TRANSDIGEST

Transportation & Logistics Council, Inc.

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T&LC Interactive "Virtual Workshops"

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NEW! IN A SOFT COVER EDITION!

FREIGHT CLAIMS IN PLAIN ENGLISH (4TH ED.)

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GUEST EDITORIAL

CHANGE IS NECESSARY

By Jon Gehrts, Director Software & Carrier Development
UniPro Foodservice, Inc.

January is normally a great month for an editorial, the previous year can be recapped or the current year can be projected. This January it is not that easy. Last year was a very difficult year for many of us, both professionally and personally, and is worthy of a novel more so than an editorial. Looking ahead to 2021 there are more questions than answers and we are still a long way from the "normal" of pre-COVID.

The one word that comes to mind when reviewing 2020 and looking ahead is change. There has been tremendous change over the past nine months, change has been necessary for most industries and depending on the industry, the change can be for completely different reasons. Supply chains were in a frenzy for most of 2020. For transportation providers, it has forced change to maximize the market conditions and generate as much revenue as possible while being able to become more selective in the freight accepted by the shippers. Shippers have been forced to change as order sizes fluctuated based on product availability, and the market transitioned to a spot market, increasing rates.

The travel industry has been hit the hardest, and businesses have been forced to change for survival. Corporate and leisure travel came to a screeching halt in 2020 and hotels and restaurants had to be creative just to keep the doors open. Hotels began promoting curbside pick-up for food and alcohol as dining rooms and liquor stores were forced to close, sleeping rooms were marketed to home office workers as an option for a quiet workspace. Restaurants had to quickly pivot to curbside business and rework menus to accommodate the changing business. Suppliers were forced to change manufacturing to support the change in demand from institutional packaging to retail packaging in order to accommodate the demand shift from restaurants to grocery stores.

Who Moved My Cheese? (Spencer Johnson 1998) was about change, and many companies quickly promoted the book to employees. I would guess the majority of you reading this now have either read the book or at least have heard of it. Twenty years ago change was promoted and embraced, but there was not the same sense of urgency as occurred during the past nine months. The companies that can rapidly change to meet the needs of their customers and current government regulations will be the companies that come out of the pandemic the fastest, with the greatest opportunity for success. The companies that continue to change after the pandemic and are diversifying their businesses will be the best prepared for the next disruption.

Change has often been viewed as difficult or even scary, but as we are learning it is completely necessary and should be embraced. What can you change professionally and personally?

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.

We hope you would agree that these are top experts in their field presenting on topics that we feel are timely and relevant for the members of the T&LC. As we continue into 2021, we will be planning additional Virtual Workshops on a regular basis. For more information and updates, visit https://www.tlcouncil.org/.

Upcoming Workshops

LOSS PREVENTION AND MITIGATION OF DAMAGES

February 10, 2021 at 1:00pm EST – 90-minute session

Cargo damage and "shortages" due to theft and pilferage cost shippers and carriers millions every year. Experts will discuss how to avoid or minimize such losses. And, when losses do occur - how damages can be mitigated by prompt action including inspection, repair and salvage. Also covered will be issues involving foods, product liability, brand and trademark considerations.

MODERATOR

Martha J. Payne, Esq., Benesch Friedlander Coplan & Aronoff LLP

PANELISTS

Glenn Master, Senior Director, Loss Prevention Global Supply Chain/Ecommerce, Pitney Bowes
Daniel I. Hill, CPP ABF Freight, Director, Cargo Claims & Prevention
Paul J. Kozacky, Esq. - Kozacky Weitzel McGrath, P.C.

THE CRYSTAL BALL - TRANSPORTATION & LOGISTICS AFTER COVID

February 12, 2021 at 1:00pm EST – 90-minute session

COVID-19 has completely changed the transportation and distribution of goods in the United States. Many traditional habits, practices, laws and regulations no longer "fit" what is happening and even the structure of the industry has changed. Leading experts discuss what they foresee and the challenges that lie ahead.

MODERATOR

William D. Taylor, Partner, Hanson Bridgett LLP

PANELISTS

William B. Cassidy, Senior Editor, The Journal of Commerce
Nikhil Sathe, Managing Director, Logisyn Advisors
Henry E. Seaton, Esq., Seaton & Husk, L.P.

T&LC SPONSORSHIP OPPORTUNITIES

You can help the Transportation & Logistics Council grow, succeed & fulfill its educational mission by sponsoring our Virtual Workshops!

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- Your logo included in all advertising emails
- Your company listed in our monthly TRANSDIGEST

Silver - $750

- Your logo on our website with a link
- Your logo included in all advertising emails

Bronze - $500

- Your logo included in all advertising emails

Sponsorships are for 5 T&LC Virtual Workshops. Sponsors will also be announced during the live seminar.

Link to **Sponsorship Form**

Or for more information contact:

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NEW MEMBERS – REGULAR MEMBERS

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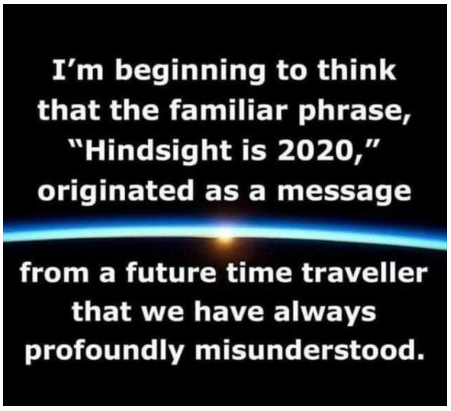
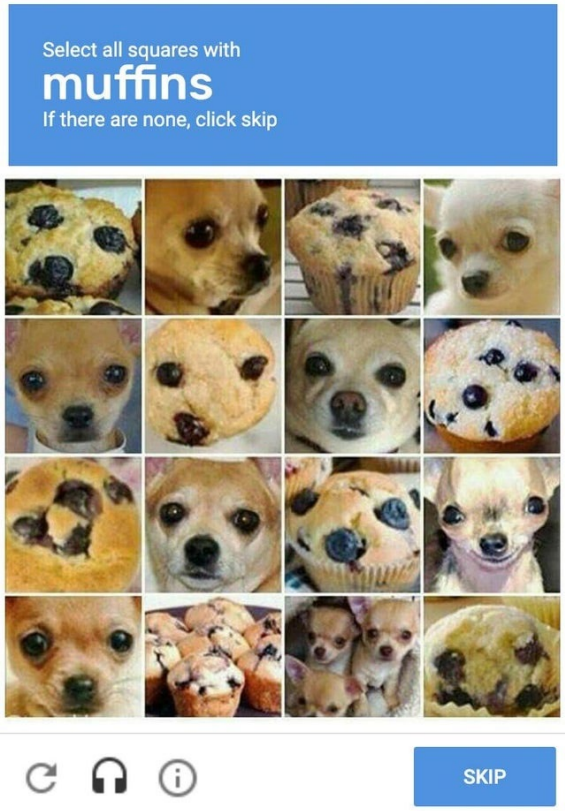
HUMOR

Safety, Security & Perspective



Cop: You were going fast.
Me: I was just trying to keep up with traffic.
Cop: There isn't any.
Me: I know! That's how far behind I am.



