

TRANSDIGEST

Transportation & Logistics Council, Inc.

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NEW: T&LC Interactive “Virtual Workshops”

- **International Trade Policy – a FREE Virtual Workshop**
- **Top Ten Trucking Issues**
- **Driver Classification Update**
- **FMC to Investigate Port Congestion**
- **USPS Rate Increases**
- **Court: Personal Injury Claims Against Brokers Not Preempted**
- **Self-Driving Vehicles**
- **More Q & As**

NEW! IN A SOFT COVER EDITION!

FREIGHT CLAIMS IN PLAIN ENGLISH (4TH ED.)

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ASSOCIATION NEWS

T&LC'S INTERACTIVE VIRTUAL WORKSHOPS

Never before has anything like the Coronavirus so disrupted our lives, our businesses and the economy of this Country. For the first time in 46 years the Council had to cancel its Annual Conference, as well as the Spring and Fall Seminar programs.

To be true to our Mission, the “Education of Transportation Professionals”, we have launched a series of what would normally be full-day seminars as intensive, interactive “webinars” and have also initiated a series of “Virtual Workshops” on various topics similar to those in our traditional live Annual Conference.

Coming up next on December 9th at 1:00-2:00pm EST the Council will present the third in its series of free Virtual Workshops, this one to discuss the impact of international trade policy.

The Great Decoupling: Trade Policy, Production Shifting and COVID-19

This presentation will review the basic elements of the Trump Administration trade policies, the shift of manufacturing out of China, and the acceleration in the growth of the e-commerce supply chain during COVID-19. The presentation will include data from American Association of Exporters & Importers (“AAEI”) surveys, other organizations and international institutions to show trends in sourcing, trade and logistics over the last 3 years.

To put things in perspective just think of this: – the very clothes you wear, your computer, smart phone, TV and maybe even your office furniture and your car, and those fresh fruits and vegetables you eat in February – where did they come from and how did they get here? Even if you are not directly involved as an importer or exporter or as part of the international supply chain we are all affected by governmental policies and relationships with our trading partners around the world.

Who should attend:

Transportation and trade professionals who need to look at the “big picture” to plan for their company’s operations or advise companies on global trade and transportation.

What they will learn:

You will learn which trends are converging to reshape the global trading system and supply chains. The presentation is about international trade policy.

Presenter:

This program will be presented by Marianne Rowden, President & CEO of the American Association of Exporters & Importers (“AAEI”).

Ms. Rowden serves as an Adjunct Professor at The John Marshall School of Law. Due to her extensive background and over twenty years of law practice concentrating in international trade and transportation regulatory compliance, she has testified before Congress on trade legislation and also made stakeholder presentations to the negotiators for U.S. free trade agreements.

In addition, Ms. Rowden speaks widely to U.S. and international audiences on trade issues, including such groups as the World Trade Organization, World Customs Organization, United Nations Conference on Trade and Development, U.S. Customs and Border Protection, the Council of Supply Chain Management, the Transportation Law Association, the Transportation Law Institute, as well as the Transportation & Logistics Council’s Annual Conferences..



Visit https://www.tlcouncil.org/sites/default/files/2020_virtual_fall_registration_form_fill.pdf to register.

AIR

AIR CARGO CAPACITY INCREASES

According to an International Air Transport Association (“IATA”) press release, air cargo recovery continued in September. From the press release:

- Global demand, measured in cargo tonne-kilometers (CTKs*), was 8% below previous-year levels in September (-9.9% for international operations). That is an improvement from the 12.1% year-on-year drop recorded in August. Month-on-month demand grew by 3.7% in September.
- Global capacity, measured in available cargo tonne-kilometers (ACTKs), shrank by 25.2% in September (-28% for international operations) compared to the previous year. That is nearly three times larger than the contraction in demand, indicating a severe lack of capacity in the market.
- Strong regional variations are emerging with North American and African carriers reporting year-on-year gains in demand (+1.5% and +9.7% respectively), while all other regions remained in negative territory compared to a year earlier.
- Improving performance is aligned with improvements in key economic indicators;
 - The new export orders component of the manufacturing Purchasing Managers’ Index rose above the 50-mark, indicating growth, for the first time since mid-2018;
 - The World Trade Organization revised their 2020 trade growth forecast from -12.9% to -9.2%;

