

TRANSDIGEST

Transportation & Logistics Council, Inc.

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T&LC's 47th Annual Conference

- **TLC Welcomes New Members of the Board of Directors**
- **Working With Carriers**
- **Supply Chain Contingency Plans**
- **Reshoring Survey**
- **Survey of Top Industry Issues**
- **FMCSA Broker Transparency Petition**
- **Another Broken Seal Case**
- **More Q & As**

NEW! IN A SOFT COVER EDITION!

FREIGHT CLAIMS IN PLAIN ENGLISH (4TH ED.)

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GUEST EDITORIAL

WORKING WITH CARRIERS AS CAPACITY TIGHTENS AND RATES RISE

By Doug Frank, SVP Procurement, GEODIS

Covid-19 has disrupted life as we know it, impacting our daily lives, the way we shop, how we gather, how we do business, our economy, and our supply chain.

Currently, many manufacturers are struggling to produce enough products to meet growing consumer demand. The flow of finished goods is now constrained even further by irregular volumes. Products are fighting to get back in inventory, ultimately causing transportation rates to go through the roof. This is Capacity Crunch.

Why do we see a Capacity Crunch?

Supply and Demand

The population is buying more consumer goods due to stay at home orders, travel restrictions, lack of events, etc.

Fewer Drivers on the Road

- Driving schools have closed nationwide during the pandemic, stunting the talent pipeline and getting new drivers on the road.
- Because drivers are concerned about exposure to Covid-19, recruiting is a challenge.
- During the slowdown, many trucking companies filed for bankruptcy or went out of business.
- Drivers are retiring or changing careers.

Why are contracted carriers not picking up freight?

Rates

The contract rate market is typically favorable for the shipper. But, because of the imbalance in demand and capacity for the first time in 17 months, contracted rates have seen a year over year increase. Spot rates have skyrocketed, and contracted rates are creeping up as well. These factors cause a ripple effect, with carriers pressuring for contract rate increases to secure capacity.

Tender Rejects are hitting historic highs

Carriers are shopping for the *highest rate*, the *best load*, and the *best lane*.

The New Normal

As demand continues to outpace capacity, the spot and contract rates will continue to climb. The 4th quarter will be busy due to the replenishment of low inventory levels and what is projected to be a strong holiday season.

Strategies to balance capacity and cost

In the short term, proactively reach out to carriers to determine if current rates are sustainable and entertain increases if viable.

In the long term, decide the right time to go to the market to secure updated rates or send out an RFP [Request for Proposal]. The bid process takes longer to complete but can ensure a more competitive rate from carriers.

Ensure you **have multiple brokerage options for spot loads** to allow for competitive pricing. Working with numerous freight brokers will help with contingency plans and backup options for tender rejections.

In Conclusion

There are two schools of thought when capacity tightens in a competitive freight market. The first school of thought is to add carriers. The risk of doing this is your business becomes less important to everyone.

The second school of thought is to work with your core contracted carriers and negotiate a win-win scenario for both parties. Negotiating real market prices based on volume and reliability allows you to deepen existing relationships by demonstrating your loyalty to your carriers. In turn, carriers can support your business and rely on planned, consistent volumes at a reasonable rate.

Using the strategies above, shippers can navigate the current Capacity Crunch by deepening partnerships and finding a balance for both carriers and shippers.

ASSOCIATION NEWS

SAVE THE DATE – T&LC’S 47TH ANNUAL CONFERENCE

The Transportation & Logistics Council, Inc. has scheduled its 47th Annual Conference to be held April 19-21, 2021 at the Catamaran Resort Hotel & Spa, located at 3999 Mission Blvd, San Diego, CA 92109.

Pre-conference Seminars will be offered the Sunday before the conference on April 18, 2021.



TLC WELCOMES NEW MEMBERS OF THE BOARD OF DIRECTORS

The Transportation & Logistics Council, Inc. (“TLC”) is pleased to welcome the following to the Board of Directors.

Ryan Anderson

Ryan Andresen is Vice President of Transportation for Clayton Homes based in Maryville, TN where he leads a team responsible for Clayton’s private fleet and transportation. Clayton Homes is the largest builder of manufactured housing and modular homes in the US. Prior to joining Clayton in April 2019, Ryan spent 15 years as Vice President of Operations for MCO Transport, Inc. in Wilmington, NC, a privately held asset-based firm that specializes in ocean container drayage, warehousing and domestic truckload.

Ryan received his MBA from the University of North Carolina Wilmington and his BA from High Point University. Ryan currently serves on the Board of Directors for the Tennessee Housing Association. Ryan is married to his wife of 17 years, and they have 2 children. When not working, Ryan enjoys spending time outdoors boating, biking, skiing and playing sports with his children. He also enjoys traveling and cooking.



Dormica Oppenhuizen

Dormica Oppenhuizen is the Director of International Business Customs Compliance at Meijer, a supercenter chain throughout the Midwest, with its corporate headquarters in Walker, Michigan. Dormica has been at Meijer for 9 years taking on various roles and in her current position for 3 years.

Dormica has worked in retail for over 15 years in various roles adding to her extensive retail experience.

In 2002, Dormica earned her Bachelor of Arts degree in International Fashion Merchandising from Bradley University located in Peoria, IL and from there worked for Talbots, American Eagle Outfitters, and Sears along the way.

As a native Illinoian, Dormica moved to Michigan 9 years ago and settled into being a full Michigander with her husband and daughter. Dormica loves to travel, read, and has a passion for the Arts including fashion/interior design and the theatre.



