2020 update: Almost 83,000 cases reported worldwide with 2,814 deaths and 33,277 recovered in some 51 countries. Iran has jumped to 245 cases with 26 deaths and 49 recovered.

[†] https://www.reuters.com/article/us-china-health-autos/chinas-passenger-car-sales-tumble-92-in-first-half-of-feb-due-to-virus-outbreak-idUSKBN20F0FA

[‡] https://www.bbc.com/news/av/business-51551992/china-economy-why-it-matters-to-you

[§] https://www.apple.com/newsroom/2020/02/investor-update-on-quarterly-guidance/

[**] https://www.forbes.com/sites/brycehoffman/2020/02/22/stop-lying-to-yourself-about-the-coronavirus/#647e13674204

do an quick and dirty Alternative Futures Analysis by drawing two columns on a whiteboard. In the left-hand column, describe how your strategy or plan would unfold in a world in which the coronavirus threat is contained and business continues as usual. In the right-hand column, describe how your strategy or plan would unfold in a world in which the number of new cases continues to grow exponentially and there is significant disruption to global supply-chains and serious consequences for the macroeconomy.

Another author, Yossi Sheffi (director of the Massachusetts Institute of Technology's Center for Transportation and Logistics), provided the following recommendations in a February 18, 2020 Commentary in the Wall Street Journal when discussing sensible "just in case" steps companies take when faced with so many unknowns from the coronavirus:[*]

1. Set up a central emergency management center. At this point it can be virtual but should include a clear roster of participants with clear decision-making rules in case of a pandemic.

2. Review the company's product portfolio and the customer base in order to set priorities. If capacity is reduced, there will need to be rules for which products should be built and which customers should be supplied first.

3. Review suppliers. Who makes critical parts? Are there alternate sources? What is the suppliers' inventory status?

4. Plan for operating to maximize cash flow rather than profits.

5. Maintain communications with federal and local authorities, as well as Chinese and other Southeast Asian friends and colleagues on the ground.

In any event, we wish for a speedy resolution to this outbreak. Perhaps this situation will strengthen the movement to reshore[†] operations and help our domestic economy.

The following link provides an up to the minute interactive map of cases around the world.

https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6

USMCA SIGNED INTO LAW

On January 29, 2020 President Trump signed into law legislation (H.R. 5430, now Public Law 116-113) to implement the United States-Mexico-Canada Agreement ("USMCA") as a replacement for the existing North American Free Trade Agreement ("NAFTA").

Amongst other things, the USMCA will raise the country-of-origin threshold for automobiles, give U.S. farmers more access to Canada's dairy market, and grant greater protections to workers. The agreement will take effect 90 days after Canada endorses it.

For the text of Public Law 116-113, visit https://www.congress.gov/bill/116th-congress/house-bill/5430. For the House Ways and Means Committee report on the bill, which provides a plain language summary, visit https://www.congress.gov/congressional-report/116th-congress/house-report/358.

[*] https://www.wsj.com/articles/commentary-supply-chain-risks-from-the-coronavirus-demand-immediate-action-11582054704?mod=searchresults&page=1&pos=1

[†] the practice of transferring a business operation that was moved overseas back to the country from which it was originally relocated.

MOTOR

DRIVER CLASSIFICATION

Last month we reported that California's Assembly Bill 5 ("AB 5") was halted in its tracks with regard to trucking and drivers. They were lucky in the sense that the Federal Aviation Administration Authorization Act ("FAAAA"), a federal law, would likely preempt the prong "B" provision of AB 5.

Other independent contractors not involved in trucking do not share in the benefit of that law. According to a recent article by Katy Grimes published in the "California Globe" on February 18, 2020, "The Legislative Analyst's Office estimates that AB 5 has already affected more than 1 million independent contractor and freelance working Californians." The author also points out that during the state Senate debate, it was revealed that the AFL-CIO wrote the bill.

The article goes on to discuss the efforts by state Assemblyman Kevin Kiley to initiate a floor vote on Assembly Bill 1928, what is called an "urgency measure" to suspend AB 5 while corrective legislation is under consideration. The floor vote on AB 1928 is scheduled for February 27, 2020.

Kiley reported: Urgency measures like AB 1928 take effect immediately and are customarily given expedited consideration. An expedited vote is especially appropriate here given that:

- the bill would simply restore the prior state of the law from less than two years ago;
- the issues presented have already been extensively considered in both Assembly and Senate policy committees;
- a suspension would function as a stopgap measure as legislators try to craft a more workable law through the committee process.

More than 150 professions are impacted by AB5, "hardly an industry or trade is unscathed," Kiley said. "This is what happens when humanist values give way to brute political force."

To view the article, visit https://californiaglobe.com/section-2/assemblyman-kevin-kiley-to-initiate-vote-on-bill-to-temporarily-suspend-ab-5/.

On the federal level, on February 6, 2020 the U.S. House of Representatives passed H.R. 2474, the "Protecting the Right to Organize Act of 2019" and sent it to the Senate. The bill includes typical pro-union measures, such as a prohibition against permanent replacements of workers who participate in strikes and a revision of the definitions of "employee" and "supervisor" to prevent employers from classifying employees as exempt.

