

# *TRANSDIGEST*

Transportation & Logistics Council, Inc.

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## **T&LC Insurance Workshop**

- **T&LC Sponsorships**
- **IATA Outlook for Global Airline Industry**
- **International Waste Trade**
- **Trucking and Insurance Cost Survey**
- **Ever Given – A Disaster that Wasn't**
- **Owners of Ever Given Declare General Average**
- **Canadian National Railway Makes Bid on Kansas City Southern**
- **COGSA “Package” Court Decision**

***SOFT COVER EDITION!***

***FREIGHT CLAIMS IN PLAIN ENGLISH (4<sup>TH</sup> ED.)***

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## Table of Contents

<b>GUEST EDITORIAL.....</b>	<b>2</b>	<b>RAIL.....</b>	<b>12</b>
<b>ASSOCIATION NEWS.....</b>	<b>3</b>	<b>RECENT COURT CASE.....</b>	<b>13</b>
<b>HUMOR.....</b>	<b>5</b>	<b>TECHNOLOGY.....</b>	<b>14</b>
<b>AIR.....</b>	<b>6</b>	<b>CCPAC NEWS.....</b>	<b>15</b>
<b>INTERNATIONAL.....</b>	<b>6</b>	<b>CLASSIFICATION.....</b>	<b>15</b>
<b>MOTOR.....</b>	<b>7</b>	<b>ADVERTISE IN THE TRANSDIGEST.....</b>	<b>16</b>
<b>OCEAN.....</b>	<b>10</b>		

## GUEST EDITORIAL

### UNPRECEDENTED WATERS

By Jerrod Slaughter, Director of Global Logistics  
KEEN, Inc.

We all have lived through unprecedented times during the COVID-19 pandemic. For those of us in the logistics profession, many of us have found ourselves coping with the wild ride of logistic turns that have occurred over the last 12 months.

My principal experience for over 25 years has involved the logistics of international trade and importation of goods. While there have always been new challenges, the current situation is a far more extreme than any of us have ever encountered.

The ocean industry finds itself in chaos through a series of events that are contributing factors rather than a single cause. The following is a brief summary of the primary events that have exasperated the condition of the ocean market today.

First, COVID-19 becomes a pandemic. Importers globally review inventories, adjust sales projections and curb or halt factory orders from Asia. This creates a large correction with factory production, including raw materials and components. The decline in Asia bookings of exports impacted the ocean industry.

Ocean carriers begin to manage capacity by decreasing fleet size and implementing blank [canceled] sailings. Through continued carrier consolidation and the big three alliances, the carriers find themselves much more effective in making adjustments to counter market conditions of decreased demand. Actions taken resulted in a cut to ocean capacity.

Demand for consumer goods ignited a shift in spending habits which includes stay at home e-commerce purchases, home improvement, home office equipment, and home entertainment. Brands found themselves with an unexpected opportunity to increase sales. Quickly there was a turn of events that sought to increase factory production to meet the stay at home shift in consumer demand.

Asia bookings begin to surge from brands seeking to increase their imports while ocean capacity was cut due to previous lack of demand. The correctional course that many ocean carriers applied was slow and cautious of these new bookings. This was the first time in recent ocean history that importers began to feel the challenge of origin booking acceptancy leading to a lack of ability to get on board vessels, as for the previous 10 years capacity was generally plentiful.

Carriers slowly begin to correct course to meet the continued increase in booking demand. While Asia ports work through the increases, US container ports steadily begin having a backlog of vessels waiting to berth at port terminals. For example, the ports of Los Angeles and Long Beach have backlogs exceeding 30 vessels at anchor waiting to secure terminal berth to initiate discharge operations. Conservative estimate of 30 vessels at 15,000 TEU [twenty-foot equivalent unit] each is nearly half a million containers sitting idle at the largest US ports.

Ocean carriers transition from closely managed capacity through the use of idle fleets to full vessel deployments. Introduction of structural blank sailing is applied by carriers to adjust for vessels off schedule due to port congestion. It was a clear call out by ocean carriers that vessels anchored off the shores of California awaiting berth for 7 to 10 days had caused vessels to be off schedule and had contributed to container equipment shortages at Asia origins.