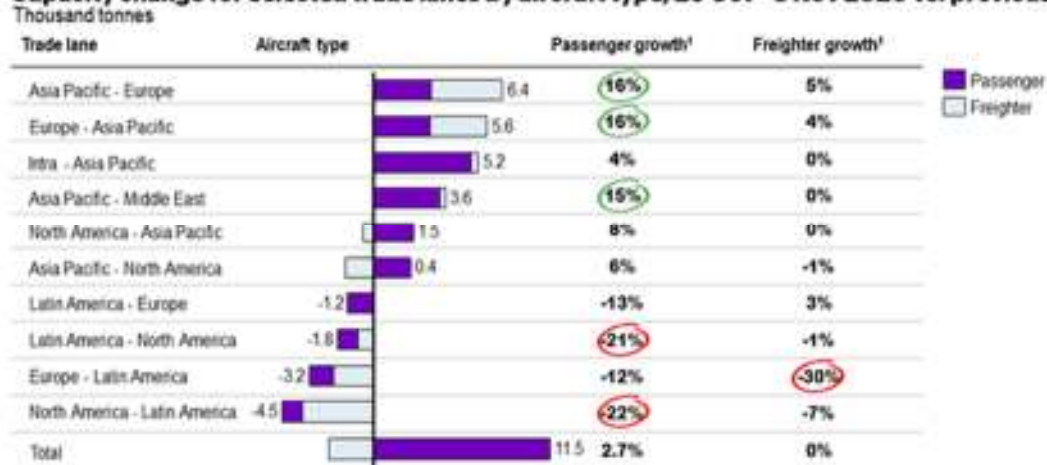
“Air cargo volumes are down on 2019, but they are a world apart from the extreme difficulties in the passenger business. For air cargo, 92% of the business is still there, whereas about 90% of international

passenger traffic has disappeared. Favorable indicators for the peak year-end season will support the continued recovery in demand. Already North American and African carriers are reporting demand gains on 2019. The challenge continues to be on capacity. As carriers adjust schedules to reflect falling passenger demand amid the resurgence of COVID-19, valuable belly capacity will be lost when it is needed the most,” said Alexandre de Juniac, IATA’s Director General and CEO.

<https://www.iata.org/en/pressroom/pr/2020-11-04-01/>

With the precipitous decline in passenger flights due to the pandemic, air freight capacity took a significant hit. Fortunately, as flights begin to return, passenger belly capacity has been increasing. According to a recent report by Seabury Consulting as published by the STAT Trade Times, air cargo capacity increased between October 26 and November 8, 2020 overall by 2.7%, driven mostly by passenger belly capacity.

Capacity change for selected trade lanes by aircraft type, 26 Oct – 8 Nov 2020 vs. previous two weeks¹



Note: Direct capacity only; All freighters and widebody passenger aircraft only, Date measured in UTC time; 1) Comparing 26 Oct – 8 Nov 2020 to 12 – 25 Oct 2020. Source: Seabury Consulting Part of Accenture Capacity Tracking database, Seabury Consulting Part of Accenture analysis (November 2020)

<https://www.stattimes.com/news/global-air-cargo-capacity-increases-in-the-last-two-weeks-seabury-report/>

HUMOR

Dogs – because their loyalty is not questioned, and I’m tired of the election and pandemic.



MOTOR

TRUCK DRIVERS AND INDEPENDENT CONTRACTOR STATUS

"Bust a deal, face the wheel" was one of Aunty Entity's rituals that she enforces in Bartertown in the movie "Mad Max Beyond Thunderdome". If someone doesn't honor a deal, they are subject to answering for their disobedience. One of our fundamental rights, as adults, is to enter into a contract, as long as the contract is not illegal or against public policy.

With that being said, the issue of whether a person is an employee or an independent contractor continues to be litigated and legislated, regardless of what sort of contract the parties entered into.

With the passage of California's Assembly Bill 5 ("AB5"), which codified the "ABC" test promulgated in the *Dynamex* decision, it became very difficult to qualify as an independent contractor. Many parts of the "gig" economy were impacted, including app-based companies like Uber, Lyft, DoorDash and Instacart. Along with litigating the legality of the law (in which they were not fairing well), they pushed a ballot initiative, Proposition 22 ("Prop 22"), that would allow them to continue to classify drivers as independent contractors. It passed with 58% of the vote.

The highly contested and financed proposition passed, removing some uncertainty moving forward. In addition to allowing app-based companies to continue to classify drivers as independent contractors, Prop 22 also provides a handful of benefits to gig workers — such as health care stipends, a minimum wage for some employees, and expense reimbursements — while they remain classified as independent contractors.