Of particular interest to the trucking industry is a definition of an employee as opposed to an independent contractor under the National Labor Relations Act. Sec. 2(a)(2) of the bill would impose a federal ABC test with the B prong stating that a worker is to be considered an employee unless "the service is performed outside the usual course of the business of the employer." As is the case with the California version of the ABC test in AB 5, the legislation is drafted so as to require that all three prongs of the test be satisfied for a worker to be considered an independent contractor.

While it is unlikely that the bill will be passed in the current Republican controlled Senate, these types of limitations on the ability of parties to enter into contracts need to be monitored.

Visit https://www.congress.gov/bill/116th-congress/house-bill/2474 for more information on H.R. 2474.

REPORT ON TRUCK BOTTLENECKS

If you have ever traveled on I-495 on Long Island or I-95 in Connecticut (sometimes dubbed the "Nation's longest parking lots"), you can appreciate the tremendous cost of highway congestion and loss of productivity. On February 19, 2020 the American Transportation Research Institute ("ATRI") released its annual list highlighting the most congested bottlenecks for trucks in America.

From the announcement:

> The *2020 Top Truck Bottleneck List* assesses the level of truck-involved congestion at 300 locations on the national highway system. The analysis, based on truck GPS data from over 1 million heavy duty trucks uses several customized software applications and analysis methods, along with terabytes of data from trucking operations to produce a congestion impact ranking for each location. ATRI's truck GPS data is also used to support the U.S. DOT's Freight Mobility Initiative. The bottleneck locations detailed in this latest ATRI list represent the top 100 congested locations, although ATRI continuously monitors more than 300 freight-critical locations.
>
> The intersection of I-95 and SR 4 in Fort Lee, New Jersey is once again the Number One freight bottleneck in the country. The rest of the Top 10 includes:
>
> 2. Atlanta: I-285 at I-85 (North)
> 3. Nashville: I-24/I-40 at I-440 (East)
> 4. Houston: I-45 at I-69/US 59
> 5. Atlanta, GA: I-75 at I-285 (North)
> 6. Chicago, IL: I-290 at I-90/I-94
> 7. Atlanta, GA: I-20 at I-285 (West)
> 8. Cincinnati, OH: I-71 at I-75
> 9. Los Angeles, CA: SR 60 at SR 57
> 10. Los Angeles, CA: I-710 at I-105

ATRI's analysis, which utilized data from 2019, found that the number of locations experiencing significant congestion – with average daily speeds of 45 MPH or less – has increased 92 percent in just five years, far outpacing the 10 percent growth in traffic congestion for that same time period.

For access to the full report, including detailed information on each of the 100 top congested locations, please visit ATRI's website at https://truckingresearch.org/2020/02/18/2020-top-truck-bottlenecks/.

WHERE DO TOLL DOLLARS GO?

On January 29, 2020 the American Transportation Research Institute ("ATRI") released its study on the collection and distribution of $14.7 billion in U.S. toll revenue, representing 82 percent of U.S. toll collections. The research sheds light on many questions about tolling, including how much toll revenue is generated versus reinvested in toll facilities, and contrasts truck-generated toll revenue versus truck utilization of toll roads.

From the ATRI announcement:

> This study was identified as the top research priority for the industry by ATRI's Research Advisory Committee in 2019.
>
> To better understand tolling, researchers collected public financial data from Comprehensive Annual Financial Reports (CAFR) published by toll systems, and attempted to standardize

> financial comparisons across systems. Key metrics included toll facility charges by user type, toll facility expenditures and toll revenue diversion to non-toll entities.
>
> ATRI's research found that the 21 major toll systems analyzed collected more than $14.7 billion in revenue with nearly 50 percent of toll revenue diverted to other uses. In addition, toll revenue increased more than 72 percent over the last decade compared to inflation growth of just 16.9 percent.
>
> The report includes a first-of-its-kind data analysis to better understand the relationship between interstate commerce and toll road utilization. Through an analysis of truck GPS data, the researchers were able to quantify toll revenue impacts on local truck activity versus interstate commerce.
>
> "It is clear from this research that highway funding mechanisms that return our tax investments to highways are far superior to tolling," said Darren Hawkins, YRC Worldwide Chief Executive Officer. "We need greater oversight and transparency to ensure that the billions of dollars paid by our industry goes back into the roads and bridges that generate the revenue."

You can download the report – *A Financial Analysis of Toll System Revenue: Who Pays & Who Benefits* – from ATRI's website at https://truckingresearch.org/2020/01/29/new-research-documents-who-pays-and-who-benefits-from-toll-system-revenue/.

FMCSA ISSUES UCR FINAL RULE

On February 13, 2020 the Federal Motor Carrier Safety Adminstration ("FMCSA") published its final rule on annual commercial vehicle registration fees. According to the summary:

> This rule establishes reductions in the annual registration fees the States collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration ("UCR") Plan and Agreement for the registration years beginning in 2020. For the 2020 registration year, the fees will be reduced by 14.45 percent below the 2018 registration fee level to ensure that fee revenues collected do not exceed the statutory maximum, and to account for the excess funds held in the depository. The fees will remain at the same level for 2021 and subsequent years unless revised in the future. The reduction of the current 2019 registration year fees (finalized on December 28, 2018) range from approximately $3 to $2,712 per entity, depending on the number of vehicles owned or operated by the affected entities.

The rates are graduated based on the number of trucks a carrier has in its fleet. For instance, carriers with up to two trucks paid $69 in 2018 and $62 in 2019, but will pay $59 in 2020.

