

TRANSDIGEST

Transportation & Logistics Council, Inc.

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T&LC – Where We Stand

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- **Just What Is “Essential”?**
- **How to Develop a Good LTL RFP**
- **Collapse of Oil Prices**
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- **More Q & As**

NEW! IN A SOFT COVER EDITION!

FREIGHT CLAIMS IN PLAIN ENGLISH (4TH ED.)

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EDITORIAL

WHERE WE STAND

By George Carl Pezold

We all see and hear the constant barrage of news about the Coronavirus every day, not to mention experiencing the real-world effects of being quarantined or sheltering in place. Amidst the anxiety, individual hardships and drawn-out economic impact this pandemic is causing, we naturally wonder what the future holds in the aftermath of this crisis. The Council remains optimistic and hopeful that we will persevere and overcome this crisis as we have with other past catastrophic events like Hurricane Katrina.

To be sure, federal and state measures such as the CARES legislation and bailout funds for small and large businesses will be a great help towards recovery. But there will be businesses that have closed and will never reopen again, workers that have lost their jobs and may not be able to get another one, and lingering effects of the damage to our economy.

As you know, we had been looking forward to the Council’s 46th Annual Conference, “Education for Transportation Professionals” and the awesome program that had been planned for the end of April. As events unfolded, the Council’s Board of Directors became increasingly aware of the ominous cloud that was approaching. We began to hear from folks that had planned to attend, as well some of the moderators and panelists for the educational sessions that they might be unable to attend because their companies banned "non-essential" travel and attendance at conferences for indefinite periods. Added to this were the growing possibilities of quarantines, flight cancellations and other closures outside of our control.

Clearly the health and safety of attendees and participants had to come first. Although this was one of the most difficult decisions that the Council has had to make in our forty-six years of successful conferences, we made the right decision and canceled the Conference.

The Board of Directors explored the possibility of rescheduling the Conference in September with the Doubletree by Hilton at SeaWorld. We no longer believe this is a viable solution. Planning a major educational conference takes months, and it is very likely that potential attendees, as well as panels of experts and speakers may still not have the ability to participate.

So, what are our plans?

We plan to be true to our Mission, which is the “Education of Transportation Professionals.” One of the lessons learned from this current crisis is the newfound appreciation for the transportation industry and the supply chain and how vital this industry is to the country. The Council and its Members have always known this. Now, the rest of the country and the world are opening their eyes to this reality.

Therefore, we will continue to provide ongoing updates and status of important developments in the TRANSDIGEST, with informative articles and educational information, our popular “Questions and Answers” forum will be open on the website, and we will continue to be available to give advice and answer questions for our members. We also anticipate presenting our intensive full-day Fall seminars, including “Contracting for Transportation & Logistics Services” and “Freight Claims in Plain English” later this year.

In short, we remain dedicated to providing the services and information about the transportation and logistics industry that can help you to maintain and improve the skills that you can use in your daily business.

AIR

AIR CARGO CRISIS

The International Air Transport Association (“IATA”) has renewed its calls for a coordinated approach among governments to keep air cargo flowing. According to an April 20, 2020 press release from the IATA and the International Transport Workers’ Federation (“ITF”):

The economic situation facing the aviation industry is severe. Air passenger demand is down 80%. Airlines are facing a liquidity crisis which threatens the viability of 25 million jobs directly and indirectly dependent upon aviation, including jobs in the tourism and hospitality sectors.

In a joint statement, ITF and IATA called for governments to:

- Ensure that the protection of health workers caring for those with COVID-19 is prioritized
- Coordinate carefully between each other and with industry to ensure harmonized and effective action to protect the safety of passengers and crew
- Provide immediate financial and regulatory support for airlines, in order to maintain the sustainability of terms and conditions for air transport workers
- Assist the industry to restart quickly by adapting regulations and lifting travel restrictions in a predictable and efficient manner

Visit <https://www.iata.org/en/pressroom/pr/2020-04-20-01/> to view the IATA press release and visit <https://www.iata.org/contentassets/a686ff624550453e8bf0c9b3f7f0ab26/itf-iata-joint-statement.pdf> to view the joint statement.

In addition, the IATA has a web page dedicated to “Air Transport & COVID-19 Coronavirus” with resources for airlines and other travel professionals, with links to the latest information on topics such as: Government measures related to Coronavirus; Cabin operations; Cargo & COVID-19; Recommendations for Ground Handling operators; and Advice for travelers.

Visit <https://www.iata.org/en/programs/safety/health/diseases/> to view the IATA resource page.

With more cargo being carried on reconfigured passenger planes, of particular interest for shippers should be the IATA’s “Guidelines for the safe carriage of cargo in the passenger cabin”. While directed to aircraft operators, shippers’ awareness of the safety implications of the cargo they offer for transport will facilitate smooth and safe operations.

Visit <https://www.iata.org/contentassets/094560b4bd9844fda520e9058a0fbe2e/guidance-safe-transportation-cargo-passenger-cabin.pdf> to view the guidelines.

HUMOR

SORRY, BUT I CAN'T HELP BUT SHARE



"I can't go out because of the virus" sounds weak, whiny and boring.

Try instead:
"I've sworn an oath of solitude until the pestilence is purged from the lands"

Sounds more Valiant and Heroic, people might even think you are carrying a sword.

After 2 weeks of not going out, the animals came to check if everything's ok. 😊



Quarantine has turned us all into dogs. We roam the house all day looking for food. We are told 'no' if we get too close to strangers. And we get really excited about car rides.

INTERNATIONAL

RESHORING MANUFACTURING?

