

TRANSDIGEST

Transportation & Logistics Council, Inc.

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VOLUME XXV, ISSUE NO. 265, MARCH 2020

TLC's 46th Annual Conference Canceled!

- **Gratitude**
- **Cargo On Passenger Aircraft**
- **Force Majeure and Contracts**
- **What Are the Trucking Impacts From COVID-19?**
- **Employee Classification Update**
- **FMCSA Waives HOS Rules**
- **Navigating Port Container Congestion**
- **More Q & As**

NEW! IN A SOFT COVER EDITION!

FREIGHT CLAIMS IN PLAIN ENGLISH (4TH ED.)

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ANNUAL CONFERENCE ANNOUNCEMENT

TRANSPORTATION & LOGISTICS COUNCIL – 46TH ANNUAL CONFERENCE “EDUCATION FOR TRANSPORTATION PROFESSIONALS”

ANNOUNCEMENT REGARDING THE CORONAVIRUS

We have all been looking forward to the Council’s 46th Annual Conference, “Education for Transportation Professionals” and the awesome program that has been planned. The Council had been hopeful that the situation with the Coronavirus would have improved enough to go forward with the Conference at the end of April, but that does not appear to be happening. We are receiving notifications from folks that had planned to attend, as well some of the moderators and panelists for the educational sessions, that they will be unable to attend because their companies have banned “non-essential” travel and attendance at conferences for indefinite periods. Added to this are the possibilities of quarantines, flight cancellations and other closures outside of our control.

Clearly the health and safety of attendees and participants must come first. Although this is one of the most difficult decisions that the Council has had to make in our forty-six years of successful conferences, we have no choice and regretfully must cancel the Conference.

The Board of Directors is considering (pending of course on when the rate of infection will drop off, when new vaccines will be available and when the scare will be behind us), the possibility of rescheduling the Conference in September and we have tentatively reserved September 9/28/20 – 9/30/20 with the Doubletree by Hilton at SeaWorld.

WE WILL CONTINUE TO MONITOR THE SITUATION AND WILL KEEP EVERYONE ADVISED AS TO OUR PLANS TO RE-SCHEDULE THE CONFERENCE IN SEPTEMBER.

EDITORIAL

GRATITUDE

By Stephen W. Beyer
Editor, TRANSDIGEST

In these trying times I think is appropriate to express our gratitude and thanks to the farmers, truckers and workers who, when you boil it all down, are most critical to supporting our very existence. Not to demean the role of others, but without food and the means to distribute it, things go downhill rapidly.

Entertainers, trades people, sports figures, professionals (lawyers, accountants, etc.) all help make life more enjoyable, livable, or have simply become necessary as the world becomes more complicated. But they are not essential to living. Production and distribution, transportation and logistics, are the essential lifeblood of our society. Even medical professionals, while they can save a life, cannot do much of anything without the supplies they need.

Most of us do not have anywhere near the capacity to live in a self-sufficient manner. We rely on others to create and deliver that which we need to survive. They grow the food, process it and deliver it across the country. Others keep those things moving. They make the things we absolutely require to live, happen.

To all those on the frontline, Thank You.

In light of the above, the situation in Pennsylvania provides an example of a short-sighted (and thankfully short-lived) approach to our current situation. At midnight Tuesday, March 17 the Pennsylvania Department of Transportation (“PennDOT”) closed all rest areas to comply with the Governor’s guidelines to mitigate the spread of the COVID-19 virus. Truckers were outraged and left scrambling for a place to sleep and use the bathroom. Rest stops are key places for drivers to sleep at night as truck drivers have limited options as to where they can park to rest.

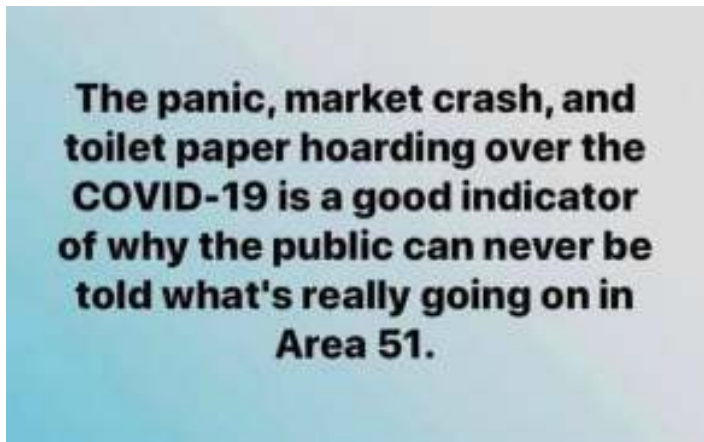
Fortunately, within a couple of days, PennDOT realized the complete closure was not a good idea and on Thursday, March 19 reopened 13 of the states 30 rest areas (although in a limited capacity). PennDOT has announced that it will continue to reevaluate their decision.

This is not an easy situation and not one we have dealt with before. We will make mistakes, we will adjust, we will make good decisions and we will learn.

On a lighter note.

As many have said, this will pass. Just how much things will change is hard to see from this side, life is an adaptive, learning experience. Some lessons are more enjoyable than others.

It is important step back and gain some perspective. Toward that end, I would like to share some of the more humorous memes I have seen recently:





Stay well, be safe and stay healthy.