Dormica holds professional memberships with various philanthropic and nonprofit organizations including being on the Board of Directors for the Grand Rapids Public Museum, and the Girls Choral Academy. At Meijer, she is also on the board of the Diversity and Inclusion team resource group Mosaic.

Dormica was named one of the Top Women in Grocery in 2019 by Progressive Grocer Magazine and was featured on NEW online (Network of Executive Women) where her career journey was highlighted and hopefully inspiring to young women with her story.

Dormica believes in empowering women and girls to use their voice and strongly believes when we educate and nurture women, we are educating and nurturing the future.

Chae Pak

Chae Pak is the Senior Director, Logistics North America for Arkema, based in King of Prussia, PA (just outside of Philadelphia). In his position he oversees logistics procurement, transportation safety, and customs compliance. In his almost 20 year career, he has had exposure to various industries and various functions within supply chains.

Chae started his career as a logistics officer in the US Air Force. In six years, he did everything from running a small warehouse to vehicle operations to logistics planning for global deployments. Chae also worked in materials management, transportation and logistics, procurement, and distribution for large companies such as Schlumberger, ABB, and MillerCoors. Chae even did some time in IT as a project manager and part of a SAP deployment team. He really enjoys working on supply chains and driving cost out the system.



NEW MEMBERS

Regular Member

Dianne Ream

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HUMOR

An homage to tools (I have been stuck in the house for far too long).



RARE PHOTO OF MOTHER WRENCH FEEDING HER YOUNG. ABSOLUTELY BREATHTAKING!



And Finally



LOGISTICS

SUPPLY CHAIN CONTINGENCY PLANS ARE A MUST

By Tony Nuzio, ICC Logistics Services, Inc.

It should come as no surprise to anyone involved in Global Supply Chain operations that the impact of Covid-19 makes the need for creating supply chain contingency plans an absolute must.

According to a recent survey from the Institute of Supply Management, 75% of respondent companies reported they experienced a disruption in their supply chains in some form or manner due to the Coronavirus and subsequent transportation restrictions.

In another survey conducted by the MIT Center for Transportation and Logistics, only 16% of survey respondents stated their company had set up an Emergency Management Center to manage their supply chain disruptions. When asked if these companies thought the Coronavirus disruptions would change how their company operates their supply chains in the future, a third of respondents felt that their companies should have better risk management initiatives in place.

Key elements of responses in these surveys documented that identifying and securing critical suppliers is critical, wherever those suppliers might be located. Furthermore, it was important that key suppliers would have the ability to withstand future uncertainty.

Clearly supply chain executives will need to better understand all of the resources available to them, as well as entertain working in markets and with countries that are more stable than they may not have considered before.

The real story behind these surveys and several others we have reviewed recently reveals that some businesses are apparently not taking supply chain disruptions seriously. Perhaps they are confident, or in some cases over-confident, that their current supply chains are safe from disruptions today and will remain safe for the future. Whatever the case may be, constant review, constant analysis and constant benchmarking supply chain partners should be on every company's mind.

As we see it, there are three key critical components for determining the extent of future supply chain disruptions and setting a framework for evaluating potential changes in management strategies to resolve any future disruptions should they occur.

1. **Gap Analysis:** How confident is the company that its current supply chain will remain stable for the short and long term? How can it absolutely prove that point? And, if it cannot prove its supply chain is sustainable for the short and long term, what does the company have to do NOW and in the immediate future to ensure its businesses survival?
2. **Mapping the Journey Forward:** Supply Chain executives and their "C" level executives MUST have a clear vision of what lies ahead. What are the supply chain challenges the business will face today and in the future? Are there any expected constraints now; will there be any constraints in the future, and if so, what steps must be taken to navigate through those constraints to ensure an uninterrupted supply chain.

Companies must think of this as a crystal ball process. While no one actually has a crystal ball to know exactly what's going to happen, that should not stop businesses from thinking about every possible potential disruption that could actually occur. It's the only way to ensure continuity in supply chain operations and to be totally prepared for any eventuality.

3. **Create a Compelling Vision for the Future:** Businesses need to create a successful path to ensure their supply chain survival goals are constantly met. The path must include various "what-if" scenarios based on analyzing rational business models and performing on-going evaluations to ensure every eventuality is considered.

The death knell for any business is the lack of total buy-in from all the key stakeholders affected by any business disruption issue, and that includes supply chain disruptions. Companies MUST align purpose, mindset, roles, strategies, and ultimate performance throughout their company to ensure it can make the necessary changes on the fly if it needs to.

How is your company going to protect its supply chain from further disruptions? We can't just wait for 2020 to be over, that's just not going to cut it!

If you don't have the in-house expertise to develop the necessary contingency plans, reach out to others for help, or take advantage of the educational opportunities provided by the Transportation & Logistics Council and other professional organizations.

WALMART TO DEMAND ON-TIME AND IN-FULL DELIVERIES

On September 1, 2020 Walmart issued a memo notifying its suppliers that on-time and in-full ("OTIF") shipments must be 98% complete effective September 15. Walmart also told its more than 100,000 suppliers about its new Supplier Quality Excellence Program ("SQEP") which will measure suppliers on four areas as part of an effort to improve supply chain efficiency and be implemented in the following four phases:

Phase 1: Accuracy and Advanced Ship Notice (ASN) – migration to Item 360

Phase 2: Barcode and Labeling

Phase 3: Load Quality, Label Quality, Packaging

Phase 4: Scheduling & Transportation

Walmart first instituted the OTIF protocol in 2017 to try and get suppliers to do a better job of hitting must-arrive-by dates on order fulfillments. Walmart said then it was losing millions of dollars on lost sales because shelves were not being replenished fast enough. Walmart raised the bar again last year with OTIF requirements taking them from 85% to 95% for general merchandise and health and wellness. It went to 97.5% for food and consumables. Full-truckload was told to achieve an average of 87% while less-than-truckload shipments were told to average 70%. The requirements became effective in February. Walmart reported in March 2019 OTIF shipments on food and consumables were still at a dismal 40%.