AIR

AIR TAXI SERVICE TRIALS IN FRANCE

At an airport on the outskirts of Paris, France, there will be a series of tests this summer aimed at the introduction of urban air taxis and drones in the French capital. The trials are being conducted in partnership with the French civil aviation authority and with the support of the European Union Aviation Safety Agency and Eurocontrol.

https://www.traffictechnologytoday.com/news/multimodal-systems/paris-to-launch-air-taxi-trials-in-june-2021.html

INTERNATIONAL

DHS TO SCAN 100% OF INBOUND CROSS-BORDER VEHICLE TRAFFIC

The Securing America's Ports Act (Public Law 116-299) ("SAPA") became law January 5, 2021. From the summary:

> This bill requires the Department of Homeland Security ("DHS") to report to Congress a plan to expeditiously scan all commercial and passenger vehicles entering the United States at a land port of entry using large-scale non-intrusive inspection systems, such as X-ray and gamma-ray imaging systems, or similar technology. The plan shall include elements such as (1) an inventory of such systems currently in use, (2) the estimated costs of achieving a 100% scanning rate, and (3) the anticipated impact that increasing the scanning rate will have on wait times at land ports of entry. DHS shall periodically report to Congress on the progress in implementing the plan.
>
> DHS shall also research and develop technology enhancements to inspection areas at land ports of entry.

While this is not a new idea, and the Transportation Security Administration ("TSA") has been able to screen all cargo carried on passenger aircraft for explosives and other potential safety threats prior to loading, since 2010, border crossing scanning is a different proposition.

Airports are a controlled and secure environment, where everyone and everything is already subject to security measures. There is a finite amount of traffic, and items are limited in size, generally ranging from small personal goods to aircraft shipping containers (usually less than twenty feet). Land borders are different and the scanning environment more complex. Not only are people crossing with their personal stuff, but cars, trucks, buses, trailers and trains need to be inspected.

Of note, according to the FY19 CBP Trade and Travel Report:

> CBP law enforcement personnel use non-intrusive inspection systems (NII) and radiation detection equipment to effectively and efficiently inspect conveyances and vehicles for the presence of contraband and illicit radiological materials. The average NII examination of a cargo container takes approximately 8 minutes, while a physical inspection takes 120 minutes on average. The time saved using NII and radiation detection equipment saves CBP $1 billion in annual operations and saves industry $5.8 billion to $17.5 billion in costs due to delays.

> In FY2019, CBP officers used 320 large-scale NII systems at land and sea ports of entry to perform approximately 6.6 million examinations, which resulted in 3,016 seizures, a 21 percent increase over FY2018. These results led to interdicting 316,203 pounds of narcotics, a 58 percent increase over FY2018; $3 million in undeclared U.S. currency, 1,655 weapons; and identifying 200 undeclared passengers hidden within commercial cargo. More than 94 percent of these seizures and 98 percent of the total pounds of narcotics seized occurred by scanning approximately 15 percent of the commercial cargo and one percent of vehicles arriving at land ports of entry on the Southwest border.

So, if CBP is currently (according to the above) only scanning about 15 percent of commercial cargo and 1 percent of personal vehicles crossing the Southwest border, there would need to be a huge increase in capacity in order to comply with SAPA.

Visit https://www.congress.gov/bill/116th-congress/house-bill/5273 to view the SAPA and visit https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/CBP%20FY2019%20Trade%20and%20Travel%20Report.pdf to view the FY19 CBP Trade and Travel Report.

CORONAVIRUS

One year ago, in the January TRANSDIGEST #263 we printed the following:

> It is still way too early to know what the ultimate outcome will be of the recent outbreak of the coronavirus, but it has already impacted stock markets, trade and travel around the world. The following link provides an up to the minute interactive map of cases around the world.
>
> https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6

Now, a year later, we have suffered over two million deaths worldwide, including over 400,000 in the U.S., businesses have been crippled and economies crushed. While several vaccines have been rolled out, with more coming, the logistics of actually getting people vaccinated have faced some hurdles. In addition, the virus has been mutating (as viruses always do), raising questions of the efficacy of the vaccines against the new varieties.

In the Spanish Flu pandemic of 1918, there were three waves before the disease ran its course. We appear to be somewhere in a second wave of this pandemic and still have no clear understanding of what the ultimate outcome will be.

MOTOR

DOL FINAL RULE ON INDEPENDENT CONTRACTOR STATUS UNDER FLSA

On January 6, 2021 the U.S. Department of Labor announced its final rule clarifying the standard for employee versus independent contractor status under the Fair Labor Standards Act.[1]

[1] A caution note on the DoL website states the following: **Please note:** As of January 20, 2021, information in some news releases may be out of date or not reflect current policies.

According to the January 6, 2021 news release:

"This rule brings long-needed clarity for American workers and employers," said U.S. Secretary of Labor Eugene Scalia. "Sharpening the test to determine who is an independent contractor under the Fair Labor Standards Act makes it easier to identify employees covered by the Act, while recognizing and respecting the entrepreneurial spirit of workers who choose to pursue the freedom associated with being an independent contractor."

"Streamlining and clarifying the test to identify independent contractors will reduce worker misclassification, reduce litigation, increase efficiency, and increase job satisfaction and flexibility," said Wage and Hour Division Administrator Cheryl Stanton. "The rule we announced today continues our work to simplify the compliance landscape for businesses and to improve conditions for workers. The real-life examples included in the rule provide even greater clarity for the workforce."

The Final Rule includes the following clarifications:

- Reaffirms an "economic reality" test to determine whether an individual is in business for him or herself (independent contractor) or is economically dependent on a potential employer for work (FLSA employee).
- Identifies and explains two "core factors" that are most probative to the question of whether a worker is economically dependent on someone else's business or is in business for him or herself:
    - The nature and degree of control over the work.
    - The worker's opportunity for profit or loss based on initiative and/or investment.
- Identifies three other factors that may serve as additional guideposts in the analysis, particularly when the two core factors do not point to the same classification. The factors are:
    - The amount of skill required for the work.
    - The degree of permanence of the working relationship between the worker and the potential employer.
    - Whether the work is part of an integrated unit of production.
- The actual practice of the worker and the potential employer is more relevant than what may be contractually or theoretically possible.
- Provides six fact-specific examples applying the factors.

The rule will take effect 60 days after publication on the Federal Register, on March 8, 2021.

WHD's mission is to promote and achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce. WHD enforces federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the FLSA. WHD also enforces the paid sick leave and expanded family and medical leave requirements of the Families First Coronavirus Response Act, the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the Family and Medical Leave Act, wage garnishment provisions of the Consumer Credit Protection Act, and a number of employment standards and worker protections as provided in several immigration related statutes. Additionally, WHD administers and enforces the prevailing wage requirements of the Davis Bacon Act and the Service Contract

Act and other statutes applicable to Federal contracts for construction and for the provision of goods and services.

The mission of the Department of Labor is to foster, promote and develop the welfare of the wage earners, job seekers and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.

Visit https://www.dol.gov/newsroom/releases/whd/whd20210106 for more information.

DOUBLE PAYMENT COLLECTIONS

It seems there is another collection outfit in Mississippi that is attempting to collect freight charges the carrier never received but the shipper paid to a third party (similar to Baxter Bailey). The firm of Alexander, Winton & Associates, Inc. of Olive Branch, MS claims to be "assignees" of Bore Express and has been sending out collection letters.