The longer we deal with the coronavirus pandemic and its impacts on supply lines and world trade, the greater the awareness of the implications of moving so much of our manufacturing and production offshore. Currently, only about 11 percent of U.S. gross domestic product comes from manufacturing, down from almost 40 percent in 1945. While this is not necessarily bad in-and-of-itself, the current pandemic and economic disruption highlights the resultant risk. Reshoring critical manufacturing should be a priority.

At this point it is not possible to ascertain just how far along we are in the progress of this pandemic – second inning? first quarter? or further along – it is becoming clear that things will likely never go back to the way they were. One of the potential changes may be a significant shift in the world economic balance.

A recent article by Azeem Ibrahim published on “The National Interest” titled *Reducing America’s Dependence on China Is Now a Strategic Necessity* provides a succinct analysis.

The author notes:

For three decades, Americans have allowed themselves to become increasingly economically dependent on China, first as the latter-day “workshop of the World,” then as the world’s greatest creditor.

And goes on:

And this is only the beginning. China is already racing ahead in renewable energy, quantum communications technologies and artificial intelligence. It will soon do the same for bio-sciences, energy storage, material sciences and others. In the future, if America and other democracies want access to all the latest developments in these essential technologies, they will be expected to kowtow to the authoritarian oligarchy at the top of the Chinese Communist Party —just as developing countries who rely on Chinese investment and debt today must do.

The author continues to point out that the U.S. and Western governments, in order to maintain their leading positions, must not only take back control of research, development and production, but must also affirmatively support these activities with funding and regulation.

Visit <https://nationalinterest.org/blog/buzz/reducing-americas-dependence-china-now-strategic-necessity-145077> to view the article.

LEGAL BRIEFS

JUST WHAT IS “ESSENTIAL”?

In this time of dealing with the economic shutdown, whether you or your job is considered “essential” takes on special significance. A recent (4/8/20) article in the Journal of Commerce (“JOC”), “Lack of US logistics standard for ‘essential’ service imperils cargo flow”, by Adriene Bailey, points out that a set of national standards for essential supply chain participants in the United States is an imperative that cannot be ignored.

We hear in the news about differences in what is considered “essential” around the country. As an example, in one state you can’t buy gardening supplies or paint at Home Depot because they are not

“essential”. Although other jurisdictions may not be so restrictive, the discrepancies between states and localities create confusion. While some of these differences are merely annoying, when it comes to logistics and the flow of cargo, the ramifications are much more serious.

According to the author, the problem is that “[d]ecisions about movement control are often being made locally, in circumstances that range from confusing to frightening, endangering the efficient flow of needed supplies across the country.”

While there has been some broad guidance from national policy makers, it has not been adequate. The article points out that the “supply chain is a hierarchy of multimodal and integrated functions that must all be preserved and protected together from disruption. Bottlenecking or eliminating any link in the chain will impact the flow of goods throughout the whole system.”

The system is complex, and includes:

Makers — such as manufacturers, packagers, and distributors — produce and direct goods through the transportation system. Movers — such as ports, motor carriers, railroads, and third-party logistics providers — physically move or coordinate the movement of goods. And mobilizers — from hotels and fuel stops to spare parts makers and repair services — provide the support services necessary to keep the system functioning.

The author concludes that a “set of national standards (either voluntarily adopted by all jurisdictions or recommended/ mandated at the federal level) is an imperative that cannot be ignored.”

There is a long history of legal precedence under the commerce clause that would support the promulgation of such standards. “A national protocol for transportation and logistics-essential functions across the supply chain would offer clarity to states, municipalities, and companies seeking a way forward in this increasingly difficult environment — while ensuring that essential goods get to the people who need them as quickly as possible.”

Article available on the Journal of Commerce website at: https://www.joc.com/regulation-policy/lack-us-logistics-standard-%E2%80%98essential%E2%80%99-service-imperils-cargo-flow_20200408.html

MOTOR

HOW TO DEVELOP A GOOD LTL RFP

By Paul Benfer, Kinetic Supply-Chain Services, LLC
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Few things in transportation management provide a higher level of satisfaction than running a successful LTL [less-than-truckload] RFP [request for proposal] or bid. Whether you manage one for a client or your company, the results often exceed your expectations when the process is developed and managed competently. Having experience on both the carrier and consultant side for clients provides a unique perspective on managing an RFP. The nuances involved on both sides can make a dramatic difference in the final bid results. The one thing I have learned over the years is that when you think you have thought of everything to include in the initial RFP offering, there will always be some piece of information a carrier will need that wasn't included.

Where to Begin?

The first thing to do when developing an LTL RFP is to list your goals. Are you looking to save money? Do you want to reduce the number of carriers due to limited dock space or to increase pricing leverage? Are there lanes where service isn't up to your needs and expectations? Do you want to standardize accessorial fees? Is the administrative burden of working with certain carriers becoming overwhelming, requiring a change? Your company hasn't benchmarked LTL costs within the past few years? These are all valid reasons to run an LTL bid.

Timing Is Important!

Is now the right time to run an RFP bid? Developing an understanding of economic conditions is imperative, as it can play a significant role in how aggressive your carrier participants will be if the primary goal is cost reduction. 2019 saw a decrease in LTL tonnage as the year progressed, as reported by carriers ODFL and YRC. If you believe the economy will go into a recession at the end of this year, perhaps waiting until later in 2020 is the right move.

Should I Outsource the Process Via a Technology Tool?

The majority of the automated RFP management tools are for truckload bids rather than LTL. The few LTL RFP management tools on the market base their cost on the size of the RFP. If you have the budget available, it can be an excellent vehicle to manage RFP responses from multiple carriers. I have asked a few LTL carriers if they prefer the automated systems available to excel based data files. They stated that it doesn't make much difference if the data is complete and in a format that is easy to manage.