Suppliers not meeting the new guidance may be fined 3% of the cost of goods.

RESHORING SURVEY

The current pandemic has had widespread economic impacts and brought more attention to the implications of a global supply chain. For many years manufacturing and related jobs have been moved offshore in efforts to reduce costs. These costs include labor, raw materials, energy, supplies and less tangible things, such as environmental constraints.

While there is a certain amount of fluidity to these supply chains, there is also a lot of inertia. Japan at one time was a source of cheap labor, but as their standard of living increased, manufacturers moved to locations of cheaper labor in China and Southeast Asia. With the pandemic, the fragility and even national security aspects of having so much of our supply chain coming from offshore has gotten much more attention.

The Reshoring Institute¹ has released the results of its 2019 Survey of Global Manufacturing “The Changing Trends of Reshoring in the United States”.

From the Institute’s September 24, 2019 announcement:

For more than three decades, moving production offshore was a relatively easy decision. With an almost endless supply of low-cost labor, the decreasing costs of transportation, low currency exchange rates, and significant foreign-government incentives, hundreds of thousands of jobs left the U.S. for lower-cost nations like China. The once overwhelming cost advantages, however, are not what they once were. A growing number of businesses are rethinking their global manufacturing strategies.

- More than half of the executives surveyed reported that they were planning or considering reshoring activities in the next five years.
- 97% said that they would consider a domestic source for parts if the price and quality were competitive to foreign suppliers.
- In addition to the growing attractiveness of U.S. markets, the unpredictability of tariffs and trade regulations leave companies conducting international business wary of unexpected cost increases.

¹ The Reshoring Institute, a 501c3 non-profit organization, offers free, downloadable research from its website, created and curated by graduate student interns from the University of San Diego, Santa Clara University, University of Southern California, St. Louis University, Rutgers University and the University of Kentucky.

- The survey found that from 2017 to 2018, the number of companies operating in multiple global locations decreased by 10%.

Due to rising foreign wages, rising tariffs on steel, aluminum, and electric components, and reconsiderations of the total cost of ownership, The Reshoring Institute predicts that companies will increasingly be motivated to participate in reshoring efforts in the coming years.

While the majority of companies reported interest in reshoring, some remain hesitant. Respondents were asked, “If you are considering reshoring and have not yet started, what if anything, is delaying you in doing so?” The largest factor in delaying companies from reshoring, comprising of 54.17% share of responses was concerns of high labor costs. Other factors include not having a facility in the U.S. (50%) as well as finding a workforce with the skills needed for production (29.17%). Executives were also concerned by resistance from the Board of Directors (20.83%), lack of internal expertise (12.50%), high material costs (8.33%), and environmental regulations in the U.S. (8.33%).

Note that this survey was conducted and released prior to the pandemic, and captured data from executives across various industries in 2017-2018. It will surely be interesting to see how and what changes with the next survey, which would include pandemic and/or post pandemic responses.

Visit <https://reshoringinstitute.org/annual-survey-of-manufacturers/> for the survey results and visit <https://reshoringinstitute.org/reshoring-institute-announces-results-of-2019-survey-of-global-manufacturers/> to view the announcement.

MOTOR

FMCSA DRUG & ALCOHOL CLEARINGHOUSE REPORT

The Federal Motor Carrier Safety Administration’s (“FMCSA”) Drug & Alcohol Clearinghouse issues a monthly summary report regarding its findings. According to the most recent report, covering August 2020, there were 4,832 violations during the month of August and a total of 35,281 reported violations since the program started in January 2020.

Positive drug tests account for 81% of the total reported violations. Marijuana Metabolite represents half of the 35,252 positive drug tests. Cocaine Metabolite (5,233), Methamphetamine (3,379) and Amphetamine (3,208) are the distant 2nd, 3rd and 4th place when it comes to the positive drug tests [Note that more than one substance can appear in a positive drug test].

Visit <https://clearinghouse.fmcsa.dot.gov/Learn> to view the monthly reports.

HOURS OF SERVICE UPDATE – SPLIT DUTY PERIOD

On September 29, 2020 the Federal Motor Carrier Safety Administration (“FMCSA”) will begin testing the impact of allowing truck drivers to stop the hours-of-service clock for up to three hours, a change meant to give drivers more flexibility and control over their work schedules.

From the FMCSA Notice:

FMCSA proposes a pilot program to allow temporary regulatory relief from the Agency's hours-of-service (“HOS”) requirement that all driving by drivers of property-carrying commercial motor vehicles (“CMVs”) be completed within 14 hours after coming on duty. During the pilot

program, known as the Split Duty Period Pilot Program, participating CMV drivers would have the option to pause their 14-hour on-duty period (also called a driving window) with one off-duty period of no less than 30 minutes and no more than 3 hours. Participation would be limited to a certain number of commercial driver's license ("CDL") holders who meet the criteria specified for participation. This pilot program seeks to gather statistically reliable evidence whether decisions concerning the timing of such flexibility can be aligned with employers', shippers', and receivers' scheduling preferences to optimize productivity while ensuring safety performance at a level equivalent to or greater than what would be achieved absent the regulatory relief.