How the drivers feel about the results appears to be divided along the lines of whether they were working full-time or part-time. Much of the disagreement between drivers' preferences for employee versus independent contractor status is fueled by the differences in the way the workers rely on the companies for income. Those who have made driving their full-time jobs tend to be more willing to sacrifice flexibility of when, where, and how many hours they work in exchange for the types of benefits and legal protections that come with employee status. On the other hand, those who drive part-time tend to prefer flexibility in exchange for fewer benefits.

Proposition 22 is likely to have national implications as other states watch what happens in California. Although AB5 itself only applies in California, other states are considering similar legislation and there is even Federal legislation, H.R. 2474 that incorporates the same language of AB5 to define an employee.*

If Proposition 22 had failed, gig economy companies may've been forced to rethink their business models. Now that the ballot measure has passed, companies can use the campaign as a blueprint for similar fights they're waging in other states and countries.

Just how the passage of Prop 22 will pan out for the drivers remains to be seen. It also remains unclear whether the state of California will seek to hold the companies liable for violating AB5 this year, before Proposition 22 has gone into effect.

* The Protecting the Rights to Organize ("PRO") Act would use the same three-pronged ABC test as AB 5 to decide who is an independent contractor nationwide. <https://www.congress.gov/bill/116th-congress/house-bill/2474>

A recent article in the Association of Transportations Law Professionals discusses the PRO Act., the COVID-19 pandemic and the impacts of the possible re-writing of traditional labor relations. View the article at https://www.atlp.org/index.php?option=com_dailyplanetblog&view=entry&year=2020&month=10&day=15&id=82:a-labor-focused-future.

FMCSA RULES ON WASHINGTON STATE MEAL & REST BREAK RULES

The Federal Motor Carrier Safety Administration (“FMCSA”) ruled that Washington State can no longer enforce its meal and rest break rules in a decision similar to one it made in 2018 with regard to California’s rules (matter is under appeal).

From the order published in the November 17, 2020 Federal Register, the FMCSA granted

the petition submitted by the Washington Trucking Associations (WTA) requesting a determination that the State of Washington’s Meal and Rest Break rules (MRB rules) are preempted as applied to property-carrying commercial motor vehicle drivers subject to FMCSA’s hours of service (HOS) regulations. Federal law provides for preemption of State laws on commercial motor vehicle safety that are additional to or more stringent than Federal regulations if they (1) have no safety benefit; (2) are incompatible with Federal regulations; or (3) would cause an unreasonable burden on interstate commerce. FMCSA has determined that Washington’s MRB rules are laws on commercial motor vehicle (CMV) safety, that they are more stringent than the Agency’s HOS regulations, that they have no safety benefits that extend beyond those that the Federal Motor Carrier Safety Regulations (FMCSRs) already provide, that they are incompatible with the Federal HOS regulations, and that they cause an unreasonable burden on interstate commerce. The Washington MRB rules, therefore, are preempted.

FMCSA received and considered 33 comments on the petition, with 24 commenters supporting preemption and nine opposing.

Visit <https://www.federalregister.gov/documents/2020/11/17/2020-25155/washingtons-meal-and-rest-break-rules-for-drivers-of-commercial-motor-vehicles-petition-for> to view the Federal Register Order.

TOP TEN TRUCKING INDUSTRY ISSUES

The American Transportation Research Institute (“ATRI”) released its 16th top industry issues report, “Critical Issues in the Trucking Industry – 2020” which identifies a number of the industry’s key concerns including the driver shortage, truck parking, driver compensation and retention and for the first time since 2005, insurance costs. From the press release:

For the fourth year in a row, the driver shortage was the top industry issue overall, as well as topping the motor carrier list of concerns, highlighting the challenges fleets face in recruiting new talent and keeping their current drivers. In fact, driver retention was carriers’ number two issue, and sixth on the combined list.

Among the 1,000+ truck drivers who responded to the survey, truck parking, driver compensation and detention issues were their top concerns.

In all, ATRI received responses from 3,122 truck drivers, motor carriers, and other industry stakeholders – an all-time record for the 16-year-old survey.

“Having such a robust sample gives us a very accurate picture of what issues are of most concern to the trucking industry,” said ATRI President and COO Rebecca Brewster. “With this information, the industry can best target its resources to address trucking’s concerns.”

This year, for the first time since 2005, insurance cost and availability appeared in the top concerns – hitting fifth in the combined top 10 and fourth in the carrier concern list. In addition, tort reform appeared in the survey’s top 10 for the first time since 2011 – hitting seventh in the combined list and fifth in the carrier list.

“The impacts of litigation and growth of nuclear verdicts in the trucking industry was really apparent in this year’s list of concerns,” Brewster said. “Earlier this year, ATRI quantified the growth in nuclear verdicts in the trucking industry, but even without that critical research, the fact that tort reform and insurance issues have resurfaced in the survey are a clear sign the industry is being impacted by rising costs related to litigation and insurance.”