For a carrier with a fleet of 1,001 or more trucks, the proposed fee would be $56,977 in 2020, down from $59,689 in 2019.

The UCR Plan and the 41 states participating in the UCR establish and collect the fees. The UCR Plan and Agreement is administered by a 15-member board of directors —14 appointed from the participating states and the industry, plus the deputy administrator of FMCSA or another presidential appointee from the department. Revenues collected are allocated to the participating states and the UCR Plan.

The plan's overall renew target for 2020 is more than $107 million, according to the final rule. If there are excess funds after payments to the states and for administrative costs, they are retained in the board's depository and subsequent fees must be reduced as required.

Visit https://www.federalregister.gov/documents/2020/02/13/2020-01761/fees-for-the-unified-carrier-registration-plan-and-agreement to view the Federal Register publication.

2019 POCKET GUIDE TO LARGE TRUCK AND BUS STATISTICS

The Federal Motor Carrier Safety Administration ("FMCSA") has released its *2019 Pocket Guide to Large Truck and Bus Statistics.* The guide highlights the FMCSA's role in collecting and analyzing data on large trucks and buses. Intended as a compact reference, it is a compilation of statistics from the overall state of the industry to enforcement activity, details on traffic violations and other incidents, the costs of crashes, and more.

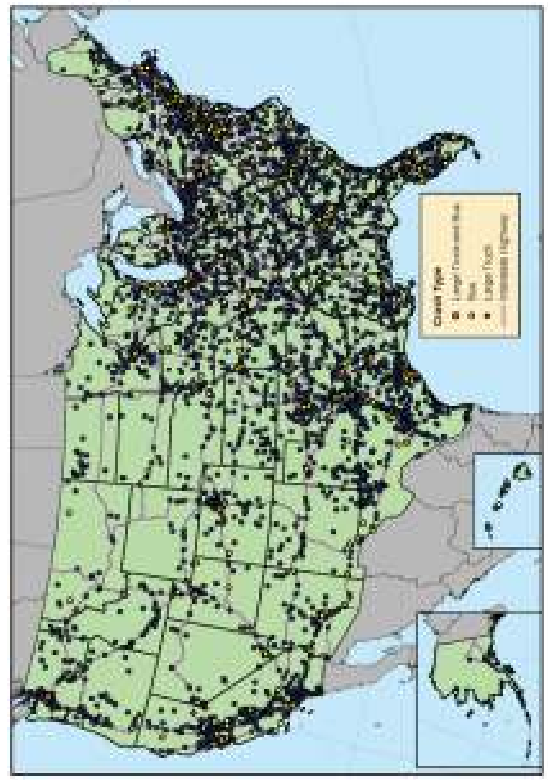
These data are used in support of their mission to prevent commercial motor vehicle-related fatalities and injuries. An example of the data provided is visible via the map adjacent that details the Locations of Fatal Large Truck and Bus Crashes, 2017.

The Pocket Guide can serve as a valuable, compact resource for industry representatives, Federal agencies, and other individuals interested in motor carrier safety regulations and performance data.

The guide can be accessed at https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2020-01/FMCSA%20Pocket%20Guide%202019-FINAL-1-9-2020.pdf.

Visit https://cms8.fmcsa.dot.gov/safety/data-and-statistics/commercial-motor-vehicle-facts to view the FMCSA overview.

LOCATIONS OF FATAL LARGE TRUCK AND BUS CRASHES, 2017



Note: In 2017, there were 4,455 fatal crashes involving large trucks and buses.
Data Source: National Highway Traffic Safety Administration (NHTSA), Fatality Analysis Reporting System (FARS).

FMCSA EXTENDS COMPLIANCE DATE FOR ENTRY-LEVEL DRIVER TRAINING

On January 29, 2020 the Federal Motor Carrier Safety Administration ("FMCSA") announced its interim final rule with request for comments regarding compliance with entry-level commercial vehicle driver training. From the announcement summary:

> FMCSA is amending 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 the rule from February 7, 2020, to February 7, 2022. This action will provide FMCSA additional time to complete development of the Training Provider Registry (TPR). The TPR will allow training providers to self-certify that they meet the training requirements and will provide the electronic interface that will receive and store entry-level driver training (ELDT) certification information from training providers and transmit that information to the State Driver Licensing Agencies (SDLAs). The extension also provides SDLAs with time to modify their information technology (IT) systems and procedures, as necessary, to accommodate their receipt of driver-specific ELDT data from the TPR. FMCSA

is delaying the entire ELDT final rule, as opposed to a partial delay as proposed, due to delays in implementation of the TPR that were not foreseen when the proposed rule was published.

Visit https://www.fmcsa.dot.gov/newsroom/extension-compliance-date-entry-level-driver-training-1 to read or download the Extension of Compliance Date for Entry-Level Driver Training.

OCEAN

INPUT FROM PORTS ON NATIONAL FREIGHT PLAN

At the end of December, 2019 the Department of Transportation ("DOT") published a request for information ("RFI") in the Federal Register on the National Freight Strategic Plan ("NFSP"). RFI seeks information from the public, including stakeholders (*e.g.,* State and local agencies, private owners and operators, industry trade groups, shippers and beneficial cargo owners, etc.) to aid development of the NFSP. While comments were due February 10, 2020, the DOT will consider late filed comments to the extent practicable.