This added flexibility could provide some relief for shippers as well as drivers by allowing changes in how drivers manage those hours, possibly giving them more time to meet shipping deadlines. While drivers are still limited to 11 hours behind the wheel, under this program a truck driver could, for example, start his or her day by spending two hours on non-driving duties, drive eight hours, stop the clock for three hours to rest, and then drive another three hours and work another hour. That's 14 on-duty hours over a 17-hour period.

Visit <https://www.fmcsa.dot.gov/regulations/hours-service/hours-service-drivers-pilot-program-allow-commercial-drivers-pause-their> to view the Notice.

ATRI CONDUCTING SURVEY ON TOP INDUSTRY ISSUES

The American Transportation Research Institute ("ATRI") is conducting its 16th annual Top Industry Issues Survey to identify critical issues confronting our industry and develop strategies for addressing those issues now and in the future. According to the ATRI announcement:

Now in its 16th year, ATRI's annual analysis not only ranks the issues overall but also provides details on where critical topics are ranked differently by motor carriers and professional drivers. The report also allows stakeholders to monitor issues over time, to better understand which issues are rising, or falling, in criticality.

"Completing this survey only takes a few minutes, but its impact can be immeasurable. The data ATRI provides maps a course for the industry to speak with a collective voice on our most important issues," said ATA Chairman Randy Guillot, president of Triple G Express and Southeastern Motor Freight, New Orleans, Louisiana.

The results of the 2020 survey will be released October 27, 2020 as part of the American Trucking Associations Virtual Management Conference & Exhibition.

"This year has been like no other we've seen and understanding how the COVID-19 pandemic has impacted all of the trucking industry's top issues will be a key feature of this year's analysis," said ATRI Senior Vice President Dan Murray.

Industry stakeholders are encouraged to complete the survey available through ATRI's website by visiting <https://www.research.net/r/2020-Top-Industry-Issues>. The survey will remain open through October 16, 2020.

BROKER TRANSPARENCY

The Federal Motor Carrier Safety Administration ("FMCSA") is seeking comments on petitions for rulemaking to amend certain requirements for property brokers submitted by the Owner-Operator Independent Drivers Association ("OOIDA") and the Small Business in Transportation Coalition ("SBTC") that would tighten the requirements on property brokers for the reporting of transactions.

Current regulations (CFR Part 371.3) require brokers to maintain transaction records and to allow parties to those transactions to review those records. However, the regulations do not specify a particular manner for providing the information. In addition to basic information about consignors and carriers, transaction records must include the compensation received by the broker for its services, the amount of freight charges collected by the broker, and the date of payment to the carrier.

OOIDA requests that FMCSA require property brokers to provide an electronic copy of each transaction record automatically within 48 hours after the contractual service has been completed, and prohibit explicitly brokers from including any provision in their contracts that requires a motor carrier to waive its rights to access the transaction records. The group argued that some brokers allow a motor carrier to access records only at the broker's office during normal business hours, making it virtually impossible for motor carriers to access the records.

SBTC requests that FMCSA prohibit brokers from coercing or otherwise requiring parties to brokers' transactions to waive their right to review the record of the transaction as a condition for doing business. SBTC also requests that FMCSA adopt regulatory language indicating that brokers' contracts may not include a stipulation or clause exempting the broker from having to comply with the transparency requirement.

In publishing the petitions, FMCSA posed several specific questions to potential commenters, including how a rule restricting the rights of private parties from adopting certain contract terms aligns with the agency's authority; whether a rule should apply to brokers of all sizes; how much a system of automatic notification would cost and whether brokers could form networks to provide the information; and what would be the economic benefits to motor carriers and economic costs to brokers.

Comments are due by October 19, 2020. To view the Notice and for instructions on how to submit comments, visit <https://www.federalregister.gov/d/2020-18130>.

OCEAN

WHAT GOES UP DOES NOT NECESSARILY COME DOWN

Ocean freight carriers operating in the Asia to North America trade lanes have announced yet another general rate increase ("GRI") to be effective October 1, 2020. The GRI is for all cargo imported from Asia ports of loading, to the U.S.A., Canada, and Mexico ports/and ramps of discharge.

The proposed increases are as follows:

General Rate Increase – October 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'

Shippers who would be impacted by these rate increases should consult with their ocean carrier partners to continually monitor the situation as it develops.

PARCEL EXPRESS

FEDEx ANNOUNCES GRI AND LATE PAYMENT FEE

by Tony Nuzio, ICC Logistics Services, Inc.

Well, it didn't take FedEx too long to report their 2021 General Rate Increases after they announced a new fee for late payment of invoices. These new rates will formally go into effect on January 4, 2021. The overall increase is pegged at 4.9% as per FedEx, but as we know the 4.9% is an overall average and therefore some services and surcharges will receive much larger increases and some services and surcharges will receive lower increases.

Here are just a few examples:

- Ground 3 pound shipments will receive an overall 7% Increase
- Ground 25 pound shipments will receive an overall 4.6% Increase
- Priority Overnight 10 pound shipments will receive an overall 3.2% increase
- Two Day shipments, 2 pounds to 50 pounds will receive an overall 5.5% increase
- Home Extended Delivery Area Surcharges will receive a 9.3% increase
- Residential Ground Extended Delivery Area Surcharges will receive a 9.3% increase
- Ground Commercial Extended Delivery Area Surcharges will receive a 7.2% increase
- Third Party Billing Surcharges will receive an 80% Increase

In other FedEx News...