Lastly, spot rates reach unprecedented levels during the first quarter. Originally industry experts anticipated an ease of capacity constraints post Chinese New Year, however that hope quickly dissipated as many factories remained operational and available cargo at origin began to backlog. Ocean contract season begins during late Q1 while the Ever Given vessel blocks the Suez Canal, adding to an already fragile ocean market. This all leads to contracted rates to be at all-time highs.

My list of events is meant to be a short overview of the primary contributing factors. As logistics professionals look at the latest industry news for a better line of sight they are hopeful of a new norm coming this fall. For now, it is time to remain focused on the importance of securing your supply chain through partnerships that have supported you in the long term or those that you may have added in the recent challenging conditions. A logistics mentor told me a long time ago that as professionals in our industry we must remain focused on the key goal – product delivery through a protected supply chain. It's easy to lose sight of this objective while rates are at extreme levels and the use of services a year or two ago we would never have considered such as Ocean Diamond at \$12k+ a container.

As we move forward, protecting your supply chain is critical and a key focus on leveraging relationships to secure capacity is the best line of sight recommendation that I can provide to those reading this article. For now, remain vigilant in these current unprecedented waters. There will come a time for a new normal.

## ASSOCIATION NEWS

### **T&LC'S INTERACTIVE VIRTUAL WORKSHOPS**

#### **Mark Your Calendar for the Next TLC Virtual Workshop**

#### **“WHAT YOU NEED TO KNOW ABOUT TRANSPORTATION INSURANCE.”**

The first of our summer season workshops will be a 90 minute Special Edition all about transportation insurance May 19, 2021 at 1:00pm EDT.

Shippers, carriers and brokers all have different risks and exposure to potential liability, whether it is cargo loss or damage, claims involving personal injury, or other catastrophic events. This workshop will tell you “what you need to know” about Transportation Insurance. A panel of experts will cover the basic definitions and concepts of liability insurance, the kinds of insurance policies available for carriers, brokers and 3PL's, what they cover and what they don't, and recommended insurance requirements in contracts with service providers.

Details for this Virtual Workshop will soon be posted on the TLC Website at <https://www.tlcouncil.org/>.

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Sponsorships are for 5 T&LC Virtual Workshops. Sponsors will also be announced during the live seminar. See form attached or visit [Link to Sponsorship Form](#)

For more information contact:

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## HUMOR

The Ever Giving source of memes:

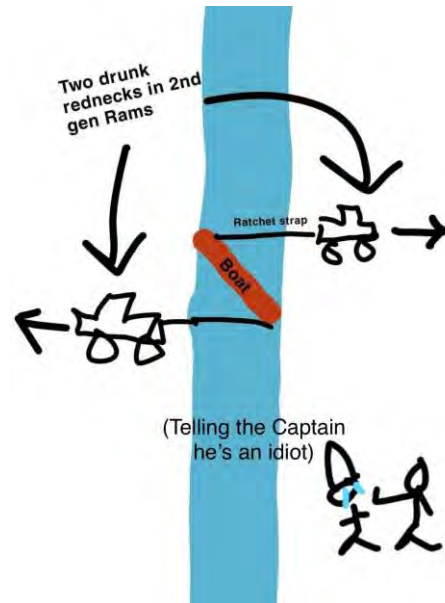
You may make mistakes, but at least they're usually not "we can see your mistake from space" bad



**Ship:** Gets stuck in canal.

**Damages:** Costing countries all across the globe millions each hour it sits in their way through the canal.

**Solution:** Small clapped out 90s Komatsu.



If you can't hide a crime scene, just pretend you are a victim



## AIR

### AIR CARGO REVENUE PREDICTED TO HIT ALL-TIME HIGH IN 2021

According to the International Air Transport Association (“IATA”) airlines will have record high cargo revenues in 2021 due to surging demand, although they will lose \$47.7 billion because of weak passenger air travel. In its “Outlook for the global airline industry” report released April 21, 2021 the IATA provided its revised forecast numbers for the industry.

While air cargo has remained strong throughout the pandemic and continues to improve, ongoing surges in virus cases and travel restrictions continue to have adverse impacts on overall airline health.

Visit <https://www.iata.org/en/iata-repository/publications/economic-reports/airline-industry-economic-performance---april-2021---report/> to view the report.