Any readers who have received demands from this collection company are asked to contact headquarters so we can collect more details.

ELECTRIC TRUCK MANDATES

Following the lead set by California last summer seeking to reduce emissions and mandating electric truck sales, a growing number of states are following suit. In July 2020, fifteen states and the District of Columbia signed a Memorandum of Understanding ("MOU") to collaborate on efforts to limit pollution and greenhouse gas emissions from commercial trucks.[2] In addition, thirty-seven major companies and investors have endorsed the MOU.

In June 2020 California approved the world's first electric truck sales mandate, the Advanced Clean Trucks ("ACT") Regulation, which requires manufacturers to sell increasing numbers of zero emission Class 4-8 vehicles.

At the December 21, 2020 New Jersey Department of Environmental Protection ("DEP") meeting of the New Jersey Protecting Against Climate Threats ("PACT") it was announced, amongst other things, that:

- CA's rules, to be adopted by reference, apply to Class 2b (delivery vans) to Class 8 (long haul tractor trailers) of all fuel types
  - Manufacturer zero-emission truck sales requirement, starting with model year 2025 in NJ and increasing through model year 2035.
- Will also include a reporting requirement for large fleet owners to support future development of zero emission fleet requirements and assess infrastructure needs.

The NJ DEP also is drafting verbiage to adopt California's Heavy-Duty Omnibus rule, which slashes pollutants from new diesel truck sales. So while the California ACT rule aims to phase out sales of diesel trucks, in the interim, new diesel trucks will have to adhere to stricter tailpipe emissions regulations.

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[2] The signatories are California, Colorado, Connecticut, the District of Columbia, Hawaii, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Washington and Vermont. Visit https://www.nescaum.org/documents/multistate-truck-zev-governors-mou-20200714.pdf to view the MOU.

Visit https://ww2.arb.ca.gov/our-work/programs/advanced-clean-trucks/about for more information on California's ACT Regulation and https://ww2.arb.ca.gov/rulemaking/2020/hdomnibuslownox and https://ww2.arb.ca.gov/our-work/programs/heavy-duty-low-nox/about for more on its Heavy-Duty Omnibus rule.

Visit https://www.nj.gov/dep/workgroups/docs/njpact-20201221-pres.pdf for NJ PACT information.

DRIVER CLASSIFICATION

Since the passage of Proposition 22 ("Prop22") in California, the referendum that took people and food delivery services out from under the driver classification rules of Assembly Bill 5 ("AB5"), there have been several impacts. Last month we reported that on Uber's ride-hailing app and food delivery service (Uber Eats), there is was a new fee – the California Driver Benefits Fee (which applies only to rides and deliveries in the state).

Now it appears that Albertsons and its subsidiaries (which includes Vons, Safeway, and others) will take advantage of the change and outsource the delivery of groceries to independent contractors working for companies like DoorDash and Instacart, and fire in-house delivery drivers.

Albertsons Companies will start eliminating the positions on February 27, 2021.

Visit https://www.10news.com/news/local-news/albertsons-companies-to-eliminate-delivery-driver-positions-starting-late-in-february for more information.

FOOD SAFETY – BROKEN OR MISSING SEALS

By George Carl Pezold

[NOTE: We are reprinting this article because these issues keep coming up and because of the importance of the subject material.]

The Coronavirus pandemic has made us all very aware about the threat of possible exposure to contagious diseases. Viruses, bacteria, fungus, mold and other harmful substances can be anywhere and can travel around the world.

So what about food safety?

A controversial area of the law is the effect of broken or missing seals during the transportation of foods and food products. Virtually all shippers of foods and food products have strict requirements that carriers' trailers must be sealed at origin and that the seals may not be broken until the shipment is delivered to the consignee. Instructions may be noted on bills of lading and very often included in rate confirmations (by brokers) or in formal transportation contracts. Consignees likewise have such requirements and will often reject any food shipment that arrives with a missing or broken seal.

Often these shipments are rejected without any inspection or testing of the contents of the trailer, and sometimes not even after the trailer has been returned to the origin which could be a manufacturer, distributor or warehouse. And often the shipper or owner of the goods will demand that they be destroyed, so that they cannot enter the stream of commerce or be sold as distressed merchandise.

Clearly, contamination of food and food-related products intended for human consumption is a serious matter.

When loss and damage claims are filed the claimant will usually assert the full invoice value to its customer as the proper measure of damage on the grounds that there was no way to conclusively determine

if there was any contamination or adulteration of the product, that the goods were worthless because it would impossible or illegal to salvage or sell them.

On the other hand, carriers (and their insurers) will usually decline such claims arguing that there is no proof of any actual damage and that the claimant has failed to mitigate the loss, or will demand a "salvage allowance" even though there was no salvage.

So what are the laws and legal principles applicable to these disputes?

STATUTES AND REGULATIONS

The Federal Food, Drug and Cosmetic Act – Title 21 of the United States Code ("U.S.C.")

21 U.S.C. § 321.Definitions; generally

For the purposes of this chapter—

(f) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

21 U.S.C. § 331, Prohibited Acts

The following acts and the causing thereof are prohibited:

(a)The introduction or delivery for introduction into interstate commerce of any food, drug, device, tobacco product, or cosmetic that is adulterated or misbranded.

21 U.S.C. § 342. Adulterated food

A food shall be deemed to be adulterated—

(a)(4) if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(i) If it is transported or offered for transport by a shipper, carrier by motor vehicle or rail vehicle, receiver, or any other person engaged in the transportation of food under conditions that are not in compliance with regulations under section 350e of this title.

Title 21 of the Code of Federal Regulations, Food and Drugs

There appears to be no reference to seals or any requirement to seal trailers or other vehicles that transport food or food-related products in the FDA regulations. This may seem strange in view of Congressional concerns voiced in enacting recent legislation such as the Sanitary Food Transportation Act of 2005 and the Food Safety Modernization Act of 2011.

COURT DECISIONS

Even though this situation does occur quite frequently, it is interesting to note that there are relatively few reported court decisions dealing with broken or missing seals and shipments of food or food products.

The first question is "can delivery with a broken or missing seal - ALONE - constitute "actual loss" or damage within the meaning of the Carmack amendment?"

One case directly on point is *Seaboard Allied Milling Corp v. Consolidated Rail Corp.*, (unreported, D.C.D.C. Civ. No. 79-0828, July 22, 1980), Aff'd 656 F2d 900 (D.C. Cir. 1981). This involved a covered hopper car containing approximately 100,000 pounds of flour shipped from Seaboard Milling's plant in

Buffalo, New York to the Downingtown, Pennsylvania Bakery of Pepperidge Farm. When the car was loaded all of the hatches were covered and sealed to ensure that the flour would not be exposed to contamination or adulteration during transport. Upon arrival at Downingtown it was discovered that a forward hatch had been opened and its seals removed, thus exposing the flour to possible contamination and Pepperidge Farm rejected the carload of flour.