For years now FedEx' main rival, UPS, has been assessing Late Payment Penalty Fees and FedEx has now decided it's a good thing to do. Frankly, we do not understand why it took them so long to jump on the bandwagon. Perhaps FedEx felt not charging late fees would give them a competitive edge, but we don't see how that's possible.

It is however a sign of the times, with the Covid-19 Crisis still in full swing, it certainly makes sense for FedEx to implement these fees. Kudos to them for holding off until after the first of the year for the official kick off.

According to FedEx:

Effective January 2021, we will begin charging a six percent (6%) late payment fee to U.S. FedEx Express and FedEx Ground customers who don't pay their invoice within their agreed upon payment terms. Details regarding the late payment fee can be found in the January 2021 FedEx Service Guide in the Fees and Additional Information section.

Visit <https://www.fedex.com/en-us/shipping/current-rates.html> for links to information on FedEx shipping rate changes.

NEW UPS SURCHARGE ANNOUNCED

by Tony Nuzio, ICC Logistics Services, Inc.

Surcharge for SurePost to Become Effective on October 18, 2020

United Parcel Service ("UPS") has announced another round of surcharges, this time specifically directed to its SurePost Postal Induction Service. The surcharge is a per package surcharge of 24 cents and mirrors the increase U.S. Postal Service ("USPS") recently imposed for Peak Season packages. The Peak

Season Surcharge implemented by USPS marked the first time it had ever published a Peak Season Surcharge and we're sure it won't be the last.

The USPS's Surcharge directly affects large commercial shippers like UPS, who utilizes the USPS to inject incredibly large volumes of packages into the postal infrastructure for last-mile residential deliveries. Obviously, UPS and their rival FedEx, (who previously announced their Peak Season Surcharge for their SmartPost parcel induction service,) had no intention of absorbing these surcharges and that's why they have now implemented these additional Surcharges to offset the Postal Service's surcharge.

NOTE: The Editor would like to thank Tony Nuzio for making these timely updates available to be reprinted in the TRANSDIGEST. In addition, he has created various comparison charts comparing current rates, accessorial fees and surcharges with the proposed increases. To obtain the FedEx charts visit <https://icclogistics.com/fedex-rates-2021/>.

QUESTIONS & ANSWERS

by George Carl Pezold, Esq.

LIABILITY – SECUREMENT OF LOAD

Question: Who is responsible for securing a truckload?

Answer: As a general rule, except for shipments that are “shipper load & count” and sealed by the shipper, the carrier is responsible for properly securing the load. The general requirements are set forth in the Federal Motor Carrier Safety Administration (“FMCSA”) regulations at 49 CFR 392.9, and specific requirements for securement devices, etc. are in sections 393.10 - 393.136.

Section 392.9 states:

§ 392.9: Inspection of cargo, cargo securement devices and systems.

- (a) General. A driver may not operate a commercial motor vehicle and a motor carrier may not require or permit a driver to operate a commercial motor vehicle unless—
 - (1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in §§ 393.100 through 393.136 of this subchapter.
 - (2) The commercial motor vehicle's tailgate, tailboard, doors, tarpaulins, spare tire and other equipment used in its operation, and the means of fastening the commercial motor vehicle's cargo, are secured; and
 - (3) The commercial motor vehicle's cargo or any other object does not obscure the driver's view ahead or to the right or left sides (except for drivers of self-steer dollies), interfere with the free movement of his/her arms or legs, prevent his/her free and ready access to accessories required for emergencies, or prevent the free and ready exit of any person from the commercial motor vehicle's cab or driver's compartment.
- (b) Drivers of trucks and truck tractors. Except as provided in paragraph (b)(4) of this section, the driver of a truck or truck tractor must—
 - (1) Assure himself/herself that the provisions of paragraph (a) of this section have been complied with before he/she drives that commercial motor vehicle;

- (2) Inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle; and
- (3) Reexamine the commercial motor vehicle's cargo and its load securement devices during the course of transportation and make any necessary adjustment to the cargo or load securement devices, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from, the commercial motor vehicle. Reexamination and any necessary adjustments must be made whenever—
 - (i) The driver makes a change of his/her duty status; or
 - (ii) The commercial motor vehicle has been driven for 3 hours; or
 - (iii) The commercial motor vehicle has been driven for 150 miles, whichever occurs first.
- (4) The rules in this paragraph (b) do not apply to the driver of a sealed commercial motor vehicle who has been ordered not to open it to inspect its cargo or to the driver of a commercial motor vehicle that has been loaded in a manner that makes inspection of its cargo impracticable.

Citation: [67 FR 61224, Sept. 27, 2002, as amended at 72 FR 55703, Oct. 1, 2007]

FREIGHT CHARGES – RETURNING LOAD OF INCORRECT PRODUCT

Question: We picked up a load in California and delivered to Texas on schedule. However, the shipper placed 6 pallets of incorrect product. According to the broker, they want their six pallets of water returned and gave us a 4 day window to return the pallets back to California and want to set their own rate for this.

We explained that we would have to cancel other loads to do this and that we simply cannot do it before Friday. We offer them to take it next week or for them to find someone to take them from here (Texas) to California, however they declined and threatened to file a claim against our insurance. Can they file a claim even though we delivered their sealed load on schedule but they put six pallet of the wrong product in it? Are we obligated to return the product on their terms?

Answer: From your description of the facts this was a full truckload, shipper load and count (“SL&C”) and sealed by the shipper, and the 6 pallets were refused by the consignee.