## INTERNATIONAL

### ILLICIT WASTE TRADE

When China severely restricted the import of plastic waste in 2018 (see TRANSDIGEST ##s 233, 237, 239, 240, and 244 for previous reporting) the trade shifted to other, less restrictive markets. Malaysia was one of these markets. This waste, generally of mixed and even contaminated plastics, has little or no value, is not susceptible to recycling, and has been an anathema to the world environment.\*

When countries like Malaysia found themselves the recipients of this useless material, they began to fight back and restrict imports of this generally unlicensed unrecyclable garbage. Recently, Malaysia said it had sent 267 containers of illegal plastic waste back to their countries of origin since 2019, and was in the process of returning 81 more.

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\* In addition to ending up in landfills and the oceans, recent research has found that thousands of tons of microplastics are in the atmosphere. <https://www.livescience.com/atmospheric-microplastics-studied-first-time.html>



As of January 1, 2021 new United Nations rules on the trade of hazardous waste under the Basel Convention came into force. Called the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, it is the most comprehensive global environmental treaty on hazardous and other wastes. The Convention was put in place to control the international movement of hazardous waste; including materials such as used lead acid batteries, waste pickle liquor, and used chemicals to name a few. It aims to protect human health and the environment from the potential negative impact of the generation, management, international movement and disposal of hazardous wastes and other waste (for example waste collected from households and non-hazardous plastic waste). The Convention has been in effect since 1992, and the Government of Canada is an original signatory.\*

The plastic waste amendments put in place controls on the international movement of plastic wastes that have limited recycling options or are more difficult to recycle; including dirty or contaminated plastics (for example: residues remaining in containers, or presence of other wastes collected from households), halogenated plastics, as well as plastic waste consisting of more than one polymer.

These are intended to discourage the production of hard-to-recycle plastics and to prevent rich countries dumping trash in the developing world, where it often ends up polluting the local environment and the ocean.

Signatories to the Convention may only trade plastic waste if it is clean, sorted and easy to recycle - unless the importing country has granted an exemption.

The United States, which produces more plastic waste per capita than any other country, is the only major nation not to have ratified the Basel Convention. However, under the treaty, Malaysia or other countries cannot accept prohibited plastic waste from the United States.

For more detailed information, visit <https://www.epa.gov/hwgenerators/new-international-requirements-export-and-import-plastic-recyclables-and-waste>

## MOTOR

### DRIVING RECOVERY

For the first time since the pandemic started, driving on the nation's highways is higher than at the same time in 2019. According to a recent article in *Transport Topics*:

Vehicle miles traveled on interstates rose to roughly 16.7 billion in the week ended April 11 — 1% higher than in 2019, U.S. government data showed. The last time there was an increase versus 2019 was in early March of last year, before the World Health Organization had declared a pandemic.

Breaking down the figures, the increase comes mostly from a boost in trucking, which rose 7% compared to the same week two years ago. Truck miles have been steadily higher in the past few months.

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\* While the United States is not a Party to the Basel Convention, 187 countries and the European Commission are Party.



But what's really interesting is that passenger vehicle miles, while still down from 2019, have recovered a lot. The figure in the week ended April 11 was just 1% lower versus the same period in 2019. That compares with declines of 20% or even 50% in prior weeks during the pandemic.

In addition, New York City toll bridges and tunnels are on pace for the busiest April in at least seven years, a further indication that travel is rebounding as pandemic shutdowns ease.

Visit <https://www.ttnews.com/articles/pandemic-era-first-driving-us-highways-tops-2019-levels> for article.

## INFRASTRUCTURE AND VMT TAX

Last month (TRANSDIGEST #277) we discussed the American Transportation Research Institute ("ATRI") report detailing the costs of deploying a national vehicle miles traveled ("VMT") tax. After briefly indicating that it might pursue a VMT tax to fund infrastructure, on March 29, 2021 U.S. Transportation Secretary Pete Buttigieg ruled out any increase in the federal gas tax or a VMT tax to pay for the Biden administration's multi-trillion dollar infrastructure plan.

<https://www.msn.com/en-us/money/markets/buttigieg-says-no-gas-tax-mileage-fee-to-fund-infrastructure/ar-BB1f631A?ocid=uxbndlbng>

States are also facing infrastructure financing issues, including the special case of electric vehicles. With most infrastructure financed by fuel taxes, electric vehicles pay none and hybrid vehicles pay less than their internal combustion engine counterparts. One approach used by states has been to impose a surcharge on the license or registration fee for electric and hybrid vehicles.