Should I Qualify Potential Participants?

There aren't nearly as many LTL carriers as truckload providers. The great majority of shippers are familiar with LTL carriers that service their lanes. It's still a good idea to create a qualification questionnaire for unfamiliar or little used LTL carriers. My recommendation is to develop a simple questionnaire. Ask for a brief overview of their organization that includes their coverage area, list of terminals, fleet size, safety rating, filed and paid claims ratio by shipment percentage, insurance coverages, and operating ratio for the past three years. Inquire as to whether they have a continuous process improvement program(s). Ask if they work with your competitors or handle similar products and commodities. It is always a good idea to find out if a carrier is experienced in handling freight like yours – both through their system and at the point of delivery.

LTL RFP Components - Set the Ground Rules

An introduction and overview of your business should be provided to the carrier participants. You can accomplish this via a Microsoft PowerPoint, Publisher or Word document. Be sure to include freight characteristics, average density, pick-up and delivery requirements, aggregate shipments, weight, and revenue information.

Are your shipping volumes consistent year-round or seasonal? Do you ship to retail locations with docks, distribution centers, construction sites or retail stores in strip malls? Are there consignee locations that require a straight-truck delivery? Do you ship high-value commodities? Better information will improve LTL carrier responses and avoid issues after new carrier implementation.

Use a contract, rules tariff, fuel surcharge schedule and rate base tailored to your freight and delivery characteristics. If you aren't sure where to secure a good LTL contract, talk to a transportation attorney or consultant with significant LTL experience. My suggestion is to not make your contract so one-sided that the carrier is hesitant to give ground in any area. Once you have a contract to work with, add specific language that insulates your company from surcharges and carrier rules that add costs and waste administrative time.

Be creative in developing strategies to limit your risk. One example is to require the carriers to use the billed weight instead of the actual weight (450 lbs. shipment rated at 500 lbs.) if your commodity is classified by density. Why pay an upcharge based on actual weight if your shipment is billed at the higher LTL weight break? You are paying for that weight, so that is the number the carrier should use when computing density.

Implement a rules tariff via a contract appendix and exempt your company from the carrier's rules tariff. You might as well not use a contract if you allow the carrier to reference their rules tariff, as it can be used to override your agreement. Carrier rules tariffs are continually updated and skewed to their advantage, not yours. A list of common LTL accessororial fees can be found below.

A fuel surcharge schedule can be used to reduce costs and insulate your company from spikes in the cost of diesel fuel.

Use a single rate base to simplify rating and cost comparisons. My suggestion is to select a rate base version no more than seven or eight years old. Do not adopt an LTL carrier specific rate base. Most LTL carriers adjust their base rates to help compensate for head-haul lanes. Please contact your incumbent LTL carriers for a rate base recommendation or contact me via email.

Once your overview, contract, rules tariff, fuel schedule, and specific shipment data are crafted you are ready to distribute the RFP.

Provide Excellent Shipment Data

The more granular information you can provide the better. I recently asked a prominent LTL carrier for their preferences. Their reply was specific shipment data by five-digit zip code to zip code or postal code for cross-border freight, the ship date, pallet or unit count, actual freight class, density and consignee name.

If your shipping patterns are static, a three-month report should suffice. If you are a seasonal shipper, a year's worth of shipment data is preferred. Depending on your business, you may not want to provide a consignee list to a broad range of carriers. Understand data that includes consignee name and location can help secure better carrier rates.

Most of the LTL carriers use costing software developed by TCG [Transportation Costing Group]. The TCG program utilizes data provided by the carrier to cost shipments. The more shipments you provide a carrier at origin per day reduces the pick-up cost of each shipment. In fact, the cost difference from one to two shipments is close to 50%. The same holds true at delivery. That is another reason to ask the carrier if they currently handle competitor freight. It can help you negotiate better rates, as it is much more profitable to deliver two or three shipments to a single delivery point than one.

Know your actual weights by mean and mode. Understand that a shipment will operate better at nine-hundred pounds versus one-thousand pounds, as the latter will be billed at the higher weight break. The TCG model will allow for the one-hundred pounds of unused cube when calculating costs.

Many chemicals move at Class 85, which when used for density rated commodities covers freight from 12 lbs. per cubic foot to less than 15 lbs. per cubic foot. Chemicals shipped in drums, pails and totes can weigh much more per cubic foot than the Class 85 range. If significantly heavier, highlight the average density of your products in the RFP to help improve the LTL carrier proposals.

Include photographs of a few typical LTL shipments with weights and dimensions with the LTL RFP. If your freight is tendered square and stackable it will help to secure better rates. You may think building pyramids reduces damages, but it just makes your freight more costly to handle. Most LTL carriers now use E-Track systems and air bags in their line-haul trailers, which reduces the frequency of damaged freight. Adding cube height via a pyramid doesn't help reduce damage claims.

Build Lines of Communication

When you submit your LTL RFP to the carrier with a contract, it is forwarded to their legal department or pricing manager for review and modification. The modified agreement is then returned to you for review and comment. I suggest you hold a conference call with the individual(s) who reviewed and modified the agreement to work out any issues of importance. If you approach the negotiation in a positive way, with an explanation why a sentence or section is important to keep in the agreement, the carrier on occasion will offer a compromise or even accept your reason(s). Person-to-person interaction is very important when building a relationship and negotiating a contract. You cannot get a three-dimensional view of either party's concerns via email.

Ask the participant carriers to send their local sales or operations personnel to visit your distribution centers to see how the LTL freight is tendered to the incumbent carriers. This simple courtesy helps to build a rapport between your distribution operations group and the carrier's local sales and management team. A positive visit can work to your advantage, as the local team can (and will) exert internal pressure to help secure your business. Conversely, they can alert the pricing team to freight that may not work well in their system. You do not want to take on a carrier that isn't equipped to properly manage your freight.