You do have a duty to use reasonable care to protect the product, but you don’t have to return it without a new separate agreement. I suggest that you send an “on hand” notice to the shipper, consignee and the broker stating that you will hold the product in storage until you receive specific instructions in writing and a mutually agreed freight charge for the return. Note that you have a “carrier’s lien” for your charges and can demand payment before making a delivery.

RECENT CASE

COURT UPHOLDS AGREEMENT ALLOWING DISPOSAL WHEN SEAL NOT INTACT

The U.S. Court for the Northern District of Georgia granted a motion for summary judgment after a shipper disposed of a shipment that was delivered without the seal intact, and the court did not allow the motor carrier to claim an off-set for the salvage value of the load.

This case involved a shipment for Proctor & Gamble (“P&G”) from Pennsylvania to Massachusetts. The broker, Coyote Logistics, LLC (“Coyote”), hired Mera Trucking, LLC (“Mera”) to transport the items. P&G had a standard practice for tendering shipments to motor carriers, and it was followed here.

The standard process was that P&G prepared an order, loaded the order into a motor carrier’s trailer, and created a bill of lading. The driver and a P&G security employee then inspected the loaded trailer to ensure the order was complete. The driver and the security employee then signed the bill of lading, closed the trailer doors, and affixed a seal to the door to monitor whether anyone opened the trailer during transit.

After that process was completed with Mera, the driver left with the cargo for Massachusetts. Enroute the driver reported a tire blowout in Rhode Island. Rather than proceeding to a repair shop as directed, the driver went dark. Mr. Mera flew to Rhode Island to investigate and found the tractor-trailer at a motel with a broken seal and some cargo missing. After investigation, the police were able to recover some of the missing items and Mr. Mera drove the trailer and recovered cargo to P&G’s facility. P&G destroyed the remaining cargo because the seal had been broken, the cargo showed visible signs of tampering, and the integrity of the cargo could not be guaranteed.

P&G billed Coyote \$86,946.52 for the value of the load, which Coyote paid after Mera refused. Coyote was assigned the claim from P&G and then brought this action against Mera to collect.

The bill of lading included language under a heading of “Terms, Conditions And Limitations For Domestic U.S. Origin Shipments,” that stated, “Shipper shall give Carrier credit for the reasonable salvage value of any damaged product which Shipper does not authorize Carrier to resell.”

However, the court pointed out that:

Coyote’s and Mera’s contractual relationship was governed by an agreement called the Broker-Carrier Agreement. Under it, Mera agreed to assume “the same liability as that of a common CARRIER for full actual loss” subject to the Carmack Amendment. Mera also agreed that, if a sealed shipment arrived without the seal intact, it would be liable for “any shortage or damage claims” and that “the shipper [had] the right in its sole discretion to deem the entire shipment damaged, contaminated and unsalvageable, without the need for any inspection.” The agreement stated that P&G could make this decision “to protect its brands and prevent potentially contaminated goods from entering into the stream of commerce, regardless of any actual condition of the shipment which an inspection might have revealed.” It further stated that, if P&G deemed the entire shipment unsalvageable, “the shipment [would] be considered totally damaged and worthless for all purposes and [Mera would] be liable for the full value of the shipment.” Finally, the agreement provided that Mera would accept a bill of lading when picking up goods for transportation but that, if the terms and conditions of any bill of lading conflict with the Broker-Carrier Agreement, “the terms and conditions of [the Broker-Carrier Agreement would] govern and take precedence[,] except to the extent the Bill of Lading contains specific instructions directly from the Customer.” [citations omitted]

After noting that Coyote had established (through the assignment) a prima facie case for liability under the Carmack Amendment, the issue the court had to decide was the damages. Mera argued it could recover the full value of the shipment while Mera says it is entitled to a credit against that amount for the “salvage value” of the cargo that it recovered but P&G decided to destroy.

The court’s analysis boiled down to whether Mera could rely on the language of the bill of lading or it was bound by the language of the Broker-Carrier Agreement. The court reviewed cases allowing a carrier to limit its liability and holding that shippers could be bound by liability limitations negotiated between their intermediary and a carrier. The court stated:

These cases establish a simple proposition that a carrier may set its liability through its dealings with a shipper or the shipper’s intermediary but may not take advantage of limitations of liability to which it is not a party. In other words, a carrier may enforce its contractual protections but must also fulfill its contractual obligations. Underlying this is the recognition that carriers set their liability limitations in league with the rates they charge and shippers, likewise, accept rates based on the protection they require.

Mera argued that “these principles require enforcement of the limited liability provision in the bill of lading. It says that, since Coyote seeks to assert P&G’s Carmack Claim and since P&G agreed to reduce any loss by the salvage value of any unsold product, Coyote must give it credit for the unsold product. Mera says the Court would not protect P&G from its own decisions and thus cannot protect P&G’s assignee from P&G’s own decisions.”

The court did not agree and ruled in favor of Coyote.

This outcome gives full effect to the parties’ agreement. It also remains true to the underlying presumption that Mera set its rates based on the higher liability it accepted in the Broker-Carrier Agreement. The undisputed evidence shows that on February 8, 2017, Coyote issued Mera a Rate Load Confirmation for the shipment at issue. That document that gave Mera information on where to pick up the shipment, where to deliver it, and other relevant instructions. It reaffirmed that the shipment was being provided pursuant to the terms of the Broker-Carrier Agreement. It then set the rate that Coyote would pay for the shipment. It also reaffirmed that the shipper had the right to deem any shipment with a broken seal unsalvageable, and if that happened, Mera could be liable for the full value of the shipment. It even listed the value of the shipment as \$100,000, well above the amount Coyote seeks here.