One theme in comments from U.S. ports and others is that the NFSP needs to take shipping costs into consideration when prioritizing freight projects and take a broad and more inclusive approach that looks beyond highways and modal boundaries to better reflect realities of 21st century supply chains.

As of February 20, 2020 there were some 80 comments submitted, mostly by groups and associations from around the country, with some comments from individuals.

One common theme throughout the comments was each party looking to their own interests and region. While this is understandable, this lack of consensus will make it difficult to move forward efficiently.

Visit https://www.federalregister.gov/documents/2019/12/27/2019-27897/national-freight-strategic-plan-request-for-information to view the Federal Register notice and comments, or to submit comments.

IMO2020

Since the implementation of the International Maritime Organization's 2020 ("IMO2020") requirements to reduce sulphur emissions that went into effect January 1, 2020, the price of very low-sulfur fuel oil ("VLSFO") has fallen by $170 per metric ton (23 percent) from its peak by the end of January at the bunkering hub of Singapore. After some initial significant fluctuations, the price and availability of various fuels is quickly stabilizing.

As with other events and regulatory mandates (e.g. Y2K and container weight verification), the actual fallout has proven to be less dramatic than anticipated.

PANAMA CANAL

Unlike the Suez Canal, which is a sea-level cut without locks, the Panama Canal has to lift vessels up 85 feet through a series of three locks, and then lower them back down. The engineering utilized water trapped in Gatun Lake, which is at the highest point of the passage, and gravity to move the water to raise and lower the ships. This requires a continuous source of water flowing into Gatun Lake.

The new larger locks* opened in 2016 and were designed to make more efficient use of the water while at the same time providing for passage of significantly larger vessels.

Located in a tropical rain forest, Gatun Lake has generally had adequate water supplies to operate the canal. However, weather being what it is, there are fluctuations and on occasion, the Panama Canal Authority has had to restrict draft of vessels transiting the canal due to low water.

On January 13, 2020 the Panama Canal Authority announced that due to changing rainfall patterns and historic low water levels at Gatun Lake, the main source of water for the waterway, it would implement a series of new measures (that began February 15, 2020) to sustain an operational level of water and provide reliability to customers while it implements a long-term solution to water supply. As one of the new measures, it will start charging two new fees: a new Freshwater Surcharge that affects vessels greater than 125 feet length overall and a Vessel Visit Creation Fee that will have two levels depending on a ship's size.

From the 1/13/20 press release:

> Despite the use of extensive water-conservation measures, this past year's rainfall was 20 percent below the historic average and the fifth driest year in 70 years. It follows several years of lower than average rainfall coupled by a 10 percent increase in water evaporation levels due to a 0.5-1.5 degree Celsius rise in temperature.
>
> Without fee and operational changes, the Canal's water levels are projected to drop to levels that would affect the Neopanamax and Panamax Locks. These new measures are intended to better provide reliability in water levels and therefore transit schedules.
>
> The measures include the following components:
>
> **Freshwater Surcharge**
>
> • A new freshwater fee will be applied to all vessels over 125 feet in length overall (LOA) that transit through the Panama Canal, and will include the following components: A fixed fee of $10,000 per transit and a variable fee ranging from a minimum of 1 percent to a maximum of 10 percent of the vessel's toll will be applied depending on Gatun Lake levels at the time of transit (i.e. if the lake has a higher level, the percentage will be lower and vice versa).
>
> **Adjustments to the Booking System**
>
> • The Panama Canal will adjust the number of daily reservation slots available to 27, replicating the total offered during lane outages. The waterway will also require that each vessel pays its booking fee in full no later than 48 hours depending on the booking period.
>
> o Regulars (up to 90.99 feet in beam): 6 slots
>
> o "Supers" (up to 107 feet in beam): 13 slots
>
> o Neopanamax: 8 slots (unchanged)
>
> • One slot for supers and one slot for regular vessels will be awarded through the auction process three days before transits. Nonetheless, the Canal will continue to provide additional capacity when possible, serving vessels on a first-come, first-serve basis.

---

* The new "Neopanamax" locks are 1400' long x 180' wide x 60' deep as opposed to the older "Panamax" locks that are 1050' long x 110' wide x 41.2' deep.

Vessel Visit Creation Fee (ETA Handling Fee)

• A handling service fee will be applied to all visits for transit at the time they are created in the system. The processing fee will be applied as follows:

- For vessels 91 feet in beam and over: $5,000.
- For vessels over 125 feet LOA, but less than 91 feet in beam: $1,500.

• The fee will be deducted from the vessel's tolls invoice once the vessel begins transit. If the vessel cancels the visit and does not transit, the Vessel Visit Creation Fee will not be refunded. All visits created prior to February 15, 2020 will be honored and will not be required to pay this fee.

Together, the new measures will allow the Panama Canal to better anticipate the number and type of ships transiting the waterway, and therefore allocate water resources accordingly.

Visit https://www.pancanal.com/eng/pr/press-releases/2020/01/13/pr686.html to view the full press release and visit https://www.pancanal.com/eng/ for the Panama Canal website.

According to a February 20, 2020 report from Reuters, this new "freshwater" charge will cost the shipping industry up to $370 million a year and according to the International Chamber of Shipping ("ICS"), this charge when coupled with a toll rate change scheduled to go into effect April 1st could cause ships to face more than 30% higher costs.