Pepperidge Farm sued Conrail and the issues at trial were whether the plaintiff had established its prima facie case by proving delivery in good condition, arrival at the destination in damaged condition, and the amount of damages incurred, as set forth in *Missouri Pacific Railroad Co. v. Elmore & Stahl*, 377 U.S. 134 (1964). As to the first element, good condition at origin, the Court stated:

> . . . Plaintiff's strict and established program of quality control prior to and during the loading process in conjunction with periodic inspections and sampling of the flour affords adequate evidence establishing that the sealed flour was delivered to the carrier in good condition.

As to the second element, actual damage to the goods upon arrival, the Court found that the Plaintiff had successfully met its burden, stating:

> The actual damage to the flour occurred at the moment the hatch was opened by some unknown vandal, thereby destroying the commercial value of this shipment. Neither Plaintiff nor Pepperidge Farm could use this flour without violating strict Federal law. Under Section 331 of the Federal Food, Drug and Cosmetic Act, it is unlawful to introduce into interstate commerce any food which has been adulterated. 21 U.S.C. § 331(a). A food is deemed to be adulterated:
>
> > "if it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby *it may have been rendered injurious to health*." 21 U.S.C. § 342(a)(4). (Emphasis added.)
>
> The prohibition extends to the use of adulterated components of food articles, 21 U.S.C. § 321(f)(3), and flour used for baking falls within the ambit of this Act. *United States v. Cassaro, Inc.*, 443 F.2d 153 (1st Cir. 1971).
>
> Therefore, because of the peculiar properties indigenous to flour, the only fail-safe method to test the flour for possible contamination would effectively destroy the entire shipment. The economic value of the flour contained in car GACX 42188 was irreparably destroyed at the moment of the unauthorized entry.

As to the third element, the amount of damage, the court awarded the contract (invoice) amount, stating:

> . . . this Court finds Seaboard Milling incurred damages of $9,448.11, and the price of the flour as set forth in the contract between Seaboard Milling and Pepperidge Farm. . .
>
> Accordingly, judgment shall be entered for the Plaintiff for damages of $9,448.11 from this date, plus interest and costs.

A more recent case is *Oshkosh Storage Co. v. Kraze Trucking LLC*, 65 F.Supp.3d 634 (E.D. Wis. 2014), recon. den., 2014 WL 7146405 (E.D. Wis. 2014). This involved a shipment of kosher cheddar cheese from Litchfield, Minnesota to Oshkosh Storage in Oshkosh, Wisconsin. The shipment was custom made according to the specifications of a customer, Dairiconcepts, and was sealed at origin. The driver contended that when he arrived on the Oshkosh premises, the load was sealed. He was given instruction sheets, one of which indicated that Oshkosh Storage may reject a load of food products for various reasons, including "[n]o seal, broken seal, or seal does not match manifest" and was told to "pull up around the north side of the building at the third set of dock doors and pull up by the stairway and our warehouse guy will get [Daniels'] paperwork and break the seal." There were also signs in the check-in area which stated: "Please DO NOT break the seal

on the trailer. Our warehouse staff will verify the seal number and break the seal prior to unloading." However, the driver prematurely broke the trailer seal, opened the trailer bay doors, and backed his trailer into an open loading dock. When the broken seal was discovered Oshkosh Storage immediately contacted the receiving customer, Dairiconcepts, which instructed it to reject the load. Thereafter, Great West Casualty, Kraze's insurer, ultimately sold the rejected load for $51,000, a sum $19,278 less than the original invoice price, which was $70,278.

The carrier did not question whether the cheese was in good condition when tendered to it at origin, but argued that the plaintiff had not proven that there was any damage upon delivery. The court rejected this argument stating:

> Kraze does not assert that Oshkosh Storage failed to deliver the cheese to Kraze in good condition. The central dispute between the parties is whether Kraze's premature removal of the seal caused "actual loss or injury" or "damage" to the delivered product. Oshkosh Storage asserts that the value of the cheese was $70,278.61 if it had arrived with a verified seal but that its value instantly decreased when the seal was broken. Oshkosh Storage President Carl Doemel testifies that his company's verification of an intact seal is part of the value of the load because customers demand this for assurance of product integrity. . . In Oshkosh Storage's view, the reduction in value constitutes damage under the plain meaning of the term. Kraze counters that a broken seal is not prima facie evidence of damaged goods because it does not indicate whether the delivered goods were actually tampered with or harmed in any way. . .
>
> The Court concludes that Oshkosh Storage has the better argument. Although the Carmack Amendment does not explicitly define "actual loss or injury," a decrease in product value is unquestionably a loss or injury. . . Here, it is undisputed that Dairiconcepts rejected the load solely because of the broken seal and that the cheese was later sold at a lower price. Kraze suggests that the broken seal did not cause the cheese to lose value and that Oshkosh Storage simply obtained a better price than Great West Casualty. Absent evidence that Great West sold the cheese at a discounted price for a particular reason, however, the Court presumes that Great West sold the cheese for its fair market value. Oshkosh Storage was therefore damaged in the amount of $19,278.61.

The Court awarded Oshkosh damages in amount of $19,278. (It should be noted that this was in addition to the $51,000 proceeds from the sale by Great West Casualty, Kraze's insurer, so that the total value of the cheese which was $70,278 was ultimately recovered.)

So, what can be learned from these two decisions? First, both judges recognized the legal principle that delivery with a missing or broken seal constitutes "actual loss or injury" within the meaning of the Carmack Amendment, 49 U.S.C. § 14706. Second, the amount of the "actual loss" can be determined differently based on the specific facts of the case. In one case, salvage was not allowed and the claimant recovered its contract (invoice) price, and in the other the parties allowed the goods to be salvaged and the claimant received the salvage amount plus the diminution of value (for the same result).

CONTRACTUAL PROVISIONS

It has become quite common that food shippers enter into formal transportation contracts with carriers that specifically address the use of seals and the consequences of delivery with a missing or broken seal. And, likewise, carriers usually will want to include contract language that says a broken or missing seal is insufficient and that there must be proof of actual physical damage to goods. Here are some examples of language in typical food shipper contracts:

> Food Security. Carrier acknowledges that exposure of food and related products to possible contamination by foreign substances may render product worthless and/or unsuitable for its intended use. Shipments with missing or broken seals, or an unexplained break in the chain of custody, may be rejected by the consignee due to the possibility of adulteration or contamination.
>
> OR
>
> Sealed shipments. If any such shipment arrives at destination: 1) with a broken seal; 2) with evidence of tampering suggesting the shipment was accessed by unauthorized persons or otherwise subjected to contamination, infestation, or other sources with the potential to render the shipment injurious to health, the typical burden of proof imposed by Carmack shall not apply and instead Shipper, in its sole discretion, may determine that the shipment may have been rendered injurious to health and may reject the entire shipment or any portion thereof.

Carriers, on the other hand, will often want to add language such as this:

> Shipper must show actual damage or contamination to the cargo when filing a cargo claim, including with respect to loads refused or rejected by Shipper or the consignee because of a missing, broken, or unsatisfactory seal.
>
> OR
>
> Shipper will use all reasonable efforts to mitigate its loss by seeking to salvage any damaged, injured or expired shipments. If Shipper refuses to mitigate its loss by seeking to salvage, then Carrier will be entitled to a reasonable salvage allowance.