One overriding factor impacting this year’s results is the COVID-19 pandemic. It exacerbated the driver shortage as state motor vehicle departments were unable to test and process new commercial driver license applicants and the retail market shifted to e-commerce home deliveries, stressing the pool of drivers. In addition, tens of thousands of drivers listed in the new Drug and Alcohol Clearinghouse were disqualified from driving because of substance abuse issues.

The report also includes a comparison of results between commercial drivers and motor carriers, along with a chart of how the rankings have changed over the years from 2011 to 2020.

Visit <https://truckingresearch.org/2020/10/27/driver-concerns-insurance-top-atris-annual-list-of-top-trucking-industry-issues/> to view the press release and for a link to obtain the report.

CVSA ISSUES NEW INSPECTION BULLETIN

The Commercial Vehicle Safety Alliance (“CVSA”) issued a new inspection bulletin to help roadside enforcement personnel determine if a roll-on/roll-off, hook-lift, or lugger box/container is properly secured.

Both the U.S. and Canada have regulations for securing roll-on/roll-off and hook-lift containers on commercial trucks, but the rules lack important details. This has led to some confusion among motor carriers, drivers, and enforcement personnel alike.

The new nine-page CVSA bulletin aims to reduce that confusion with photos and clear instructions on how the containers should be secured, whether the truck has a built-in container securement system or not.

Visit <https://www.cvsa.org/wp-content/uploads/Inspection-Bulletin-2020-05-Roll-on-off-Hook-Lift-Lugger-Containers-Securement.pdf> to view the bulletin.

OCEAN

FMC LOOKING INTO PORT CONGESTION

In response to port congestion complaints and container imbalances, the Federal Maritime Commission (“FMC”) issued a Supplemental Order on November 19, 2020 that it is launching a formal investigation into ocean carriers’ operational issues and practices. The FMC believes ocean carriers’ actions are contributing to congestion at the ports of Los Angeles, Long Beach, and New York and New Jersey.

The FMC specifically cites three main issues as contributing to congestion at the two largest US cargo gateways: demurrage and detention practices, empty container returns, and the refusal by some lines to carry US exports as they expedite the return of empty containers to Asia to be refilled with higher-paying import cargoes.

According to the press release:

The expanded Commission investigation will seek to determine if the policies and practices of those shipping companies related to detention and demurrage, container return, and container availability for U.S. export cargoes violate 46 U.S.C. 41102(c).

Commissioner Dye made the following statement in response to the Commission's Supplemental Order:

"The time has come to resolve the most serious impediments to port performance. I'd like to thank my fellow Commissioners for their support of the Supplemental Order for Fact Finding 29, as I focus the investigation on the extreme conditions in the Ports of Los Angeles, Long Beach, and New York/New Jersey. The Order emphasizes I, as Fact Finding Officer, have all enforcement options at my disposal to address the crisis that exists in our major port gateways.

The Commission has a compelling responsibility to investigate the situations that currently exist in our major port gateways. The Commission is concerned that certain practices of ocean carriers and their marine terminals may be amplifying the negative effect of bottlenecks at these ports and may be contrary to provisions in the Shipping Act of 1984. The potentially unreasonable practices of carriers and marine terminals regarding container return, export containers, and demurrage and detention charges in the Ports of Los Angeles, Long Beach, and New York/New Jersey present a serious risk to the ability of the United States to handle trade growth.

Removing the obstacles to port performance allows ocean carriers, ports and marine terminals, drayage truckers, American importers and exporters, and every other business engaged in freight delivery to grow and prosper."

From the Order:

Because of these stakeholder concerns, the Commission now has a clear and compelling responsibility to investigate the practices and regulations that are having an unprecedented negative impact on congestion and amplifying bottlenecks at these ports and other points in the Nation's supply chain. This is a serious risk to the growth of the U.S. economy, job growth, and to our Nation's competitive position in the world.

Visit <https://www.fmc.gov/commission-approves-supplemental-order-expanding-fact-finding-29-authority/> to view the press release and visit <https://www2.fmc.gov/readingroom/documents/35459> to view the Supplemental Order.

OCEAN FREIGHT GRIs

Twice in the month of November ocean carriers have announced general rate increases ("GRIs") for cargo imported from Asia ports of loading going to U.S.A, Canada and Mexico ports.