This is coming at a difficult time for the industry as it is currently having to pay billions of dollars in extra fuel costs due to the tough new sulphur emissions rules that started in January and disruption to supply chains due to the coronavirus.

Visit https://www.reuters.com/article/us-shipping-panamacanal/shipping-industry-faces-370-million-hit-from-new-panama-canal-charge-idUSKBN20E211 to view the Reuters article.

Visit https://www.ics-shipping.org/news/press-releases/view-article/2020/02/13/ships-may-face-more-than-30-higher-costs-under-new-panama-canal-authority-measures-says-international-chamber-of-shipping to view the ICS press release.

PARCEL EXPRESS

FIVE STEP PLAN TO LOWER FREIGHT COSTS [NOT JUST PARCELS]

by Tony Nuzio, ICC Logistics Services, Inc.

They say, what goes up must come down and we believe that includes shipping costs!

Here is a Five Step Plan to rationalize your current transportation costs and use that data as a starting point to reduce those costs. We caution in advance however that this plan will require not just time on your part, but a commitment from the various key stakeholders within your organization. Ideally, this should include the most senior people in the organization. They need to understand the value of this mission and how it could positively impact the company's bottom line. Follow these steps, commit to your savings goals, and you can do this.

Quantify Your Savings Goals:

Any cost reduction process must begin with goal setting. Ask yourself: How much do we WANT to save? How much do we NEED to save? Is there a delta between the two, and if so why? A sound knowledge of transportation cost structures is the key to successfully benchmarking costs and achieving savings. If your firm does not have the expertise to thoroughly understand the various cost structures, (including of course the assessment of accessorial fees and multiple surcharges), it may be time to outsource these services to a qualified Third Party. Remember in any negotiation, Knowledge is Power!

Identify Your Baseline:

What are your true transportation costs? Many costs may be hidden; perhaps your topline freight invoices don't always reveal the whole story. For example, freight terms dictate how freight costs are captured, reported and expensed. In some cases firms purchase goods on a delivered basis. In many of these cases suppliers bury transportation costs in their product pricing, therefore masking the true cost of these shipments. Transportation companies frequently overcharge shippers on invoices, and will make refunds ONLY when overcharges are detected and claims are filed for recoveries. Make sure your company has a comprehensive freight audit process in place to help find the money you never knew was missing!

Review and Update Your Supply Chain Strategy:

Supply chain economics change frequently; so should your supply chain activities. Many sourcing decisions that favored offshore manufacturers for years are getting revised today. Similarly, consider consolidating fewer smaller deliveries into larger consolidated deliveries to reduce costs and improve efficiencies at the receiving dock. Remember there are hard savings in dollars, but equally important are the soft savings achieved as a result of process improvements. While we are on this topic, this is an area of savings that almost never gets the attention it should.

Develop and Track Key Performance Indicators, (KPI's):

This is a mirror image of step #2, focusing on your internal processes. Here you'll be measuring your basic transportation expenses across various platforms and materials: costs by product, by weight, by origin, destination, across various shipping modes, and so on. Settle on the number of KPI fields necessary to properly evaluate the success or failure of your initiatives. Do not overcomplicate the process by including metrics that have absolutely no value towards tracking and attaining the savings goals.

Initiate Your Cost Reduction Program:

You're probably saying: sure, it's that easy? Just like that! Well it can be just like that and here's why: If you clearly establish your company's current total cost of shipping, then you can clearly identify your cost reduction goals. Now you know exactly where you are and where you need to be to attain the realistic savings your company deserves.

A word of caution before getting started; you should never attempt to tackle this process alone if you are not absolutely sure of your starting point, (AKA current costs), and have clearly identified through a Comprehensive Benchmarking Process, where your company should be in terms of shipping expenses. Carriers will see right through your attempt to reduce costs without a clear and concise process and comprehensive documentation that proves beyond a doubt, that your company is entitled to the savings you are requesting.

Remember, there is help out there to make these negotiations simple, quick and more importantly, 100% successful.

QUESTIONS & ANSWERS

by George Carl Pezold, Esq.

FREIGHT CLAIMS – REJECTION AND CONDITION OF EQUIPMENT

Question: If cargo is unlawfully refused, can the motor carrier lawfully place it on-hand, charge storage fees, and eventually sell the abandoned cargo at public auction?

Also, can a claim be filed against two parties? For example, against a carrier that provides a trailer that doesn't meet food grade and damage-free delivery requirements, and against a shipper that didn't properly audit the trailer prior to loading?

Answer: I will try to answer some of your questions based on the limited information you have provided.

First, you say that the shipment was "unlawfully refused". Assuming that this involved some type of food or food product intended for human consumption, there could be a number of valid reasons for rejection of a shipment: temperature abuse, damage to packaging, broken or missing seal (possibility of adulteration or contamination). It could also be that the shipper shipped the wrong product (something other than what the buyer ordered).