According to Land Line magazine:

About 30 states impose a special registration fee for plug-in electric and/or plug-in hybrid vehicles. Fees range from about \$50 annually for plug-in hybrid vehicles in Iowa to \$225 yearly for plug-in electric vehicles in Washington.



The Land Line article also provides a rundown of recent efforts by states to address revenue raised by alternative fuel vehicles at <https://landline.media/legislation-in-eight-states-cover-hybrid-electric-vehicle-fees/>.

## TRUCKING AND RISING INSURANCE COSTS

The American Transportation Research Institute (“ATRI”) is conducting a survey of carriers on “Understanding the Impact of Rising Insurance Costs” which was developed with input from both motor carriers and insurance providers. ATRI is seeking to better understand how drivers and fleets are managing rising insurance costs.

Motor carriers are asked to provide data through an online data collection form that will quantify changes in deductibles, excess insurance over minimum requirements, and how drivers and fleets are balancing insurance costs against rising risk levels. The research will be complementary to ATRI’s annual Operational Costs of Trucking, but will provide more granular detail on one of the most volatile cost centers in the annual analysis.

All data will be kept confidential and all survey respondents will receive an advance copy of the final report.

The survey can be done online or by downloading a .pdf that can be faxed. For links to the survey, visit <https://truckingresearch.org/2021/03/23/survey-understanding-the-impact-of-rising-insurance-costs/>

## DRIVER CLASSIFICATION

We have previously discussed the federal legislation, the Protecting the Right to Organize (“PRO”) Act (H.R. 842), that would codify the ABC test that became law in California as Assembly Bill 5 (“AB5”) (see TRANSDIGEST ##s 276 & 277) and its possible impacts on the ability of drivers to work as independent contractors. The PRO Act passed in the House on March 9, 2021 on a party line vote. Besides codifying a federal ABC test for worker classification similar to that in California’s AB 5, the bill also would explicitly declare misclassification of workers a violation of the National Labor Relations Act.

The Biden administration’s recently announced American Jobs Plan – a \$2.3 trillion broadly defined infrastructure package – anticipates that the PRO Act will become law as expressed in the White House Fact Sheet on the American Jobs Plan.

From the Fact Sheet:

President Biden’s plan will:

- **Empower Workers.** President Biden is calling on Congress to update the social contract that provides workers with a fair shot to get ahead, overcome racial and other inequalities that have been barriers for too many Americans, expand the middle class, and strengthen communities. He is calling on Congress to ensure all workers have a free and fair choice to join a union by passing the Protecting the Right to Organize (PRO) Act, and guarantee union and bargaining rights for public service workers. His plan also ensures domestic workers receive the legal benefits and protections they deserve and tackles pay inequities based on gender.

To view the Fact Sheet, visit <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/>.

## OCEAN

### EVER GIVEN – A DISASTER THAT WASN'T

For reasons yet to be fully determined, on Tuesday, March 23, 2021 the container ship Ever Given jammed itself across a section of the Suez Canal only about six miles from the southern entrance.\* From photos, the vessel appeared to be stuck at about a 45 degree angle with the bow stuck about 15 feet into the canal wall. This blockage shut the canal down until the vessel could be removed.

That was the rub. The canal was shut down with traffic rapidly backing up. Initial estimates to free the Ever Given ranged from days to possible weeks. And that mattered.

If it is only going to be days, vessels seeking to transit the canal can slow down or simply wait until the canal reopened. If it is going to be weeks, alternate routes would become the only viable alternative in order to keep commerce moving. A trip around the southern tip of Africa can add about 5000 miles and up to 14 days to the voyage from the Middle East to Europe, with attendant fuel and operating expenses that can amount to additional costs of \$450,000.

Fortunately, the Ever Given was freed after about six days of frantic efforts and the canal was able to reopen. In that time, there were about 400 ships stranded waiting for transit while several ships were rerouted. Once the canal was reopened, it took about five days to clear the traffic backup.