Establish Submission Deadlines & Response Format

Provide the participants with a complete timeline of the LTL RFP process. The due date for their initial proposal, along with a timeframe for a second round of discussion and negotiation should be included. I usually provide a thirty-day window for the first offer, then one to two weeks for analysis followed by a second round of discussions and negotiations before final selections are made. A declination letter should be sent to all participants who do not make the cut.

Clearly outline your preferred carrier LTL RFP response format. Whether it be an email reply, web based TMS [Transportation Management Systems] response or some other method of communication.

Develop Key Performance Indicators ("KPI")

Some RFP's include KPI's for performance review. A shipper often adds so many KPI's to the RFP that it renders their use in carrier evaluation meaningless. Pick three or four at most to measure carrier performance. In my opinion, on-time pick-up and delivery, and claims-free handling are the most important LTL KPI's. You can add invoice accuracy and speed, as carrier billing has slowed recently due to aggressive weigh and inspections programs.

You can develop a more extensive list of measurements to review performance. A carrier report card can be used for an in-depth evaluation of service. For purposes of the RFP, I would recommend the short list outlined in the prior paragraph.

The Final Selection

Now that you have received, reviewed and analyzed the LTL carrier offers, it is decision time. Winnow your choices down to the best responses that match your original goals. Establish primary and secondary carrier choices. Negotiate the contract and appendices before a final selection is made. You may like one carrier's discount levels, but their contract amendments are unacceptable. If the carrier is unwilling to compromise, the secondary carrier's offer could become your best or only option. Use the secondary carrier's contract pliancy as a tool with your preferred choice. Please perform one last review of your current carrier needs, issues and goals before a final selection is made.

Once you have finalized your selections and awarded the business, make sure the distribution team follows through on your organization's commitment. I have personally witnessed distribution and shipping managers attempt to subvert organizational goals based on their own preferences and prejudices. Make sure

everyone on your team understands the benefits of the RFP and why compliance is expected and demanded. The organization's needs and goals are preeminent over any individuals'.

<u>Common LTL Accessorial Fees</u>	<u>Cost Range</u>
Notification or Appointment Required for Delivery	\$10-\$35
Fuel Surcharge – Sliding Scale Based on DOE Cost of Diesel	% of freight charge
Limited Access Pickup or Delivery	\$45-\$100
Hazardous Materials Fee	\$15-150
Lift-gate Pick-up or Delivery	\$25-\$150
Reclassification Fee	\$25-\$50 + freight charge adjustment
Reweigh Fee	\$25-\$50 + freight charge adjustment
Residential Delivery Service	\$50-\$150
Redelivery Fee	\$50-\$500 dependent on shipment size
Reconsignment Fee	\$50+ dependent consignee location
Corrected Bill of Lading	\$15-\$75
Protect from Freezing Service	\$50-100
Sorting & Segregating Fee	\$50 minimum + cost per piece or cwt.
Over Sized or Over Length Fee – 8'+	\$50-\$250 dependent on size of item
Metro Delivery or High Cost Delivery Fee	\$75-\$250
Inside Delivery Fee	\$55-\$250 dependent on requirements
Container Freight Station (CFS) or Airport Pick-up Fee	\$35-\$150
Detention	\$50-\$150 per hour
Blind Shipment Fee	\$25-\$50
In-bond Freight	\$100-\$150
Saturday, Sunday or After-Hours Delivery Fee	\$250+ dependent on circumstances
Trade Show Delivery	Varies by carrier and location
Pallet Jack Required	\$100-\$150
Driver Unload-Lumper Service	\$100-\$150
Storage On-Hand Freight notification	\$25+ per day after on-hand
C.O.D. Fee	\$25 minimum, 2% of dollar amount
Linear Foot or Visible Capacity Rule – 750 cubic feet	Varies greatly by carrier
Single Shipment	\$10-\$25

Please note that you should negotiate all accessorial fees that pertain to your delivery characteristics. It doesn't make sense to negotiate reductions for services that are never required. Concentrate on securing relief for fees for services that will be needed.

It is important to be specific with definitions. One excellent example is a limited access delivery. LTL carriers have broadened the traditional definition of a limited access delivery. The exact types of delivery locations should be spelled out in your agreement.

A few of the above accessorial fees are normally waived if requested via the LTL RFP process. Two examples are single shipment and delivery appointment fees. I would insist on a waiver of reweigh and reclassification fees.

OIL PRICE COLLAPSE

Amongst the unexpected impacts from the economic slowdown has been the crash in the price of oil. Primarily a function of continued production while world consumption shut down, there was abruptly no place to put the oil. As a result, on Monday, April 20, the May contract for West Texas Intermediate ("WTI") crude, the U.S. oil benchmark, dipped into negative territory for the first time on record and closed at a shocking -\$37.63 per barrel ahead of the final trading day (April 21).

It should be noted that this radical price drop in the WTI May 2020 contract was partially a result of the nature of the contract, and not truly reflective of the actual price of the product.

However, the implications are far ranging. It might be nice to dream of real cheap gas or fuel oil (prices have dropped significantly), but the industry requires certain price levels in order to survive. Oil production and refining are complex operations that cannot simply be turned on and off, and cost of production can vary widely depending on region and source. The result is that operations without strong balance sheets are likely to fail.

Visit <https://library.wilmingtontrust.com/z-featureditems/featured-2/oil-market-collapse> for a more in depth analysis of the oil price collapse.

TRUCKING VOLUMES

On April 22, 2020 the American Transportation Research Institute ("ATRI") released new data that quantifies the continued impacts of COVID-19 business disruptions on the trucking industry.