In any event, if the shipment moved under a typical Uniform Straight Bill of Lading, Section 4 of the terms and conditions would apply. This section reads as follows:

> Sec. 4.
>
> (a) If the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request, or the consignee refuses the shipment tendered for delivery by carrier or if carrier is unable to deliver the shipment, because of fault or mistake of the consignor or consignee, the carrier's liability shall then become that of a warehouseman. Carrier shall promptly attempt to provide notice, by telephonic or electronic communication as provided on the face of the bill of lading, if so indicated, to the shipper or the party, if any, designated to receive notice on this bill of lading. Storage charges, based on carrier's tariff, shall start no sooner than the next business day following the attempted notification. Storage may be, at the carrier's option, in any location that provides reasonable protection against loss or damage. The carrier may place the shipment in public storage at the owner's expense and without liability to the carrier.
>
> (b) If the carrier does not receive disposition instructions within 24 hours of the time of carrier's attempted first notification, carrier will issue a second and final notification by telephonic or electronic communication. Such notice shall advise that if carrier does not receive disposition instructions within five (5) days of that notification, carrier has the right to offer the shipment for sale, and carrier may sell the property under such circumstances as may be authorized by law. The amount received from the sale will be applied first to the carrier's invoice for transportation, storage and other lawful charges, including those incurred by the carrier in selling the goods. The owner will be responsible for the balance of any charges not covered by the sale of the goods. If there is a balance remaining after all charges and expenses owing to the carrier are paid, such balance will be paid to the owner of the property sold, subject to a claim and proof of ownership
>
> (c) When perishable goods cannot be delivered and disposition instructions are not given within a reasonable time, the carrier may dispose of the property in a manner that the carrier deems best serves its disposition.

As to your other questions, a motor carrier is liable for loss or damage to goods while in its possession or control. Its liability is governed by the "Carmack Amendment", a federal law (49 USC 14706) and the court decisions that interpret and apply that law. Carriers also have a duty to provide "suitable" equipment for the type of goods being transported. As between the shipper and the carrier, unless the parties have a separate transportation contract, the "contract of carriage" is usually the bill of lading.

As to the shipper, there are two separate contracts: (1) between the shipper and the carrier, i.e. the bill of lading or transportation contract, and (2) the contract of sale between the seller and the buyer.

Thus, if the loss or damage in transit is caused by an "act or default of the shipper", that could be a defense that the carrier could assert against a loss or damage claim. On the other hand, if the shipper's negligence or fault caused the loss or damage it could be considered a violation of the shipper's obligations under the contract of sale.

FREIGHT CLAIMS – MEASURE OF DAMAGES AT DESTINATION

Question: We had hired a carrier to pick up a load of avocados in Laredo, TX coming from Mexico to deliver to Montreal, Canada. The carrier was involved in an accident and the load was a total loss.

When we went to settle with the receiver, who is the claimant, he wanted to be paid the amount that was on the confirmation of sale as well as loss of sale. He stated he has a contract with the end user and had to go out and purchase more avocados to fulfill his commitment to end user and also wanted a 15% handling fee. I was always under the impression that he would only get the amount that was on his purchase invoice at the time of the loss.

Answer: As you indicate, the usual measure of damage if the shipper is the claimant would be its invoice price to the customer. The reason is that the shipper/seller is entitled to get the same amount that it would have received if the goods had been delivered in good order and condition to the consignee/buyer.

However, there can be a different rule where the consignee is the claimant and needs to purchase a replacement for the goods at destination in order to meet an obligation to its customer (e.g., as opposed to merely putting the goods into its inventory for some later sale).

The 1930 U.S. Supreme Court decision in *Illinois Cent. R. Co. v Crail*, 281 U.S. 57 (1930), which involved shortage in a shipment of coal, sheds some light on this question. I would think that, based on the facts you have described, the consignee would at least be entitled to the "wholesale market price" at destination, i.e. what the consignee had to pay for the avocados in Montreal, most likely at a local produce market.

RECENT COURT CASE

BROKER AND CARRIER NOT LIABLE FOR LOAD STOLEN BY IMPOSTOR

On appeal to the Third Circuit Court the District Court ruling finding that a carrier and its related brokerage was not liable for a missing shipment of copper when it had been picked up and stolen by an impostor.

This case arose after a 35,000 pound truckload of copper disappeared. Worth over $100,000, the shipment was supposed to be transported from AMG Resources Corporation ("AMG") scrap metal facility in Newark, New Jersey to a customer in Pennsylvania. Arrangements for the transportation had been made with

WMW Logistics, Inc. ("WMW"), a federally licensed freight broker. WMW shared common ownership with Wooster Motor Ways, Inc. ("Wooster"), a federally licensed motor carrier.

A driver showed up at AMG's facility, his truck was loaded and weighed and after a bill of lading was prepared the load was released to the driver, never to be heard from again.

After the shipment went missing, AMG filed suit against both WMW and Wooster in state court. That action was removed to federal district court and after a two-day bench trial the District Court entered judgment in favor of WMW and Wooster.

On appeal to the Third Circuit, AMG appealed the District Court's decision on its claim under the Carmack Amendment and a claim for breach of contract.

Amongst facts noted in the decision, while there had been some 92 prior occasions that AMG used WMW to arrange for transportation of scrap metal, only once had Wooster acted as the carrier, and the parties had never entered into a master agreement; each transaction was agreed upon separately.

The negotiations for the load that was lost were done by email and identified the contents, the purchase order, the point of origin, the destination, a load value as well as the price of the transportation. Other details, such as the identity of the carrier, were not included in the email chain.

In order to obtain a driver, WMW advertised on online boards and a particular driver responded. After WMW verified the driver's carrier license and insurance policy, it entered into a broker-carrier agreement with the driver to move the shipment.