It was a disaster that wasn't. Fortunately, although commerce was disrupted for what turned out to be a short period of time, there was little or no damage to the vessel, the canal or the environment, no loss of cargo, and no loss of life. It was, and should be, a lesson on many levels. Our reliance on "just in time" logistics only works when everything flows smoothly.

Just how important is the Suez Canal to commerce? The canal's daily vessel throughput capacity is 106, although the daily traffic is more like 40-50 ships per day. Some \$400 million an hour or almost \$10 billion U.S. dollars of product moves through the canal each day! (\$5.1 billion westbound and \$4.5 billion eastbound) This traffic represents ~12% of global trade and the energy exports, like liquefied natural gas, crude oil and refined oil, make up 5 to 10 percent of global energy shipments (there is a pipeline that parallels the canal that is also used to move crude oil).

There are several chokepoints to global commerce around the world, geographic locations where ocean trade is concentrated and any disruption can have widespread ramifications. They include the Suez Canal, the Panama Canal, the Strait of Malacca, the Strait of Hormuz, and even the South China Sea, amongst others.



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\* While wind and sandstorm have been suggested as a cause for the mishap, it appears that things might be more complicated. When a large vessel moves through a confined waterway, such as the Suez Canal, there are complex forces involved as water must squeeze between the vessel and the sides and bottom of the canal that can create suction and severely impact the handling of the vessel. Visit [https://www.theguardian.com/environment/2021/apr/03/wind-or-worse-was-pilot-error-to-blame-for-the-suez-blockage?CMP=oth\\_b-aplnews\\_d-l](https://www.theguardian.com/environment/2021/apr/03/wind-or-worse-was-pilot-error-to-blame-for-the-suez-blockage?CMP=oth_b-aplnews_d-l) for more detail and to view a simulation of the event visit <https://www.linkedin.com/feed/update/urn:li:activity:6781195539166834688/>.

Disruptions at these chokepoints can be the result of natural events (volcanic eruption, earthquake, or storms), intentional actions and political events, or accidents (such as the Ever Given).

As we have already learned from the global pandemic, there is risk involved in relying on long supply chains from foreign countries, particularly if critical supplies are involved. Those foreign suppliers will make decisions based on their own self interests.

## EVER GIVEN FALLOUT

While the actual blockage of the Suez Canal by the Ever Given has been resolved, the fallout from the event is not over. Once it was freed from the canal, the Ever Given was towed to the Great Bitter Lake pending investigation of the incident and to be inspected for damage. It was given a technical all-clear to proceed up the Suez Canal but has not been able to move because on April 13<sup>th</sup> the vessel was “seized (legally impounded pending resolution of a claim) by Egypt’s Suez Canal Authority (“SCA”) for damages resulting from the blockage. This situation needs to get resolved and the vessel allowed to proceed.

The SCA is seeking some \$916 million in damages from the vessel’s owners and operators based on the claim that the grounding incident damaged both the canal’s income and its reputation. While clearly there is some compensation due, many in the industry feel the amount being sought is excessive.

On April 16, 2021 *Lloyd’s List* published the following analysis of the SCA compensation demand:

Suez Canal revenue last year was \$5.6 billion US (down from \$5.8 billion in 2019). Divide that by 365, and that works out at around \$15 million a day.

The six-day shutdown caused by the *Ever Given* grounding does not necessarily mean six days’ loss of revenue, as most of the backed-up traffic eventually made the transit and paid the toll. But let’s not quibble; \$100 million should meet the tab.

Legitimate salvage expenses must be met. Let the SCA present an itemized account, which will presumably be in the order of tens of millions.

Some element by way of saying sorry for the aggravation and the inconvenience is also arguably reasonable.

Total everything up, and this is nothing that, say, \$225 million shouldn’t comfortably cover. Asking for four times that figure — including a \$300 million for a ‘salvage bonus’, whatever that might be, and a further \$300 million for ‘loss of reputation’ — is transparently petulant.

Pending a resolution of these claims, the ship and its crew are not being allowed to proceed. This also means that all the cargo is being held up. It is in the interests of all parties to seek a rapid resolution. The *Lloyds List* article suggests that the “constructive way forward stares everybody in the face; post suitable security; let the vessel finish its voyage; get the cargoes to the consignees; sign the crew off; get the arbitrators on the case; and work out a settlement everybody can live with.”