FOOD-RELATED GOODS

Just the other day we received an email from a broker who said that he "just got hit with claim on empty food cans that our manufacturer is refusing to receive because when the warehouse they shipped them to refused them, they were returned without a seal." He explained, "Long and short, load went from Oakdale, CA to Kent, WA. Kent refused as a few cans had shifted. Upon return to Oakdale, trailer had no seal and manufacturer claiming a full loss as "potential contamination" and driver's insurance (Progressive) is declining "contamination" coverage. I'm trying to get our client, the can manufacturer, to physically inspect and they are refusing. Any suggestions?"

What about food-related items such as bottles, cans, plastic "clamshells" or other containers, wrapping materials, covers and caps, etc.? Manufacturers of these products and their customers also have strict rules and sanitary policies that require seal integrity.

While it does not appear that this situation has been the subject of any reported court decisions, the answer may lie in the wording of the definition of "food" in 21 U.S.C. § 321(f), which states: "The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article." Certainly it would seem that food-related items such as those described above would be considered as "articles" within the definition of the statute.

"THE LAW OF THE LAND AND THE LAW OF THE JUNGLE"

On the one hand we have the truck driver who says "There's nothing wrong with this stuff – I'll take it home and me and the kids will be happy to eat it!" On the other we have the supervisor on the dock who says "Can't you see that sign right there on the building! We don't accept any food shipments without a seal!"

Shippers and their customers believe that they have the right and the duty to enforce food security requirements out of legitimate concerns about exposure to violating the law, the possibility of adulterated or

contaminated food entering the stream of commerce, and potential product liability. Carriers argue that in many cases there is no inspection, testing or evidence of the condition of the product, and that the shipper has to prove actual damage and has to mitigate the loss.

It certainly would seem that in some cases there may be a middle ground for avoiding or resolving these disputes. For example, how is the product packaged and would it be reasonable to assume that the individual packages contained in a properly sealed carton should be adequately protected from any foreign substances? If the product is not permanently labeled with a brand or trademark, is there a secondary market?

In may be observed that, in view of the paucity of reported court decisions as noted above, it would appear many of these disputes are resolved by negotiation or settlement under the "Law of the Jungle", thus avoiding costly and time-consuming litigation involving the "Law of the Land".

Some final points:

1. Shippers (and consignees) must make it absolutely clear in advance of the consequences of delivery with a broken or missing seal.
2. Carriers have to respect shippers' concerns and their food safety policies and procedures, and ensure that drivers are aware of the need to protect seal integrity.
3. Both parties should be willing to examine all of the facts in each case, and see if there can be some amicable solution.

OCEAN

OCEAN FREIGHT GRI - DÉJÀ VU – AGAIN!

Ocean Freight Rates Continue to Climb

by Tony Nuzio, ICC Logistics Services

Attention Importers, here's a surprise Happy New Year gift from the ocean freight carriers transporting cargo from Asia to North America. The reality is that this really is not much of a surprise to anyone, with shipping volumes still very strong the ocean carriers see this as an opportune time to file for another General Rate Increase. We've been saying for quite a while now that every shipper's freight budgets are going to be tested to the limit and this General Rate Increase continues to support that point. Perhaps it's time to take a long hard look at global freight expenses by utilizing an independent, comprehensive benchmarking process to see just how much your company can actually save.

Effective February 1, 2021 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:

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′

PREMIUM SURCHARGES SEND TRANS-PAC RATES TO RECORD HIGHS

by Tony Nuzio, ICC Logistics Services

As we enter 2021, the real question that importers from the Far East MUST ask themselves is, how can we possibly continue to pay these skyrocketing ocean rates? The answer of course is, what choice do they have. But a much deeper question is how will they or should they handle the budget process for 2021.

Budgets are typically created for the upcoming business year. In some cases they are based on the calendar year and in some cases they are formed to meet a fiscal year calendar instead. Regardless of the timing, setting a hard and fast number for a 12 month period is not going to work for 2021. It is clear that a monthly or quarterly budgeting process may be the best way to go in 2021.

Follow the link to read an article written by Bill Mongelluzzo, Senior Editor at the Journal of Commerce, that provides some very interesting facts about the current, and, we suspect, the future ocean freight rate marketplace. https://icclogistics.com/guest-post-premium-surcharges-send-trans-pac-rates-to-record-highs/

VERY LOW-SULFUR FUEL OIL ISSUES

Things are never simple. Categorize the following under "the best laid plans" and the "law of unintended consequences."

In an effort to reduce the adverse impacts of sulfur compounds in combustion by-products by 80%, the International Maritime Organization ("IMO") issued a mandate implementing a global sulfur limit of 0.05% m/m (mass/mass) that went into effect January, 2020. Now, just over a year since its implementation, the results are becoming apparent.

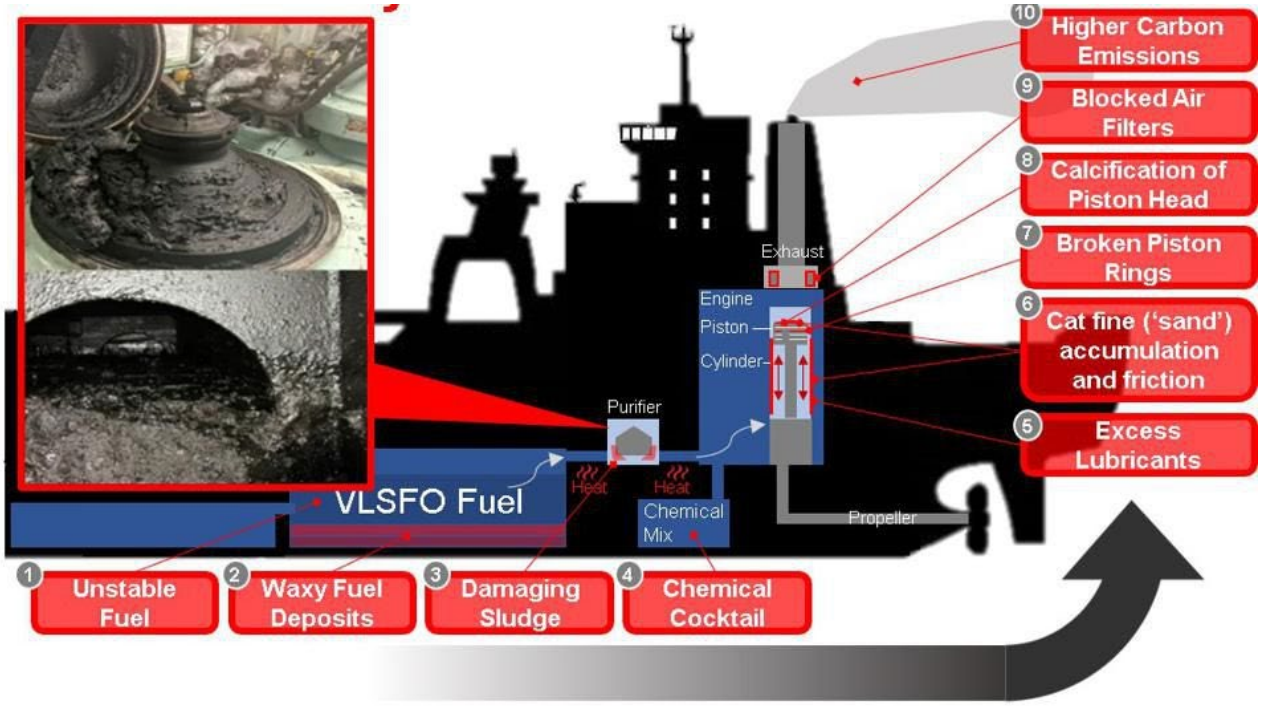
Under the mandate, there were basically three options by which shipping lines could comply: retrofit scrubbers to clean exhaust (exhaust gas cleaning system ("EGCS")); use alternate fuels or sources of power such as liquefied natural gas ("LNG")); or use bunker fuel formulated to contain less sulfur (very low-sulfur fuel oil ("VLSFO")).