According to a November 3, 2020 notice by Tony Nuzio of ICC Logistics Services, Inc., ocean freight carriers announced a GRI for ocean shipments from various Asia ports to North America as follows:

Effective December 1, 2020 a 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 – Effective Date: December 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'

Then, on November 11, 2020, Tony published the following:

Another Ocean Freight General Rate Increase Coming

Well it seems that one General Rate Increase for the month of November, 2020 is not enough. So, effective November 15, 2020 another General Rate Increase (GRI) has been filed for all cargo imported from Asia ports of loading, to U.S.A., Canada, and Mexico ports and ramps of discharge.

This GRI increase is a direct result of the explosive growth of freight volumes in this highly attractive trade lane. And, the reality is there is no end in sight.

Importers are really going to have to adjust their freight budgets upwards and we're sure senior management will not be happy, but it is simply part of the cost of doing business here in 2020.

General Rate Increase – November 15, 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'

This is a rapidly evolving environment and stakeholders need to pay attention and be proactive to stay on top of the situation.

IMO ISSUES NEW POLLUTION MEASURES

The International Maritime Organization ("IMO") issued draft amendments to the MARPOL* convention that would require ships to combine a technical and an operational approach to reduce their carbon intensity. The goal is to reduce carbon intensity of international shipping by 40% by 2030, compared to 2008. The draft amendments will be offered for formal adoption at the Marine Environmental Protection Committee meeting in 2021.

About 90% of the world's physical trade is moved by ship, and the sector spews about as much CO2 into the atmosphere as Germany and France combined.

Visit <https://www.imo.org/en/MediaCentre/PressBriefings/pages/42-MEPC-short-term-measure.aspx> for more information.

PARCEL EXPRESS

USPS ANNOUNCES NEW DOMESTIC COMPETITIVE PRICES FOR 2021

On November 16, 2020 the United States Postal Service filed notice with the Postal Regulatory Commission ("PRC") of price changes to take effect Jan. 24, 2021. From the press release:

* International Convention for the Prevention of Pollution from Ships

The proposed prices, approved by the Postal Service Governors, would raise Shipping Services product prices approximately 3.5 percent for Priority Mail service, and 1.2 percent for Priority Mail Express service. Shipping Services price increases vary by product. Although Mailing Services price increases are based on the consumer price index, Shipping Services prices are primarily adjusted according to market conditions. The Governors believe these new rates will keep the Postal Service competitive while providing the agency with needed revenue.

If favorably reviewed by the PRC, the new prices will include an increase in the price of a Small Flat-Rate Box to \$8.45. The Medium Flat-Rate Box would increase to \$15.50, the Large Flat-Rate Box would increase to \$21.90 and the price of the APO/FPO Large Flat-Rate Box would increase to \$20.40. Regular Flat-Rate Envelopes, Legal Flat-Rate Envelopes, and Padded Flat-Rate Envelopes would increase to \$7.95, \$8.25, and \$8.55 respectively.

The proposed domestic Priority Mail Flat Rate Retail price changes are:

Product	Current	Proposed
Small Flat-Rate Box	\$8.30	\$8.45
Medium Flat-Rate Box	\$15.05	\$15.50
Large Flat-Rate Box	\$21.10	\$21.90
APO/FPO Large Flat-Rate Box	\$19.60	\$20.40
Legal Flat-Rate Envelope	\$8.05	\$8.25
Padded Flat-Rate Envelope	\$8.40	\$8.55

The Postal Service has some of the lowest letter-mail postage rates in the industrialized world and continues to offer a great value in shipping. Unlike some other shippers, the Postal Service does not add surcharges for fuel, residential delivery or regular Saturday delivery.

The PRC will review the prices before they are scheduled to take effect. The complete Postal Service price filings with prices for all products can be found on the PRC site under the Daily Listings section at prc.gov/dockets/daily. For the Shipping Services filing, see Docket No. CP2021-28. The price change tables are also available on the Postal Service's Postal Explorer website at pe.usps.com/PriceChange/Index.

The Postal Service receives no tax dollars for operating expenses and relies on the sale of postage, products and services to fund its operations.

Visit <https://about.usps.com/newsroom/national-releases/2020/1116-usps-announces-new-domestic-prices-for-2021.htm> to view the press release.

Previously, on October 9, 2020 the USPS announced its proposed new prices for 2021, to take effect January 24, 2021. From the press release:

The proposed prices, approved by the Postal Service Board of Governors, would raise Mailing Services product prices approximately 1.8 percent for First-Class Mail and 1.5 percent for other categories. Although Mailing Services price increases are based on the consumer price index, competitive International Shipping Services prices are primarily adjusted according to market conditions. The governors believe these new rates will keep the Postal Service competitive while providing the agency with needed revenue.