On the appropriate date, a truck with an unknown driver arrived and produced the purchase order number for the load; the truck was loaded; a bill of lading was prepared; and the driver left with the copper never to be seen again. When AMG filed suit, it named the broker WMW and its related carrier, Wooster, but it did not sue the actual driver.

The issues for the court was whether either WMW or Wooster were liable for the missing copper under the Carmack Amendment or contract.

After a thorough history of the evolution of the Carmack Amendment, the Appeals Court determined that neither WMW nor Wooster were liable under Carmack. Their rationale was that the first element of a prima facie Carmack case requires evidence of delivery to the carrier, or subsequent carrier, in good condition. There was no evidence that WMW or Wooster ever arrived at AMG's facility to pick up the copper load or that either of them ever later transported the load.

With regard to the contract claim, the Appeals Court noted that the Carmack Amendment provides the exclusive cause of action for loss or damage to goods transported by a motor carrier and any state-law claims are preempted. The court also noted that even if a breach of contract claim were permitted, the District Court did not err in finding that the brief email exchange between AMG and WMW did not indicate that WMW or Wooster assumed liability for non-delivery of the copper.

The lesson here appears to be how important it is to verify who is picking up a load before releasing it.

AMG Resources Corporation v. Wooster Motor Ways, Inc., (3rd Circuit, January 9, 2020)

Available online with links to citations at https://scholar.google.com/scholar_case?case=4726769864184224246&hl=en&as_sdt=6&as_vis=1&oi=scholarr

Note that this disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

CCPAC NEWS

CCPAC NEWS UPDATE

The Certified Claims Professional Accreditation Council ("CCPAC") Officers and Board of Directors are pleased to announce the newest Certified Claim Professionals ("CCP"). Kudos to those who after many hours of self-study successfully passed the CCP Annual Fall Exam held on the first Saturday of November each year nationwide.

The next CCP Primer Class will be held at the DoubleTree by Hilton at SeaWorld, Orlando, FL on Sunday, April 26, 2020 and the CCP Exam will be conducted at the same location on Wednesday April 29, 2020. Prior application, registration and approval are required to sit for the CCP Primer Class and/or the CCP Exam. Registration closes March 30, 2020. On-line registration for the April events is now open on the home page under CCPAC Headline News, center section at website www.ccpac.com

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 and to warrant acknowledgment of their professional stature. Only those who have passed the CCP Exam and maintain continuing education requirements may use the "CCP" professional designation following their name.

For more information about CCPAC visit www.ccpac.com for general information and membership in CCPAC or email director@ccpac.com.

CCPAC also has the following online presence:

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Website www.ccpac.com

CLASSIFICATION

FUTURE COMMODITY CLASSIFICATION STANDARDS BOARD ("CCSB") DOCKETS

	Docket 2020-2	**Docket 2020-3**
Docket Closing Date	April 2, 2020	August 6, 2020
Docket Issue Date	April 30, 2020	September 2, 2020
Deadline for Written Submissions and to Become a Party of Record	May 21, 2020	September 25, 2020
CCSB Meeting Date	June 2, 2020	October 6, 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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Hotel rate of $149/night is available until April 3, 2020 or room block is sold out

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The Transportation & Logistics Council, Inc.

Phone: (631) 549-8984 120 Main Street, Huntington, NY 11743 Fax: (631) 549-8962
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APPLICATION FOR ANNUAL MEMBERSHIP

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

- **Regular Member** (shippers, brokers, third party logistics and their representatives);
- **Multiple Subscriber** (non-voting additional representatives of a **Regular Member** firm); and
- **Associate Member** (non-voting members – carriers and freight forwarders).

All members receive:

- An email subscription to ***TRANSDIGEST*** (TLC's monthly newsletter). NOTE: To receive the printed version of the ***TRANSDIGEST*** by First Class Mail a fee of $50, in addition to applicable membership fee, will apply.*
- **Reduced rates** for **ALL** educational programs, texts and materials.

New Members also receive:

- A complimentary copy of "**Shipping & Receiving in Plain English, A Best Practices Guide**"
- A complimentary copy of "**Transportation Insurance in Plain English**"
- A complimentary copy of **"Transportation & Logistics – Q&A in Plain English Books 4, 5 & 6 on CD Disk"**

If you are not presently interested in becoming a member, but would like to subscribe to the **TRANSDIGEST**, you can opt for a 1-Year/Non-member subscription to the newsletter by making the appropriate choice below.