According to a recent series of articles in *Forbes*, VLSFO is being "used by over 70% of major ships around the world. This new type of fuel is responsible for causing serious mechanical and engine failures that have led to shipping disasters, and is more polluting than the fuels used by ships before."

After over a year of VLSFO use, Chevron Marine Lubricants has reported that some types of VLSFO are causing damage to cylinder liners in ships' engines, particularly in older, two-stroke engines. What they reported was increased scuffing of the cylinder walls (metal on metal wear) and build ups of iron oxide deposits.

Another issue, identified by ship engine manufacturers Wärtsilä Marine Power and MAN-Energy Solutions, involves excessive sludge buildup resulting from fuel instability, leading to the clogging of fuel separators and fuel filters. They also reported increased wear and tear on ship engines.

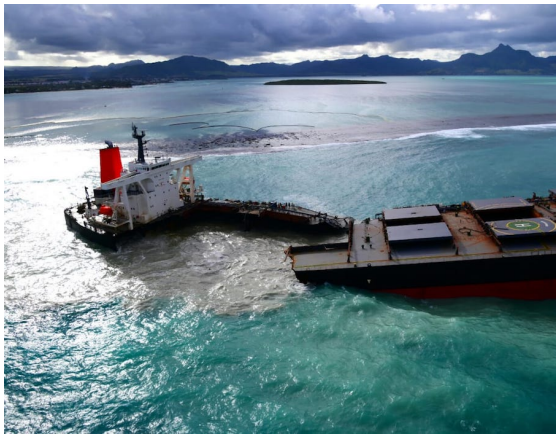
The following diagram lists 10 deadly issues with VLSFO.



In addition to engine risks associated with VLSFO use, environmental groups consider VLSFO fuels a "super pollutant" according to the Clean Artic Alliance. They have raised two issues in particular, increased toxicity and "black carbon" pollution. According to the Alliance, "black carbon ("BC") has been described as a short-lived climate forcer, second only to CO2 in terms of international shipping's contribution to global climate. It represents 7% to 21% of shipping's overall GHG (greenhouse gas) equivalent impact on the climate."

Both the toxicity and black carbon pollution appear to be related to the high proportion of aromatic compounds in VLSFO, in a range of 70% to 95%, which resulted in increased BC emissions in a range of 10% to 85% compared to HFO [heavy fuel oil] and in a range of 67% to 145% (a factor of 2.45) compared to DMA [distillate marine fuel].

These factors combined result in the concern that the new fuel blends pose a risk of contamination to a ship's systems, possibly causing breakdowns, and safety risks to the crew and environment.



An example presented in the *Forbes* article is the breakdown and grounding of the Japanese bulk carrier *Wakashio* last summer on the reefs of Mauritius. This 13 year-old ship used a two-stroke marine engine of the type Chevron had identified as being particularly vulnerable to the effects of VLSFO fuel. The ship came to a complete halt in the middle of the Indian Ocean, before ultimately breaking up on the Mauritius reef, spilling toxic fuel.

Investigation of the *Wakashio* grounding has not been concluded.[3]

For more in depth reading on the VLSFO issue, consider the following articles:

https://www.forbes.com/sites/nishandegnarain/2021/01/24/new-images-released-of-engine-damage-caused-by-experimental-low-sulfur-ship-fuel-vlsfo/?sh=711aa21362a3

https://www.forbes.com/sites/nishandegnarain/2020/12/21/shipping-gate-explained-how-the-global-ship-fuel-scandal-came-about/?sh=42e97e4d1428

https://www.forbes.com/sites/nishandegnarain/2020/12/21/global-toxic-ship-fuel-scandal-revealed-by-mauritius-oil-spill-a-special-report/?sh=4ab8b801eecf

https://www.forbes.com/sites/nishandegnarain/2020/12/21/shipping-gate-why-toxic-vlsfo-fuel-is-such-a-danger-for-global-shipping/?sh=6a48fce178fd

https://www.offshore-energy.biz/clean-arctic-alliance-how-did-super-pollutant-frankenstein-fuels-come-to-market/

https://www.offshore-energy.biz/study-new-blends-of-marine-fuels-have-higher-bc-emissions-than-hfo/

QUESTIONS & ANSWERS

by George Carl Pezold, Esq.

FREIGHT CLAIMS – COST OF TRANSPORTING PRODUCT TO ITALY FOR REPAIR

Question: One of our domestic less-than-truckload ("LTL") shipments got damaged by the forwarding company. In order to have it repaired, we had to ship it back to the factory in Italy. The claim amount we submitted included the repair amount, the local freight charges and the freight charges to ship it to the factory in Italy and back.

The transportation company will only pay part of the claim, rejecting the freight charges related to the transportation to Italy and back. They refer to those charges as miscellaneous and not being subject to reimbursement. Is there any legal reference we can use when disputing the claim with them?

In addition, there was insurance on the unit as well and so the transportation company has accepted the claim without limiting their liability. The total amount we have insured it for was higher than what we are claiming. With insurance on the unit, how does this change the situation?

Answer: From your description of the facts you had two options:

1. Declare the item a total loss and claim for the full invoice value.
2. Attempt to mitigate the loss by having it repaired.

[3] The owners of the *Wakashio* refuted the *Forbes* conclusion and rejected claims fuel oil problems were a cause of the grounding. Visit https://gcaptain.com/mol-rejects-seriously-flawed-forbes-report-on-wakashio-grounding/ and https://www.forbes.com/sites/nishandegnarain/2020/12/22/satellites-reveal-gaping-holes-in-mols-latest-explanation-for-wakashio-crash/?sh=2b4404061bc0 for more information.

You have a duty to mitigate the loss if it is reasonable to do so under the circumstances. Apparently you were not able to do the repairs yourself or have them done locally, so it would be reasonable and proper to send it back to the manufacturer for repairs, and you would be entitled to claim both the repair cost and the freight charges to and from the place of repair.

This subject is discussed in *Freight Claims in Plain English* (4th ed.) at Section 7.4.9: "Freight charges to and from a place of repair, plus an allowance for depreciation, have been awarded as damages in *Olsen v. REA*, 295 F.2d 358 (10th Cir. 1961). And see *Vacco Industries v. Navajo Freight Lines, Inc.*, 63 Cal. App. 3d 262, cert. den., 431 U.S. 916 (1976.)"

It is not clear what you mean by "insured". Did you declare a value and pay an excess valuation charge to the carrier, or did you purchase a separate shipper insurance policy (inland marine coverage)? In either case there is no indication that the carrier is attempting to assert a liability limitation from the bill of lading or its rules tariff.

The point is that you used reasonable measures to mitigate the damages so you would be entitled to recover the cost of repair and your expenses.