Mera accepted the terms when it picked up the cargo. It did not obtain the bill of lading until after the truck was loaded. By that time, Mera had already agreed to a rate that reflected the liability it accepted in the Broker-Carrier Agreement. To enforce the salvage-value provision would give Mera a windfall — less liability than it agreed to incur. It would also deprive Coyote of something it negotiated and paid for — its customer’s right to declare the entire shipment unsalvageable. And it would deprive P&G of its benefits as an intended (and named) beneficiary of the Broker Carrier Agreement. Just as the carrier in *Megatrux Transportation* could not avoid full liability it negotiated with the intermediary in reliance on an agreement to which it was not a party, Mera cannot avoid full liability it negotiated with Coyote by relying on a subsequent bill of lading that it agreed not to rely upon. [citations omitted]

This case is interesting in that the court looked beyond the simple language of the two contractual documents, the bill of lading and the Broker Carrier Agreement, and also used a liability limitation analysis to support its conclusion.

Coyote Logistics v. Mera Trucking, LLC, 18-cv-03788 (N.D. GA, August 19, 2020) available online at <https://law.justia.com/cases/federal/district-courts/georgia/gandce/1:2018cv03788/254050/60/>

CCPAC NEWS

CCPAC HEADLINE NEWS

The Certified Claims Professional Accreditation Council (“CCPAC”) announced that due to the Pandemic and for the safety of applicants, proctors and students, all Certified Claim Professionals (“CCP”) Exams and CCP Primer Classes originally scheduled during 2020 are canceled.

The next CCP Exam will be conducted after the close of the Transportation & Logistics Council’s (“T&LC”) Annual Conference Wednesday afternoon, April 21, 2021, from 12:30 PM to 3:30 PM at the Catamaran Hotel, 3999 Mission Blvd., San Diego, CA 92109. A CCP Exam Primer Class will be held prior to the T&LC Annual Conference on Sunday, April 18, 2021, at the same location as the exam.

Candidates must apply and pre-qualify to take either or both the CCP Exam and/or the CCP Exam Primer Class. Additional information, including exam fees, preparation materials, registration to sit for the exam and registration for the celebrated exam primer class, is all available at www.ccpac.com, under Headline News section.

David Nordt, CCP and CCPAC Council President, has announced that the CCPAC Annual Membership Meeting will be held Monday Afternoon, April 19, 2021, at 5:30 P.M. (Pacific Time) at The Catamaran Hotel, 3999 Mission Blvd. San Diego, CA 92109. The meeting immediately follows the end of the first day of the T&LC Annual Conference. The CCPAC Annual Membership Meeting is open to all CCPAC members, guests and anyone interested in learning more about CCPAC and meeting its officers and board members present.

ALL CCP’s and CCPAC Associate Members are reminded that to maintain their membership in “Active” status, annual dues and membership are now due and renewable on-line or by mail. Dues can be paid with a major credit card on-line or a check by mail made payable to CCPAC, Inc. Checks should be mailed to CCPAC, Inc., Membership Dept., P.O. Box 550922, Jacksonville, FL 32255-0922.

Established in 1981, Certified Claims Professional Accreditation Council (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 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**NEW CCSB DOCKET 2020-3**

The Commodity Classification Standards Board (“CCSB”) will conduct its next public meeting to consider proposals for amending the National Motor Freight Classification (“NMFC”) in Docket 2020-3 on Tuesday, October 6, 2020. Due to the COVID-19 health emergency, this will be a virtual, online meeting. The meeting will commence at 10:30 am Eastern Time. For information on how to attend, please contact Colleen Airgood, Meeting Coordinator, at airgood@nmfta.org or 703-859-3924.

Anyone having an interest in a proposal listed in this docket may attend the meeting on October 6, 2020 and/or communicate that interest in writing by mail, email or fax prior to the meeting. Such Interested Persons will be notified of the CCSB’s disposition of the proposal.

Following is the subject index for Section I of the docket:

COMMODITY CLASSIFICATION STANDARDS BOARD DOCKET 2020-3
INDEX OF SUBJECTS (PROPOSALS) - DESCRIPTION and SUBJECT:

A	Electrical Controllers or Switchboards	1
Air Heaters or Air Conditioners,	Expansion Joints or Seals, pavement or	
automobile	construction	9
Amusement Rides or Riding Devices,		
coin- or currency-operated	F	
14	Filing Cabinets	7
Anchors, building, mast, pole or	Forms, concrete retaining, sign or	
smokestack, or Guy Anchors	lamppost base	16
19		
B	G	
Bases, sign	Games, NOI, coin- or currency-operated	14
16	Gloves	12
Battery Chargers, including Cell Phone	Guy Anchors	19
Chargers		
2	H	
Blinds, exterior	Heaters, air, automobile, including	
6	Windshield Heaters	11
Brackets, sign		
16	I	
C	Industrial Process Water Treating	
Cabinets, filing	Compounds	18
7	Item (Rule) 110, Explanation of “Coin- or	
Cash Registers	Currency-Operated” or “Coin- or	
15	Currency-Operating”	13
Chargers, battery, including Cell Phone		
Chargers	J	
2	Joints, pavement or construction	9
“Coin- or Currency-Operated” or		
“Coin- or Currency-Operating” –	L	
Explanation	Lenses or Lens Blanks, optical	17
13		
Compounds, industrial process water		
treating		
18		
Controllers, electrical, including Motor		
Controllers		
1		
Cyanides, crude, NOI		
20		
E		
Electric Toasters		
8		