Visit <https://lloydslist.maritimeintelligence.informa.com/LL1136496/Suez-Canal-compensation-claim-is-simply-outrageous> to view the article.

## EVER GIVEN OWNER DECLARES GENERAL AVERAGE

As a result of the grounding of the vessel Ever Given in the Suez Canal, the Japanese shipowner declared “general average” (“GA”) on April 1, 2021. GA is a principle of maritime law whereby all stakeholders in a sea venture proportionally share any losses resulting from a voluntary sacrifice of part of the ship or cargo to save the whole in an emergency.

In this situation, while there was no loss of, or damage to cargo, the vessel is currently being held in Egypt pending resolution of the Suez Canal Authority's ("SCA") claim of almost \$1 billion dollars. With some 20,000 twenty foot equivalent unit containers involved and the possibility of up to 20 cargo interests per container, this could be the most complex GA claim of all time.

Under GA, the beneficial owners of the cargo being transported will be on the hook for a portion of that claim, usually in a ratio based on the relative value of their cargo, and the cargo will not be released until that obligation is covered. Insurance might cover the costs for some, while those without insurance will have to pay out of pocket.

For a more thorough analysis, visit <https://www.loydsloadinglist.com/freight-directory/news/%E2%80%98Ever-Given%E2%80%99-vessel-owner-declares-%E2%80%98general-average%E2%80%99/78806.htm#.YH72cuhK1s>

## **DANIEL MAFFEI TO HEAD FMC**

According to a March 30, 2021 press release Commissioner Daniel B. Maffei has been designated as the Chairman of the Federal Maritime Commission. The designation was made by President Joseph R. Biden, Jr. on March 29, 2021. Chairman Maffei is a sitting member of the FMC and replaces Michael A. Khouri in the role of Chairman.

Contact information and a biography are available on the FMC's website at <https://www.fmc.gov/commissioners/daniel-b-maffei/>.

## **RAIL**

### **CN MAKES BID TO MERGE WITH KCS**

Last month (TRANSDIGEST #277) we reported on the proposed merger between Canadian Pacific Railway ("CP") and Kansas City Southern ("KCS") in a \$29 billion deal that would create the only railroad connecting Canada, the United States and Mexico in a single network.

However, on April 20, 2021 CP rival Canadian National Railway ("CN") made an unsolicited bid to acquire KCS for \$33.7 billion in what could precipitate a bidding war. Either combination would connect Mexico and Canada on a single railroad, with one difference being that the CP combination would move through Kansas City and the CN combination would be through Jackson, MS.

CN asserts that its bid for KCS "offers superior financial value over the immediate and long-term, a more complementary strategic fit, greater choice and efficiencies for customers, and enhanced benefits for employees and local communities."

In response, CP claims CN's proposal "is illusory and inferior because it creates adverse competitive impacts and raises other serious public interest concerns. CN's proposal increases regulatory and anti-trust risk for KCS shareholders and decreases benefits for customers, employees and other stakeholders."

It will be interesting to watch how this plays out.

Visit <https://www.connectedcontinent.com/assets/uploads/pdf/Superior-Proposal-to-Combine-With-Kansas-City-Southern.pdf> to view CN's proposal, as outlined in its April 2021 Investor Presentation.

To view the CP press release in response, visit <https://investor.cpr.ca/news/press-release-details/2021/Canadian-Pacific-Comments-on-Unsolicited-Anti-Competitive-Proposal-by-Canadian-National-to-Acquire-Kansas-City-Southern/default.aspx>

## RECENT COURT CASE

### WHAT IS A COGSA PACKAGE FOR LIABILITY LIMITATION PURPOSES?

The Carriage of Goods by Sea Act (“COGSA”)\*, amongst other things, provides for a liability limitation of \$500 per package on goods transported by ship. As COGSA was enacted (1936) prior to the advent of the use of containers, there has been much litigation regarding what constitutes a “package” when the carrier seeks to limit its liability – is the container the package or does the limitation apply to units within the container? Which applies can make a huge difference, depending on the cargo.

The U.S. District Court for the Southern District of New York recently addressed that issue in a motion for summary judgment wherein the plaintiff was represented by the Transportation & Logistics Council’s very own General Counsel, Raymond A. Selvaggio, Esq.