If favorably approved by the Postal Regulatory Commission, the new prices will include no increase in the price of a First-Class Mail Forever stamp, which would remain at 55 cents. The single-piece letter additional ounce price would increase to 20 cents, the metered mail 1-ounce price would increase to 51 cents and the prices of postcard stamps would increase to 36 cents. Single-piece 1-ounce flat prices will remain unchanged at \$1.

The proposed Mailing Services price changes include:

Product	Current Prices	Planned Prices
Letters additional ounce(s)	15 cents	20 cents
Letters (metered 1 oz.)	50 cents	36 cents
Domestic Postcards	35 cents	36 cents
Letters (1 oz.)	55 cents	55 cents (no charge)
Flats 1 oz.)	\$1	\$1 no charge

The Postal Service has some of the lowest letter-mail postage rates in the industrialized world and continues to offer a great value in shipping. Unlike some other carriers, the Postal Service does not add surcharges for fuel, residential delivery or regular Saturday delivery.

Visit <https://about.usps.com/newsroom/national-releases/2020/1009-usps-announces-new-prices-for-2021.htm> to view the press release.

UPS ANNOUNCES ITS 2021 GENERAL RATE INCREASE

By Tony Nuzio, ICC Logistics Services, Inc.

Well, it took a while, but we now have all of the 2021 General Rate Increase information from UPS. There is an old saying, “what goes up must come down,” but as we all know that saying does not apply to shipping rates. And, it certainly does not apply here in 2020, as we have seen a slew of surcharges being added to shippers invoices and there is more to come in 2021, as you will see below. In their General Rate Increase announcement, UPS states that these increases, (as in prior years), will average around 4.9%. Of course when we talk about averages, some increases will be less and some increase will be much higher.

We are offering the [full list of rate increases](#) as published by UPS so you can see the actual increases for each of UPS’ services. But be aware, there are more increases coming in early 2021 as you will see below.

The following changes will also be made:

- Effective January 10, 2021, an Additional Handling charge will be applied to any package with its length plus girth combined exceeding 105 inches
- Effective April 11, 2021, Additional Handling and Large Package Surcharge rates for non-Hundredweight Service packages will differ by zone, and effective July 11, 2021, Additional Handling and Large Package Surcharge rates for Hundredweight Service packages will differ by zone.

As we do each and every time FedEx and UPS announce their Annual General Rate Increases, we create for our readers comparison charts comparing the current rates to the increased rates and those are available for [download here](#).

QUESTIONS & ANSWERS

by George Carl Pezold, Esq.

FREIGHT CHARGES – CONTRACTUAL TIME TO PAY

Question: I work for a shipper who contracts with many carriers. There are terms in the master service agreement (“MSA”) that provide a window for a carrier to invoice within 90 days. Do I have the obligation to pay after that 90 days being the contract has been agreed to by both parties?

Answer: It depends on the wording of your contract. Is the 90-day period merely a “target” to encourage prompt invoicing or is it really a “condition” for payment. For example, some contracts have language like this:

In no event shall Carrier submit an invoice more than ninety (90) days after the date of delivery. If invoices are not received by Shipper or its freight payment agent within such ninety (90) day period, such charges shall be deemed waived by Carrier, and Shipper shall not be responsible for payment to Carrier.

This kind of language makes it clear that invoices must be received within the time period as a condition for payment.

FREIGHT CHARGES – CARRIER HOLDING CLAIM FUNDS AGAINST INVOICES

Question: Can a carrier hold claim funds and apply those funds for past due invoices that are not relative to the claim?

Answer: Holding claim payments or setting off claim payments against unpaid freight charges is not “illegal” or in violation of the provisions of 49 CFR Part 370 which govern the processing of loss or damage claims. It really should not be done since the carrier’s liability for loss or damage is separate and distinct

from the shipper's liability for freight charges, but unfortunately it is a common practice and some less-than-truckload carriers actually have provisions in their rules tariffs that permit this.

FREIGHT CHARGES – ENSURING BROKER PAYS CARRIER

Question: We use brokers for our business in some situations. How can we protect ourselves with regards to making sure they pay the carriers their agreed rate for covering our loads?

Answer: Many shippers have transportation agreements with the brokers that they use that require the broker to pay carriers promptly upon receipt of the funds received from the shipper.

However, this is no guarantee that the broker will do so, and unfortunately it is a common problem. In fact, there is a small industry of collection companies like Baxter Bailey that advertises carriers: "Third Party Liability. We collect from or sue Shippers and/or Consignees if their brokers fail to pay you."