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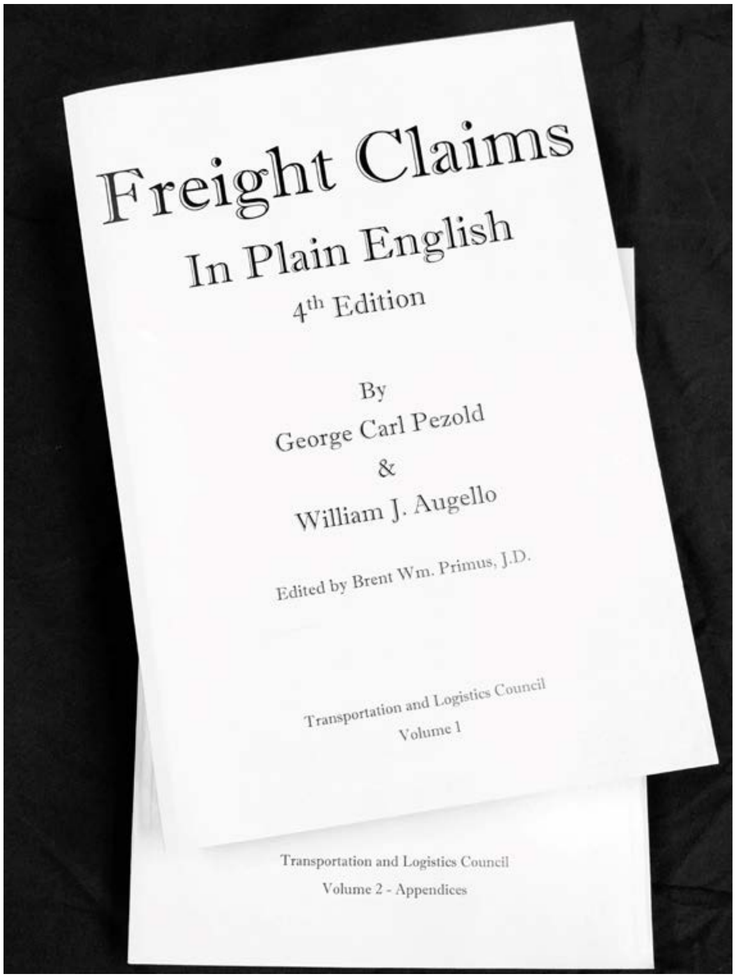

Freight Claims in Plain English (4th Ed.)

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.

Click here to see the Table of Contents

Best of all, the soft-cover edition is reasonably priced – formerly $289 but now only $149 for T&LC members and $159 for non-members. Free shipping in the contiguous U.S.

New York State residents sales tax applies.

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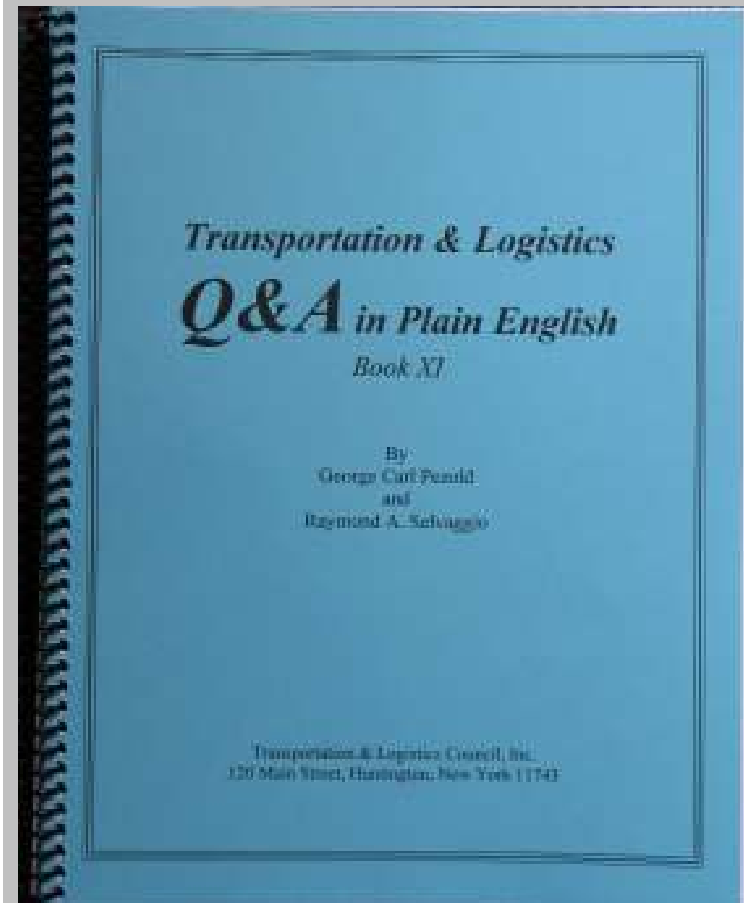

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Transportation & Logistics
Q&A in Plain English – Book XI

"Transportation & Logistics - Q&A in Plain English - Book XI", by George Carl Pezold and Raymond A. Selvaggio, is the eleventh in this series of the Transportation & Logistics Council's popular texts, and is a compilation of 275 of the most recent questions submitted to the Council's "Q&A" forum and published in the TransDigest,

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.

Transportation & Logistics - Q&A in Plain English is excellent resource of advice and knowledge about everyday problems in transportation and logistics, and a great training tool for anyone starting out in the transportation and logistics profession.

Between this new eleventh edition and the previous ones, the authors have created a virtual encyclopedia of almost every conceivable question that can come up. You can't find this kind of information anywhere else.

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Item #	Description	Qty	Price	Total
595	Q & A in Plain English – Book XI (T&LC Member)		$ 60.00	$
595-NM	Q & A in Plain English – Book XI (Non-Member)		$ 70.00	$
596	Q & A in Plain English – Book XI on CD (T&LC Member)		$ 60.00	$
596-NM	Q & A in Plain English – Book XI on CD (Non-Member)		$ 70.00	$

CREDIT CARD INFORMATION

Credit Card #		MC ☐ VISA ☐ AE ☐	
Name on Card		CVV:	Exp. Month/Year:
Billing Address (if different)			