The case involved a shipment of glass doors and windows that arrived in damaged condition after being transported from Ireland to Connecticut. The ocean carrier sought by motion for summary judgment to have its liability limited to the COGSA \$500 per package and asserted that the two containers involved were the packages. If successful, the plaintiff would have been limited to recovering \$1,000 on a shipment worth significantly more.

In making its determination, the court analyzed the two bills of lading in the context of previous Second Circuit decisions on the matter. The court noted that the:

Second Circuit has emphasized the difference between a “container” and a “package,” and noted the “distinct analyses for container and non-container cases.” [Monica Textile Corp. v. S.S. Tana, 952 F.2d 636, 640 \(2d Cir. 1991\)](#). “[T]he prevalent large metal shipping container furnished by a carrier is functionally part of the ship, and classification of it as a ‘package’ would violate the purpose of § 4(5) by permitting the carrier to limit its liability unduly....” [Binladen, 759 F.2d at 1012-13](#) (internal citation and quotation marks omitted). “[I]n container cases we must take a critical look at clauses purporting to define the container as the COGSA package. Accordingly, we have consistently cast a jaundiced eye upon language purporting to embody such an agreement.” [Monica Textile, 952 F.2d at 641](#) (interior citation omitted). “[W]hen a bill of lading refers to both containers and other units susceptible of being COGSA packages, it is inherently ambiguous,” and that ambiguity is resolved against the carrier. [Id. at 642](#).

Courts will, however, treat a container as a package “ ‘when the bill of lading expressly refers to the container as one package, or when the parties fail to specify an alternative measure of the ‘packages’ shipped....’ ” [Binladen, 759 F.2d at 1015](#) (quoting [Allied Int’l Am. Eagle Trading Corp. v. S.S. Yang Ming, 672 F.2d 1055, 1061 \(2d Cir. 1982\)](#)).

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\* Previously codified at 49 U.S.C. §§1300-1315 and now at 46 U.S.C. § 30701.

In this case, the bills of lading contained language that listed “1 Container Said to Contain 102 pieces” and “1 Container Said to Contain 160 pieces”. The court noted that although the term “pieces” was used to describe the plaintiff’s cargo, which can cut either way, the court ruled in plaintiff’s favor as:

The bills of lading do not reflect an express agreement between the parties to treat a “container” as a “package,” and the “pieces” identified in the bills of lading can reasonably be understood from the description as being “packages.” See [Binladen, 759 F.2d at 1015](#). Because Maersk has not come forward with evidence demonstrating that it is entitled to judgment in its favor, its motion for summary judgment will therefore be denied.

This COGSA package issue continually arises and as it is usually the carrier that prepares the bill of lading, there is not much a shipper can do to protect itself. To the extent possible, a shipper should try to avoid using the term “pieces” and try to have a number of packages listed. Adequate insurance is really the only protection readily available.

This was a subrogation case, so the actual shipper had been paid by the insurer and it was the insurer standing in the shoes of the shipper seeking recovery.

*Hartford Fire Insurance Co. v. Maersk Line*, 18-cv-121 (USDC SD NY April 11, 2021) available online at <https://www.leagle.com/decision/infeco20210316h20>.

## TECHNOLOGY

### ITS AMERICA PUBLISHES POLICY DOCUMENT

On April 21, 2021 the Intelligent Transportation Society of America (“ITS America”) released its 2021 policy blueprint, “A Better Future Transformed By Intelligent Mobility – ITS America’s Blueprint for a Safer, Greener, Smarter Transportation System”. The document breaks the topic down into six main technology areas: Smart Infrastructure; V2X (vehicle to everything) and Connected Transportation; Automated Vehicles; Mobility on Demand; Emerging Technology; and Sustainability and Resiliency.

According to the press release:

ITS America believes that developing and deploying transportation technologies provides the opportunity to alleviate many of the negative impacts of our transportation system while providing more equitable and accessible mobility without leaving behind the transportation workers who allow our transportation system to function. Intelligent mobility driven by the deployment of transportation technologies has the potential to significantly reduce deaths on US roadways, reduce congestion and emissions, and provide equal access to mobility for all US residents while growing the economy, providing better health outcomes, and increasing access to education and economic opportunity.

Visit <https://itsa.org/wp-content/uploads/2021/04/2021-ITSA-Technology-Blueprint.pdf> for a copy of the Blueprint.