According to the release:

From early February into March, the data shows a spike in initial truck activity in the analyzed states – documenting the response to high consumer demand for items such as non-perishable food and paper products, as well as the much-needed emergency medical supplies.

The analysis further documents the impacts of the stay-at-home orders that shut down major segments of the economy, with a resulting decline in April trucking operations.

- Of the six states analyzed, California had the earliest stay-at-home order issued on March 19. California also experienced the earliest upward spike in truck activity, occurring during the week of March 1. However, truck activity in [California](#) is now down 8.3 percent from early February.
- In [Florida](#), [Illinois](#) and [New York](#), truck activity spiked the week of March 8 but is now down on average by over 10 percent from February 9.

- In [Pennsylvania](#) and [Washington](#), truck activity spiked during the week of March 15, but is now down by an average of nearly nine percent from February 9.

There are initial signs of a return to normal, however. In New York, one of the earliest states to experience high numbers of cases, truck activity started a positive uptick during the week of April 12.

Visit <https://truckingresearch.org/2020/04/22/new-data-show-covid-19-impacts-on-the-trucking-industry/> to view the ATRI release.

MIXED BLESSING OF REDUCED TRAFFIC

With much of the country on lockdown or stay-at-home orders, highway traffic is greatly reduced. A benefit of this has been that with less traffic, contractors and departments of transportation have been able to work more hours during the day on stretches of road that typically are busy and would otherwise require them to work at night. This has allowed some projects to be accelerated and be completed ahead of schedule.

On the downside, fewer people on the road translates to smaller revenue streams to support transportation projects. In particular, sources of revenue, such as tolls, fuel taxes, license and registration fees and sales taxes on motor vehicles, will be greatly reduced.

On April 6, 2020 the American Association of State Highway and Transportation Officials (“AASHTO”) sent a letter to Congress with an urgent request for almost \$50 billion in direct emergency assistance to state departments of transportation experiencing a dramatic decrease in revenues due to the nationwide response to the COVID-19 pandemic.

According to the AASHTO April 8, 2020 news release:

“State DOTs are forecasting a significant reduction in state transportation revenues that will challenge their ability to maintain and operate our transportation system in a way that can support the COVID-19 response,” said Jim Tymon, AASHTO’s executive director. “Some state DOTs are already furloughing workers due to funding shortfalls and more will be faced with the same difficult decision about projects and people, unless Congress takes action.”

Preliminary projections from state DOTs show at least a 30 percent decline in transportation revenues on average for the next 18 months. AASHTO’s proposal calls for a fiscal year 2020 and 2021 funding backstop of \$50 billion to be distributed to state DOTs via formula: approximately \$16.7 billion for the remainder of fiscal year 2020 (30 percent state revenue cut prorated over six months) and approximately \$33.3 billion for all of fiscal year 2021 (30 percent state revenue cut for a full year).

AASHTO also expressed concerns that the current federal surface transportation authorization – the Fixing America’s Surface Transportation or FAST Act – will expire in just six months with no clear pathway in sight to renew federal funding for America’s highway and transit programs.

Visit <https://aashtonews.wpengine.com/2020/04/08/aashto-asks-congress-for-50-billion-in-covid-19-relief-aid-for-state-dots/> to view the AASHTO news release and visit <https://policy.transportation.org/wp-content/uploads/sites/59/2020/04/2020-04-06-AASHTO-Letter-to-Congress-on-COVID-19-Phase-4-FINAL.pdf> to view the AASHTO letter to Congress.

OCEAN

“BLANKED” SAILINGS AND PORT CONGESTION

“Blanked” sailings are canceled sailings, and with the recent economic upheaval container shipping lines have blanked some 435 sailings on various routes so far in 2020. Those cancellations equal about 7 million TEUs [twenty foot equivalent units] taken out of global trade.

Despite this significant reduction in trade, some ports are facing container congestion problems due to the following two reasons. First, the growing number of empty containers stored at ports as activity from Asia remains well below annual levels. Second, limited warehouse space as thousands of pallets of product ordered months ago are not being picked up by retailers because stores are temporarily shuttered. Further complicating the situation, some shipments are more “essential” than others and need have their movement expedited.

The issue of detention and demurrage charges has been in front of the Federal Maritime Commission (“FMC”) for some time and a proposed rule was published last fall. Unfortunately, it has not been finalized and voted on yet.

As proposed, the rule would essentially provide the agency a lens through which to determine whether demurrage and detention fees are “reasonable” by considering whether the fees truly incentivize the timely retrieval of cargo and return of containers. Unfortunately, these are not “reasonable” times and the industry will have to work together to find solutions.

While the scale and duration of the congestion is uncertain, it’s safe to assume there will be an increase in detention and demurrage disputes between cargo owners and forwarders, and marine terminals and carriers.

OCEAN CARRIERS RAISE RATES AGAIN!

by Tony Nuzio, ICC Logistics Services, Inc.

It’s hard to believe, but the ocean carriers moving freight from the Far East to North America Ports are again seeking rate increases. Effective May 1, 2020 General Rate Increase (“GRI”) has been filed for all cargo imported from Asia ports of loading, to U.S.A., Canada, and Mexico ports/ramps of discharge.

The proposed increases are as follows:

General Rate Increase – May 1, 2020

USD 900 / 20’

USD 1,000 / 40’

USD 1,125 / 40’ HQ

USD 1,125 / 40’ Reefer

USD 1,266 / 45’

USD 1,600 / 53’

As we have stated in the past, it is not possible to predict the future market based on the current trade conditions and the Covid 19 crisis adds more uncertainty.