FREIGHT CHARGES – TIME LIMITS ON OCEAN FREIGHT CHARGES

Question: Question: What is the statute of limitations on collecting destination charges from a shipper or consignee?

Answer: Are you asking about ocean freight charges on an import/export shipment and a situation where a forwarder has not paid the ocean carrier? If so, and a person wants to bring suit against a shipper or consignee in the U.S., I believe the state time limit for an action based on contract would apply, e.g., in New York it would be six years.

RECENT CASES

COURTS AND FEDERAL PREEMPTION OF BROKERS

There have been a number of recent decisions regarding actions on negligent hiring of a motor carrier by a broker, and whether the Federal Aviation Administration Authorization Act of 1994 ("FAAAA") preemption applies.

In the following actions, the plaintiffs seek to hold the brokers liable for personal injuries and the courts have uniformly rejected the brokers' argument for FAAAA preemption.

The U.S. Court of Appeals for the 9th Circuit reversed a lower court's dismissal of a lawsuit against C.H. Robinson alleging negligent selection of a motor carrier resulting in injuries in a motor vehicle crash. The district court had ruled that the lawsuit fell within the FAAAA preemption because the claim was "related to" C.H. Robinson's services and did not fall within the exception for "the safety regulatory authority of a State with respect to motor vehicles."

Although the appeals court panel agreed that the claim was related to C.H. Robinson's broker services, it ruled that Congress intended to preserve the states' broad power over safety, including not only through legislation and regulation but also through common law damages.

Allen Miller v. C.H. Robinson. Visit <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/09/28/19-15981.pdf> to view the September 28, 2020 decision online.

The Eastern District in Missouri ruled a claim of negligent brokering was not preempted under Missouri law. While the court agreed that Plaintiffs' negligent brokering claims relate to the services of the broker and

fall within the scope of 49 USC 14501(c)(1), the cause of action, for personal injuries resulting from a motor vehicle accident, was subject to the safety regulation exception and therefore not preempted by the FAAAA.

Uhrhan et al v. B&B Cargo, Inc., et al, 4:17-cv-0270 JAR (USDC ED MO, August 5, 2020) available online at <https://www.leagle.com/decision/infeco20200806c43>

The Middle District in Pennsylvania also rejected a broker's claim of preemption for a personal injury loss from a motor vehicle accident. The court concluded that the FAAAA does not preempt general tort law that does not significantly impact the broker's prices, routes, and service. The court also denied summary judgment to the plaintiff, concluding that whether the broker should be held to the liability of a motor carrier was one to be left to the jury because genuine issues of material fact exist as to whether the defendant acted as a broker and whether the driver was an employee of defendant.

Ciotola v. Star Transportation & Trucking, LLC, 3:19-cv-753 (USDC MD PA, August 24, 2020) available online at <https://www.leagle.com/decision/infeco20200825957>.

The District Court in Massachusetts also addressed truck broker liability in a recent decision. This case involved an injury plaintiff sustained while operating a forklift in the motor carrier's trailer during the loading process. The court dismissed the portion of the negligence claim based on the breach of the duty to comply with the rules and regulations, however the negligent hiring portion of the claim was not preempted. The court concluded that plaintiff's

negligent hiring claim is genuinely responsive to safety concerns respecting motor vehicles and thus falls within the safety regulatory authority of the state. "Historically, common law liability has formed the bedrock of state regulation, and common law tort claims have been described as a critical component of the States' traditional ability to protect the health and safety of their citizens."

Therefore, the negligent hiring claim seeks to impose a duty on the service of the broker rather than regulate motor vehicles and therefore was not subject to the preemptive effect of FAAAA.

Skowron v. C.H. Robinson, 4:20-cv-10276-TSH, (USDC D MA, August 14, 2020) available online at <https://www.leagle.com/decision/infeco20200817906#>.

NOTE: While the above cases all involved damages for personal injury claims, the decisions in cases involving other issues have not been quite so uniformly decided. If this is an area of interest and you would like a more in depth discussion of this topic, contact Headquarters for access to a paper by David T. Maloof and Kipp C. Leland of Maloof & Browne LLC titled "Are Claims Against Brokers Preempted by Federal Law?"

TECHNOLOGY

AUTONOMOUS VEHICLES

They're here! Perhaps lost in all the election and pandemic news, Waymo began driverless taxi service to the public in the Phoenix area in early October. This is a real driverless taxi service with no one in the driver's seat, open to anyone who downloads the Waymo One app.

Currently, the service is operating in a roughly 50 square mile area southeast of Phoenix that includes Chandler, Gilbert, Mesa and Tempe with a total population of nearly one million people.