FREIGHT CLAIMS – INCLUDING TAXES

Question: We're working through the claims section of a transportation contract agreement which the client is requesting we agree to "all taxes which SHIPPER may have paid or may be required to pay or collect in respect to such cargo, and reasonable freight charges, administrative costs, warehousing costs, transportation costs, and all other accessorial charges if applicable".

What 'taxes' are recoverable in a cargo claim? I'm assuming they mean the sales tax, which is normally 'baked' into the destination invoice value, but I'm curious if there's another 'tax' that wouldn't normally be agreed to within a claim.

Answer: I see that the shipper's contract is asking for a lot of expenses and other items in addition to the usual measure of damages (invoice amount to the buyer/customer).

Other than sales tax, which would usually be a line item on an invoice, I am not aware of any other taxes (such as federal excise taxes on liquor and tobacco) that would not already be included in the sales price.

FREIGHT CHARGES – INCLUSION OF TOLLS

Question: Is it legal for surface transportation vendors to charge tolls incurred while empty, before picking up freight. I understood tolls were to be billed on loaded miles only, but vendors will bill for tolls incurred on the way to pick up the freight, and tolls after pick up to delivery.

These are 3rd party vendors picking up parcel shipments in their own vehicles, cars to large straight trucks. Some are covered by contracts but do not specify tolls. We have always been invoiced and paid for tolls on loaded miles but recently we are seeing a few couriers send invoices for both empty and loaded.

How should we handle this?

Answer: Apparently these "3rd party vendors" are essentially making round trips between a terminal and customers to pick up their shipments. It isn't clear what compensation has been agreed upon (flat rate, mileage, etc.) but it seems reasonable that they should be reimbursed for expenses like tolls if they are not otherwise included in the compensation that has been agreed upon.

I would strongly suggest that appropriate contracts are in order in order to avoid such issues in the future.

FREIGHT CHARGES – PREPAY & ADDING "ACTUAL" FREIGHT CHARGES

Question: If our vendor refuses to use our freight account information for shipping and our purchase orders ("POs" state "Freight: Prepay/Add actual"). Are we allowed to request proof on the freight fees they charge us? If so, are they allowed to decline that and not show us the proof when our PO specifically says PREPAY/Add actual?

Answer: Unless there is some other contract or agreement I would assume that the vendor is deemed to have accepted the terms and conditions of the purchase order by its performance, i.e. shipping the goods.

If the PO states "Freight: Prepay/Add actual", it is reasonable for you to ask for the actual freight charges. If the vendor represents that its invoice shows the actual freight charges, but it is charging more, it could be considered commercial fraud.

I would note that this is a common issue. Some vendors conceal the actual freight charges by calling it "shipping and handling" and many have contracts with carriers that include discounts which they don't pass along to their customers. In some situations it is even considered a "profit center".

FREIGHT CLAIMS – INTERNATIONAL CLAIMS

Question: I have several questions: First, does the Transportation & Logistics Council ("T&LC") have a Canada Freight Claims in Plain English book?

Second, where in the Canada Highway Traffic Act does it state what liability is for consequential or special damages?

Third, where in the Canada Highway Traffic Act does it state for shipments from Canada into the US which currency should the claim be filed/paid under, CAD or USD? Canadian carriers will only pay in CAD, so they request claims be filed in CAD. However, some Canadian claimants request claims be paid in USD since their consignees/customers were in U.S.

Additionally, I would also like to ask about claims on shipments to Mexico.

On shipments from anywhere in U.S. to U.S. border consignee/customs brokers, what are the requirements for those consignee customs brokers regarding reporting damage and/or shortages to the carriers? Are they still responsible under Carmack and Federal Motor Carrier Safety Act?

Answer: *Freight Claims in Plain English* (4th Ed.) does have two chapters devoted to Canada and Mexico (Sections 19.0 and 20.0) and is available from the Council.

As to your specific questions about "consequential or special damages" I would defer to my colleague, Catherine Pawluch, who is an expert on Canadian transportation law and who may be able to answer your questions:

Catherine A. Pawluch, Partner
T: +1 416 369 5272
F: +1 416 777 7402
E: catherine.pawluch@dlapiper.com

DLA Piper (Canada) LLP
Suite 6000, 1 First Canadian Place
PO Box 367, 100 King St W
Toronto ON M5X 1E2
Canada
www.dlapiper.com

As for your Mexico cross-border questions it sounds as though these are more about the "practices" than legal issues. Feel free to give us a call if you would like to discuss this.

FREIGHT CHARGES – OBLIGATION OF 3PL IF SHIPPER FAILS TO PAY

Question: We are a 3rd party logistics provider. What is the typical agreement between carrier and 3rd party in the event one of the 3rd party customers goes bankrupt and has freight charges pending? How should we address this in our contract? I am speaking of less-than-truckload ("LTL") shipments.

Answer: I assume that you are asking whether there could be some language in your "Broker – Carrier" contracts that could protect you from having to pay the carrier if the shipper goes bankrupt and doesn't pay your company (the broker).

Obviously, the carrier is not a party to any agreement (or financial problems) between the broker and its shippers.

Since I haven't seen your carrier contract, I don't know what it says about payment terms. Normally carriers would expect to be paid by the broker since they have performed the services, regardless of whether the broker has actually received the funds from the shipper.

You could try to include language that your obligation to pay the carrier is contingent upon receipt of funds from the shipper, but I think that an alert carrier would object. Or if this actually happens, you could try to assign your claim against the bankrupt shipper to the carrier and tell them to proceed in the Bankruptcy Court and try to collect, which would be unlikely.

IN MEMORIAM: COLIN BARRETT

On January 6, 2021 Colin Barrett passed away at 81 while at his home in Johns Island, South Carolina. For 48 years, Colin Barrett researched and wrote the Q&A column that initially appeared in Traffic World magazine, then in the Journal of Commerce and finally on JOC.com. His last column was published December 7, 2020.

Colin Barrett took over the "Questions and Answers" feature at Traffic World in 1972 after the previous author passed away. That feature, introduced in April 1919 had been written by several successive editors, always anonymously.

We thank him for his contributions to the industry.

For more details, visit https://www.joc.com/regulation-policy/colin-barrett-joc-qa-writer-48-years-dies-81_20210114.html .

CCPAC NEWS

CCPAC HEADLINE NEWS, DECEMBER 2020

The Officers and Board of Directors of the Certified Claims Professional Accreditation Council ("CCPAC") wishes to extend a cheerful Holiday Greeting to all during the Season of Joy and Thanksgiving and for a Healthy and Prosperous New Year.

The next Certified Claims Professional ("CCP") Exam is tentatively scheduled to be held on March 31, 2021. This is a timed exam that will begin promptly at 12:30PM and conclude at 3:30 PM EST. The written exam will be taken by each candidate at their location and they will need to login to an Exam Podcast for special instructions on when to begin and end the exam by a Virtual Proctor in a LED Format.

The next CCP Exam Primer Class is tentatively scheduled for 4 - 1 ½ hour sessions each Wednesday beginning March 3, March 10, March 17 and March 24, 2021 from 12:30 PM to 2:00 PM EST on-line in a Virtual Instructor – LED Format. Additional information including exam fees, preparation materials and registration to attend the class and/or the exam or both are posted on our website www.ccpac.com Home Page under Headline News section.