M

Machines, cooling or freezing	3
Mittens	12
Model Railroad Equipment	10
Motor Controllers, electrical	1

O

Optical Lenses or Lens Blanks	17
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P

Package 2050	1
Package 2148	17
Package 2246	2
Package 2535	1
Package 60F.....	7
Package 83F.....	7
Package 96F.....	7
Package 99F.....	7
Package 112F	7
Point-of-Sale (POS) Systems	15
Posts or Poles, sign	16

S

Salts, cyanogen, crude, NOI	20
Seals, pavement or construction	9
Shades, exterior	6
Shears, pruning or plant cutting, other than power operated	5
Shutters, exterior	6
Sign Posts, Poles, Brackets or Bases	16
Switchboards or Switchboard Sections, electrical	1

T

Tape, sealing or masking, paper, with adhesive	4
Toasters, electric	8
Toy Railroad Equipment	10

U

Unit Coolers, commercial or institutional	3
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V

Ventilators, foundation	6
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Shippers whose traffic may be affected by proposed changes should review the proposals and respond accordingly. Visit <http://www.nmfta.org/pages/Public-Docket-Files-2020-3> to review the complete Docket online. Proposals to be included in the Public Docket must be submitted by 5:00 pm Eastern Time, September 25, 2020 and requests to be a Party of Record must be received no later than 5:00 pm Eastern Time, September 25, 2020.

The CCSB invites all interested persons to participate in the classification process. Anyone having an interest in a proposal listed in the docket is welcome to attend the meeting and/or submit a statement relating to the transportation characteristics of the product(s) involved — or relevant to packaging materials or methods in connection with proposed packaging amendments. Statements should include any underlying studies, supporting data and other pertinent information.

Written submissions will be included in the respective public docket file. Decisions on docketed proposals will be based on the information contained in the public docket file.

The address is: Commodity Classification Standards Board, 1001 North Fairfax Street, Suite 600, Alexandria, Virginia 22314, and the CCSB fax number is: 703.683.1094. Written statements may also be emailed to the staff contact involved. To schedule an appearance at the meeting, or if you require further information, please contact Colleen Airgood, Meeting Coordinator, at airgood@nmfta.org or 703.859.3924. Anyone requesting assistance in accordance with the Americans with Disabilities Act will be accommodated.

The CCSB's policies and procedures as well as other information on the CCSB and the National Motor Freight Traffic Association are available online at <http://www.nmfta.org>.

Amendments to the National Motor Freight Classification resulting from the proposals in this docket will be published in a supplement to the NMFC, unless reconsideration is granted or arbitration is sought in accordance with the CCSB's rules. The supplement is scheduled to be issued on November 19, 2020, with an effective date of December 19, 2020.

FUTURE COMMODITY CLASSIFICATION STANDARDS BOARD (“CCSB”) DOCKETS

	Docket 2021-1	Docket 2021-2
Docket Closing Date	November 25, 2020	April 8, 2021
Docket Issue Date	January 7, 2021	May 6, 2021
Deadline for Written Submissions and to Become a Party of Record	January 29, 2021	May 27, 2021
CCSB Meeting Date	February 9, 2021	June 8, 2021

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

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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:

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All members receive:

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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.

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[Click here to see the Table of Contents](#)

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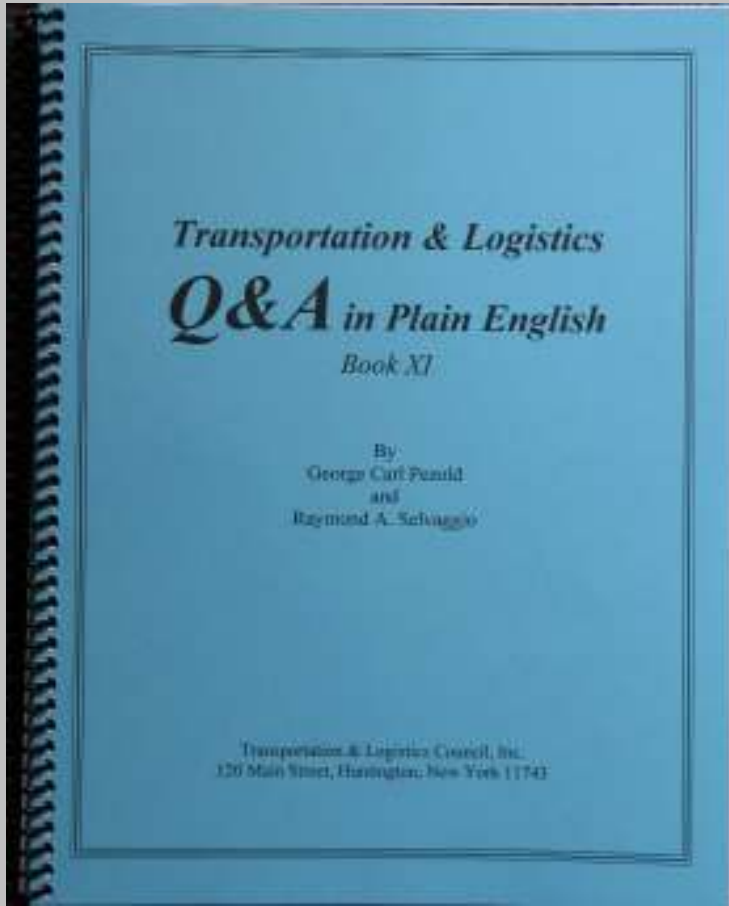
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