PARCEL EXPRESS

THE VALUE OF FREIGHT AUDITS:

WAS THE DEAL YOU STRUCK, THE DEAL YOU GOT?

by Tony Nuzio, ICC Logistics Services, Inc.

Each and every day shippers and their freight carriers negotiate pricing agreements and contracts in good faith. The goal of course is to create a long-term business relationship that benefits both parties. The shipper receives the services it requires and the freight carrier receives adequate compensation to provide those services and to also generate a profit so they can continue to invest in equipment, technology, and improved services to meet the ever-changing demands of their shipper customers.

But, once the negotiations are finalized, how does a shipper really know it received the rates, discounts and incentives it negotiated? Well, of course the pricing agreement or contract would contain those rates, discounts and incentives, so there is the proof, right? Wrong! While the contract might in fact have all of the correct rates, discounts and incentives the shipper negotiated, absent a comprehensive audit of the actual shipping invoices from the date the new agreement became effective, a shipper really does not know if the new pricing provisions were actually put into the carrier's billing systems correctly.

In a real life example, one of our clients recently entered into a new contract agreement with its major carriers. The negotiation was supposed to bring substantial savings to the client. However, after just a few weeks of the new invoices being submitted by the carrier for payment, the client felt that it was not saving money, but was actually paying more for their "normal" shipping activity. The client engaged our company to perform a comprehensive Financial Audit to ensure the rates the shipper negotiated were in fact being charged correctly by the carrier.

Our Financial Audit of this client's actual shipping invoices involved validating that all pricing aspects of the new contract were being charged properly by the carrier. We re-rated every shipment to validate the accuracy of the carrier's base rates; that the applicable discounts were correct; and that every accessorial fee was charged correctly. The Financial Audit we performed also involved re-rating every shipment to validate that the Custom Dimensional Weight Factor the client had just negotiated was correctly applied to each and every eligible shipment. (To be perfectly honest here, the computer actually re-rated all of the shipments, but I guess you knew that!)

The audit results were quite revealing, because the client's concerns were in fact validated. Many of the revised pricing provisions the shipper negotiated were not properly uploaded in the carrier's electronic invoicing system. The carrier did not apply many of the newly negotiated surcharge percentages. Therefore all shipments subject to the revised surcharges were being overcharged. The audit also provided some very interesting findings that would have gone undetected without the comprehensive audit process having taken place. You see, the shipper also did not sign away its right to file claims for late delivery refunds, however for some reason the carrier inadvertently marked the account as having signed such a waiver, preventing the client from filing claims for refunds they were in fact entitled to.

Over a 180 day period, this Financial Audit identified over \$100,000 in carrier invoicing errors for our client and they are now in the process of receiving a full refund from the carrier for these excessive costs. Needless to say, our client now knows they actually "got the deal they struck!"

QUESTIONS & ANSWERS

by George Carl Pezold, Esq.

LIABILITY – PART OF LOAD BLOWS OFF

Question: We are a carrier that hauled a shipment for a broker. The broker rate confirmation sheet noted “carrier to secure cab” of the tractor we hauled. Securing cab from our perspective is to make sure the door is locked and secure and we protect the windows from flying debris that may bust the windows, etc.

While in transit, the roof of the unit flew off due to rusted bolts on the cab that did not hold the cab in place. We declared this as an improper packaging or preparation to ship a shipment and denied claim.

It is not customary for an open deck carrier to strap over the top of a secured (bolted) cab to a machine as it tends to do damage to a cab if we did. What is our liability?

Answer: Ordinarily a carrier is responsible for loss or damage to any shipment that occurs while it is in the “possession and control” of the carrier.

I am not sure exactly what happened from your description of the damage (“the roof of the unit flew off due to rusted bolts on the cab that did not hold the cab in place”), but you may have a defense to liability.

The leading case on common carrier liability, *Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134 (1964) lists some six defenses: “(a) the act of God; (b) the public enemy; (c) the act of the shipper himself; (d) public authority; (e) or the inherent vice or nature of the goods.” In your situation it could be argued that the cause of the loss was the “inherent vice or nature of the goods” – particularly if the defective or rusted bolts were a “latent defect” and could not have been observed if the cab had been inspected before shipment.

I would note that, in addition to having the burden of proving that the loss was caused by an “inherent vice”, you would also be required to establish that you were free from any negligence that could have caused or contributed to the loss. That is where the instruction "carrier to secure cab" raises a possible question as to whether there was actual notice that some kind of additional securement would be required.

FREIGHT CHARGES – SECOND CARRIER REQUIRED TO COMPLETE DELIVERY

Question: If carrier (A) held our shipment at their distribution center near the destination of our customer due to a billing issue not related to us (shipper) or customer (consignee), and we had to contract another carrier (B) to pick up the shipment at location of carrier (A) and deliver it to our customer, are we still liable for the portion of miles from us to the carrier (A) distribution center? Or, since carrier (A) did not make delivery to the final destination stated on bill of lading, are we liable for anything?

Answer: I don’t believe that there are any court decisions that address this question. However, assuming that you used some form of a typical Uniform Straight Bill of Lading, it would have contained the following language:

“RECEIVED . . . the property described below . . . which said carrier agrees to carry to destination if on its route, or otherwise to deliver to another carrier on the route to destination.”

Thus, if carrier (A) contracted to deliver to the destination shown on the bill of lading for an agreed freight charge, but did not do so, and the shipper had to hire another carrier (B), I think carrier A would, at most, be entitled only to the agreed freight charge less the amount the shipper had to pay carrier B to complete the delivery.

RECENT CASE

TIME LIMIT FOR FILING A CLAIM

In this case from the Western District of Kentucky, the Court upheld the tariff requirement that a claim must be filed within nine months in order to bring a suit. In this subrogation action, unfortunately it was the insurance carrier that got stuck with the loss.