Candidates planning on participation in either the Class and/or the Exam must apply and pre-qualify. To do so, Candidates will need to download and compete the CCP Exam Application and Calculation of Points Forms and email to director@ccpac.com or mail to CCPAC Exam, P. O. Box 550922, Jacksonville, FL 32255-0922. Once CCPAC receives and approves the candidates' application, it will then be necessary for the candidate to complete the on-line Registration and pay the required fee(s) with a major credit card, or register on-line and opt to pay with a check by mail.

ALL CCP's and CCPAC Associate Members are reminded that to maintain their membership in "Active" status, annual dues and membership are due now and through the first quarter of 2021. Membership is 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, 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 FCDC DOCKET 2021-1

The Freight Classification Development Council ("FCDC") (formerly the Commodity Classification Standards Board) will conduct its next public meeting to consider proposals for amending the National Motor Freight Classification ("NMFC") in Docket 2020-3 on Tuesday, February 9, 2021. 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 February 9, 2021 and/or submit a written statement. Written statements may be submitted by mail or email, and they must be received by the FCDC no later than 5:00 pm Eastern Time, Thursday, February 4, 2021.

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

FREIGHT CLASSIFICATION DEVELOPMENT COUNCIL DOCKET 2021-1
INDEX OF SUBJECTS (PROPOSALS) - DESCRIPTION and SUBJECT:

Shippers whose traffic may be affected by proposed changes should review the proposals and respond accordingly. Visit http://www.nmfta.org/Dockets/Docket%202021-1/2021_1.pdf to review the complete Docket online.

The FCDC's procedures as well as other information on the FCDC and the National Motor Freight Traffic Association are available online at 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. The supplement is scheduled to be issued on March 11, 2021, with an effective date of April 10, 2021.

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	February 4, 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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Full page and one-half page ads are now being accepted for the TRANSDIGEST. Reach a highly selective audience with information on your products and/or services at a reasonable cost. Rates are available for 3, 6 and 12 monthly issues, and include both print and electronic issues. For information contact Diane Smid or Stephen Beyer at (631) 549-8984.

The Transportation & Logistics Council, Inc.

Phone: (631) 549-8984 **120 Main Street, Huntington, NY 11743** **Fax: (631) 549-8962**
E-Mail: diane@transportlaw.com

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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Please return completed Membership Application Form along with your payment to:
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Membership Application Form

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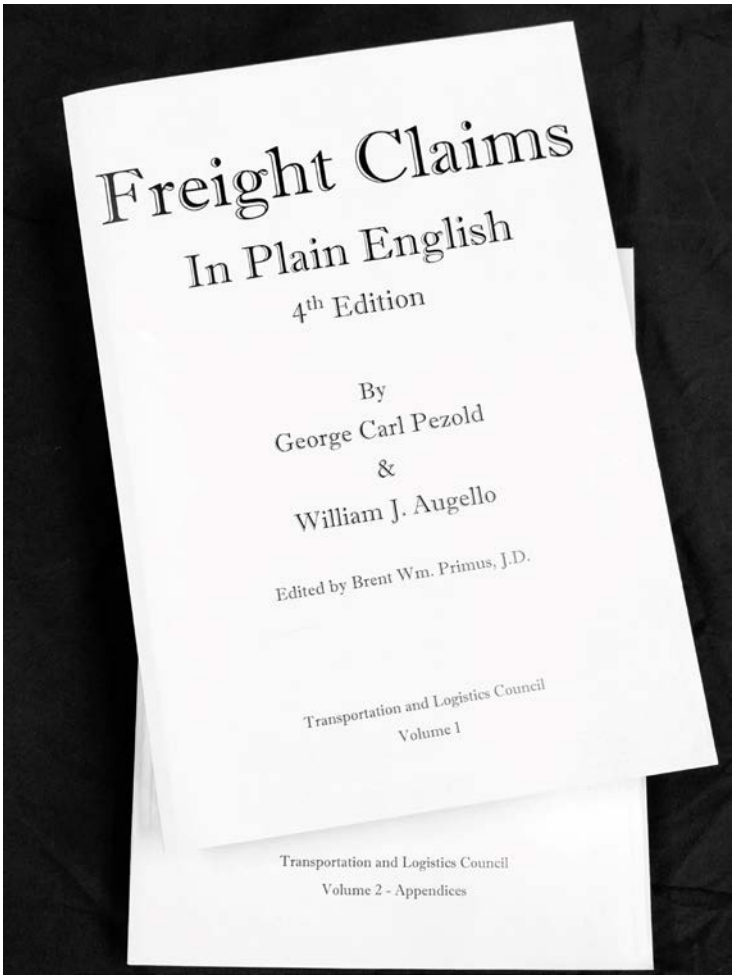
It's Back Again! Now in Soft Cover



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.

Order Form

Fill out the information below, detach and send with your payment to: **TLC, 120 Main St., Huntington, NY 11743**
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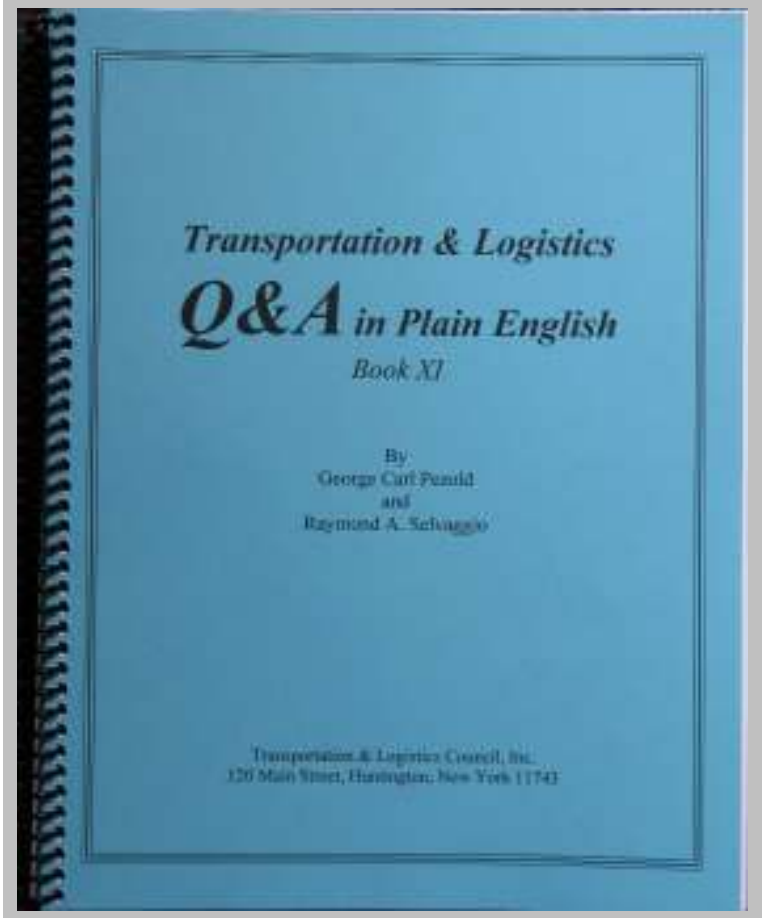

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