According to a recent Forbes article:

The service is not being tested, it is not just a beta development for a closed group of people, it's not being tried out on a specially designed closed circuit; this is more than just proof of a concept. In other parts of the world, such as China, Japan or Russia, tests are also progressing satisfactorily, and Elon Musk, who is pursuing a completely different development model, announced last July that Tesla's fully autonomous vehicles would be available "very soon".

As the use of driverless vehicles spreads, the thorny issue of liability is going to have to be resolved. Without drivers, responsibility will shift to vehicle makers and software designers. There may or may not be attempts at comprehensive legislation to address the matter. According to a recent article in Fortune:

Instead, liability for robotaxis or automated tractors will be determined as cases through the courts, based on using existing law to the new facts of specific incidents.

"The answer to who's liable is going to be, 'It depends,'" says Bryant Walker Smith, a University of South Carolina law professor who studies liability and autonomous vehicles.

The same process shaped how we think about liability for human drivers. For instance, Smith says that in the 1930s and '40s, some accident victims struck by hired taxis tried to sue the passengers rather than the drivers. That approach has largely disappeared because it was rejected by courts.

Smith says that judging liability in individual accidents involving self-driving vehicles should come down to several well-established legal principles. At the highest level, autonomous vehicles will be subject to 'vicarious liability,' the idea that companies are responsible for the actions of their employees and the quality of the products they produce.

"Did a wheel fall off? Was a stop sign miscoded [in the system]? Did the LIDAR fail?" says Smith, referring to the laser-based radar used by many autonomous systems. If an obvious hardware or software failure caused a crash, a vehicle's manufacturer would probably end up being liable.

But many accidents involving human drivers are caused by subtler failures of judgment, and Smith expects courts to use a handful of formulas to evaluate how the technology responded. The first, he says, will be: "Did this system perform as well as a competent human driver? If not, that's going to suggest there was a defect."

That standard may be applied to a system's overall performance rather than its actions in a specific situation. The U.S. National Highway Traffic Safety Administration set the table for that criteria in 2017, when it touted the overall safety benefits of Tesla's Autopilot system while clearing the system of fault in a fatal 2016 crash.

Second, Smith says, courts assessing liability will look at whether a specific system performs as well or better than a comparable system. That's already a key measure in automotive recall and safety-monitoring programs.

Finally, Smith hopes courts will adopt one novel legal test when evaluating self-driving cars: "Did the system perform better than the last one that caused this harm?"

The ability to constantly learn, after all, is one of the core features that promise to make robots safer drivers than humans. Rather than relying on one person's experience (or their slow human reflexes), autonomous systems will learn from data gathered by thousands of other vehicles. That technological promise aligns with the legal principle of 'foreseeability'—the question of whether a civil defendant should have predicted a particular risk.

“Once something has happened, it has been foreseen,” says Smith. The makers of autonomous systems, he argues, shouldn’t “get to make the same mistake twice.”

Auto manufacturers are as concerned with their reputation as with straightforward legal liability, though. Automakers have long competed on safety, and they’re still out to win the battle for autonomy. But they’re also collaborating on safety standards for the systems through the Automated Vehicle Safety Consortium, which includes Ford, GM, Toyota, Uber, and Lyft.

To view the Forbes article, visit <https://www.forbes.com/sites/enriquedans/2020/10/11/you-may-not-have-heard-but-the-autonomous-vehicle-has-nowarrived/#3fa89c764002>.

Visit <https://fortune.com/2020/11/21/self-driving-car-crash-liability-who-is-liable/> to view the Fortune article.

ROBOTS ON THE JOB

It’s not just self-driving cars. While robots have a long history in manufacturing, they are now beginning to be deployed on-site in the construction trades. Canvas is a company that has built a robot using artificial intelligence that is being used in several construction sites in San Francisco. According to a recent article on Wired.com:

About the size of a kitchen stove, the four-wheeled robot navigates an unfinished building carrying laser scanners and a robotic arm fitted to a vertical platform. When placed in a room, the robot scans the unfinished walls using lidar, then gets to work smoothing the surface before applying a near perfect layer of drywall compound; sensors help it steer clear of human workers.

While the robot requires human oversight, its operator does not need to be an expert drywaller or roboticist.

As technology advances, it will be adapted to, and adopted by, more areas of human endeavor.

Visit <https://www.wired.com/story/robots-invade-construction-site/> to view Wired.com article.

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 is currently scheduled 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

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:

- **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.

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

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

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

New York State residents sales tax applies.

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

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

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