The facts of this case involve a shipment of glass windows that was damaged enroute from Brooklyn, NY to Louisville, KY while in the possession of Old Dominion Freight Line, Inc. (“ODFL”). The parties used ODFL’s Straight Bill of Lading, which incorporated ODFL’s Rules 100 Tariff by reference. In particular, the relevant rule provided that “Carrier must receive all claims for cargo loss or damage including all supporting documentation within nine (9) months of the date of delivery, or, if lost, the date delivery was anticipated.”

On July 19, 2017 the windows arrived damaged, and that day the consignee sent an email to ODFL stating:

Bill of lading #07906084756 BKN has arrived with some damage. We are documenting the damage with pictures. Please advise as to the insurance liability, and the process required when making a claim.

ODFL responded:

Please note that on the Security Divider service-we are not Liable [sic] for any damages-since it was a shipper load and off load.

The consignee then filed a claim with its insurer, who paid \$21,076.83 pursuant to the insurance policy.

Thirteen months later (August 21, 2018), the insurer’s counsel sent a letter to ODFL seeking \$21,076.83 in damages, which ODFL declined as untimely. The insurer then brought filed suit.

On a motion for summary judgment brought by ODFL, the court discussed the requirements of the Carmack Amendment (49 U.S.C. §14706) and the regulations promulgated thereunder as to what constitutes a proper claim (49 C.F.R. § 370.3 (b)):

- (b) Minimum filing requirements. A written communication from a claimant, filed with a proper carrier within the time limits specified in the bill of lading or contract of carriage or transportation and:
 - (1) Containing facts sufficient to identify the baggage or shipment (or shipments) of property,
 - (2) Asserting liability for alleged loss, damage, injury, or delay, and
 - (3) Making claim for the payment of a specified or determinable amount of money, shall be considered as sufficient compliance with the provisions for filing claims embraced in the bill of lading or other contract of carriage; Provided, however, That procedures are established to ensure reasonable carrier access to supporting documents.

The Court focused on the language of (b)(3) and held that the email sent by the consignee did:

not include a specified or determinable amount of money that [consignee] was seeking from ODFL. Indeed, there is no damage estimate included whatsoever. Without any reference to any amount [consignee] was seeking, the email cannot comply with 49 C.F.R. § 370.3 (b), even

under the more lenient substantial compliance standard articulated by the Sixth Circuit. Therefore, ODFL is entitled to summary judgment.

The insurer made, and lost, two additional arguments. First, it argued that ODFL's tariff was not incorporated by reference into the bill of lading because the copy it received was "exceedingly difficult to read." Despite this issue, the court found that there was enough legible language on the bill of lading that it did incorporate ODFL's rules tariff by reference.

The second argument the insurer made was that it was not the shipper for purposes of the bill of lading and should not be bound by its terms. This argument failed as the consignee is presumed to know the effect and applicability of the carrier's rules tariff and that there is "no authority for the proposition that a consignee is exempt from a carrier's tariff if the consignee did not have knowledge of the tariff's terms."

In a subrogation action such as this, the insurance company "steps into the shoes" of its insured. If, as in this instance, the insured failed to take required steps to timely perfect a claim, the insurer is left stuck with the bill.

For insurers, the lesson here is not to assume your insured has done everything required in order to preserve the claim and to pay close attention to time limits that may keep you from collecting.

Secura Insurance v. Old Dominion Freight Lines, Inc., 2020 WL 1430608 (WD Kentucky, 3/20/20)

Visit <https://law.justia.com/cases/federal/district-courts/kentucky/kywdce/3:2018cv00780/109662/32/> to view the case.

TECHNOLOGY

ROLE OF GOVERNMENT IN AUTONOMOUS TRUCK DEVELOPMENT

On January 12, 2020 the American Transportation Research Institute ("ATRI") released its research on the role and impact of government policies, programs and regulations on the development of autonomous trucks. According to the release:

This study was identified as the top research priority for the industry by ATRI's Research Advisory Committee in 2018.

More specifically, the report documents the dozens of local, state and federal activities that guide and regulate autonomous truck activities. While most attempt to create a framework for the safe testing of autonomous trucks, the myriad state and local activities ultimately impede the creation of a seamless and standardized autonomous truck (AT) network. Even those government rules that ostensibly support autonomous truck development often are too prescriptive to generate meaningful outcomes. For example, multiple vendors highlight Level 4 testing, even though regulations require constant control of the vehicles by both drivers and onboard engineers – making it difficult for motor carrier executives to accurately assess the real value of ATs.

Visit <https://truckingresearch.org/2020/01/13/new-research-helps-redefine-the-role-of-government-actions-on-autonomous-truck-testing/> to view the release and link to access the report.

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.

Unfortunately, the CCP Primer Class that was to be held in conjunction with TLC’s Annual Conference in Orlando also has been canceled and will have to be rescheduled.

At this time, the next CCP exam will be the Annual Fall Exam to be held November 7, 2020 at various locations around the country. Visit <https://www.ccpac.com/calendar/current-year/> for more information.

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

CCPAC also has the following online presence:

- FaceBook: www.facebook.com/certifiedclaimsprofessional
- FaceBook Blog: www.facebook.com/groups/410414592821010/
- LinkedIn Group: www.linkedin.com/groups/4883719/
- Twitter: twitter.com/ccpac_1
- 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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The advertisement features a header image with a world map, a hand pointing, and a ship. The main text is in a dark blue box with white and yellow text. The bottom of the ad has a dark blue footer with white text.