## CCPAC NEWS

### CCPAC HEADLINE NEWS

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.

#### CCPAC ANNOUNCES NEW ON-LINE CCP EXAM

The CCPAC Officers and Board of Directors announces that completion of the programming stages to make CCP Exams available on-line to all members 24/7 is coming soon. After the exam has been implemented live on-line, programming for the CCP Exam Primer Classes will begin. Initial plans called for roll-out of the CCP Exam Primer Class first as the natural order of things, but we had to reverse the implementation due to programmer expertise availability. Check this section of TransDigest each month and/or our website [www.ccpac.com](http://www.ccpac.com) for updates for anticipated roll-out dates of the CCP Exam and eventually the CCP Exam Primer Class.

#### MEMBERSHIP RENEWAL AND ANNUAL DUES ARE DUE FOR ALL MEMBERS NOW

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 600249, Jacksonville, FL 32260.

For further announcements visit [www.ccpac.com](http://www.ccpac.com) for general information and membership in CCPAC or email [director@ccpac.com](mailto:director@ccpac.com)

CCPAC also has the following online presence:

FaceBook: [www.facebook.com/certifiedclaimsprofessional](http://www.facebook.com/certifiedclaimsprofessional)

FaceBook Blog: [www.facebook.com/groups/410414592821010/](http://www.facebook.com/groups/410414592821010/)

LinkedIn Group: [www.linkedin.com/groups/4883719/](http://www.linkedin.com/groups/4883719/)

Twitter: [twitter.com/ccpac\\_1](https://twitter.com/ccpac_1)

Website [www.ccpac.com](http://www.ccpac.com)

## CLASSIFICATION

### FUTURE FREIGHT CLASSIFICATION DEVELOPMENT COUNCIL (“FCDC”) DOCKET

	Docket 2021-2
Docket Closing Date	April 8, 2021
Docket Issue Date	May 6, 2021

	<b>Docket 2021-2</b>
Deadline for Written Submissions and to Become a Party of Record	May 27, 2021
FCDC Meeting Date	June 8, 2021

Additional future meeting dates and locations are currently scheduled as follows:

June 8, 2021	Westin Portland Harborview, Portland ME
October 5, 2021	Westin Alexandria Old Town, Alexandria VA
February 8, 2022	Omni Royal Orleans, New Orleans LA
June, 2022	TBD
October 18, 2022	Hilton Alexandria Old Town, Alexandria VA

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

## ADVERTISE IN THE TRANSDIGEST

### TRANSDIGEST ADVERTISING

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The graphic features a dark blue background with the Mercury MyEZClaim logo at the top. Below the logo is the tagline 'Simplifying Your Claims Management'. A horizontal line separates this from the heading 'Come Experience the MyEZClaim ADVANTAGE'. Below the heading are five green circles, each containing a statistic. The statistics are: 25+ Years in Business, 600,000+ claims filed in 2020, 91,308 companies, Over \$1 billion dollars filed yearly, and Over 6,337 active, world-wide users.

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3. We have 5 different transportation-based applications including the industry's best-of-breed cargo claims application, MercuryMyEZClaim. It can be integrated with a number of proprietary and commercial TMS providers including the industry leading MercuryGate.
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**Thank You!**



# The Transportation & Logistics Council, Inc.

Phone: (631) 549-8984

120 Main Street, Huntington, NY 11743

Fax: (631) 549-8962

E-Mail: [diane@transportlaw.com](mailto: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.
- Access to the **Members Only** section of the website.

New Members also receive:

- A complimentary copy of "Shipping & Receiving in Plain English, A Best Practices Guide"
- A complimentary copy of "Transportation & Logistics – Q&A in Plain English Books 7,8,9" on CD Disk

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

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## Freight Claims in Plain English (4<sup>th</sup> Ed.)

The hard-cover edition of Freight Claims in Plain English (4<sup>th</sup> 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

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

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

What is unique about this compilation of questions and answers is that the questions reflect the real problems that actually come up every day, and that the people actually doing the work - shippers, carriers, brokers, intermediaries and even truck drivers - need help with.

The answers range from simple advice to thorough explanations of the legal principles based on the authors' extensive experience in transportation law.

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

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

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