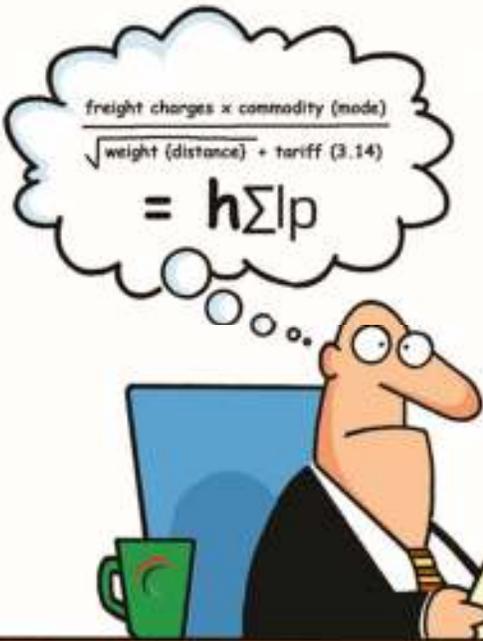


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APPLICATION FOR ANNUAL MEMBERSHIP

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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It's Back Again! Now in Soft Cover

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.

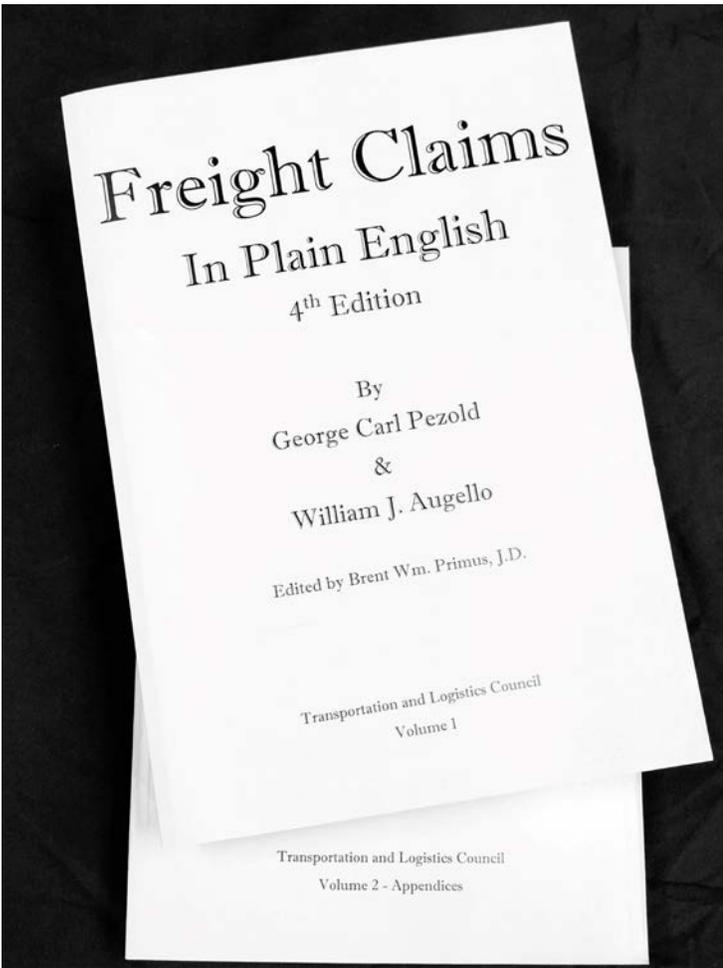
Often referred to as “the Bible” on freight claims, as the title suggests it remains the most readable and useful reference on this subject for students, claims professionals and transportation attorneys.

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[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.

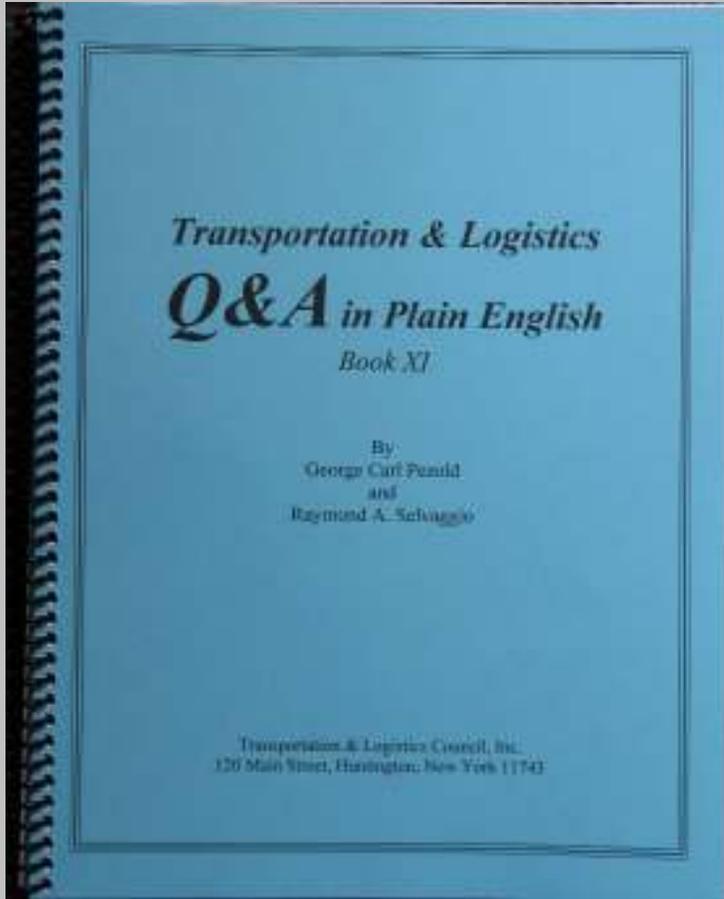


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