ASSOCIATION NEWS

NEW MEMBERS

Multiple Subscriber Members

Anacarolina Estaba

Foley Gardere
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AIR

CARGO ON PASSENGER AIRCRAFT

While there are dedicated air cargo fleets, a tremendous amount of cargo also moves in the belly of passenger flights. With the recent drastic reduction in passenger flights, there has been a capacity crunch for air cargo and the passenger fleet is now helping to fill that shortage by turning their aircraft into cargo-only planes to haul critical medical supplies, foodstuffs and other economically essential goods.

The capacity shortage is so acute that the Air Forwarders Association (“AFA”) is urging airlines to consider scheduled freight-only flight operations – not just ad hoc charters – to ensure an adequate supply of affordable air transport for cargo owners.

“A reliable, planned schedule of flights between origin and destination points that are driven by cargo demand and not by passenger demand would ensure forwarders the ability to access needed lift on behalf of their customers proximal to the cargo’s beginning and endpoints, speeding critically needed raw materials and finished goods to their destination,” the group said in a letter to Congressional leaders requesting the industry be included in any emergency economic relief.

Visit <https://silkstart.s3.amazonaws.com/3ec54230-c53b-4faf-8702-7e63f83d878a.pdf> to view the AFA statement to the White House and U.S. Congress.

IATA RELEASES COVID-19 UPDATED IMPACT ASSESSMENT

On March 24, 2020 the International Air Transport Association (“IATA”) released its Updated Impact Assessment for COVID-19. Along with charts and graphs of specific data, it includes a number of comparisons between the current situation and previous pandemics along with projections for recovery.

Visit <https://www.iata.org/en/iata-repository/publications/economic-reports/third-impact-assessment/> to view the assessment.

The International Air Transport Association (“IATA”) on their front page (<https://www.iata.org>) provides links for airline and air transport professionals, recommendations for passengers and financial developments.

REDUCTION OF FLIGHTS MAY IMPACT WEATHER FORECASTING ACCURACY

An interesting side effect from the reduction of aircraft flights is the reduction of aircraft based observations available to weather prediction centers. Aircraft based observations are used with other data sources to help improve the precision of weather forecasts. In particular, aircraft based observations (“ABOs”) provide specific data points on wind, temperature and pressure at altitude.

According to the European Centre for Medium-Range Weather Forecasts (“ECMWF”), aircraft reports are second only to satellite data in their impact on forecasts and by March 23 there was a reduction of 65% in reports received compared to March 3. Globally the reduction was about 42% and further reductions are expected in the near term.

According to the ECMWF the largest impacts from the lack of this data are in the forecast range up to 24-hours ahead, but a significant impact is seen in forecasts up to 7 days ahead. A study published in 2017 by the American Meteorological Society (“AMS”) discovered that utilizing aircraft observations reduced six-hour forecast errors in wind, humidity and temperature by 15% to 30% across the US.

The ECMWF does note, however, that recently added satellite wind observations will help to mitigate the drop in the number of aircraft-based observations, and also that a small proportion of aircraft reports come from cargo flights, which have been less affected than passenger flights.

Visit <https://www.ecmwf.int/en/about/media-centre/news/2020/more-and-better-aircraft-weather-observations-are-possible-experts> for more information on ABOs and their use in weather forecasting and visit <https://www.ecmwf.int/en/about/media-centre/news/2020/drop-aircraft-observations-could-have-impact-weather-forecasts> for the ECMWF article on impact of ABO reduction on weather forecasts.

Visit https://madis.noaa.gov/madis_acars.shtml for an overview of aircraft based observations.

Visit <https://journals.ametsoc.org/doi/10.1175/MWR-D-16-0398.1> to review the AMS study.

INTERNATIONAL

CORONAVIRUS UPDATE

Wow! Last month we noted that this is a moving target and tried to forward some guidance for planning. Like most, I really didn’t realize how fast that target was moving and how overwhelming the changes might be. On the bright side, there is mounting evidence from China, South Korea and even Italy that the back side of the curve is not that far away.

In the meantime, we have to deal with the situation as it is.

On the international level, countries and regions around the world are at different stages in dealing with the ongoing pandemic. Governments and the private sector are striving to adapt to the situation as it evolves. As the amount and content of information available is so voluminous, rather than condense and report on the matters, following are simply highlights of some areas of concern and links to their sources for your consideration:

General overview of repositioning empty containers:

https://transportgeography.org/?page_id=9481

Container imbalance resulting from trade disruption:

<https://www.wsj.com/articles/coronavirus-snarls-trans-pacific-shipping-and-ripples-through-u-s-business-11583432172>

<https://www.logisticsbureau.com/how-the-coronavirus-epidemic-is-throttling-global-supply-chains/>

C.H. Robinson Client Advisory Update: Coronavirus Pandemic

<https://www.chrobinson.com/en-US/-/media/ChRobinson/client-advisories/2020/03-27-20-client-advisory-update-coronavirus-pandemic.pdf>

C.H. Robinson Client Advisory on Container Imbalance Surcharge

<https://www.chrobinson.com/en-US/-/media/ChRobinson/client-advisories/2020/03-27-20-client-advisory-LCL-OX-CIS-US-to-all-dest-postpnement.pdf>

CHINESE FACTORIES FACING SECOND SHOCKWAVE

According to an article in Bloomberg News, just as China appears to have stabilized their infection rate and are getting back to work, the impacts of COVID-19 on the rest of the world are circling back in the form of orders being canceled; requests for delays of orders already made; putting goods ready to be shipped on hold until further notice; or asking for payment grace periods. Only last month it was customers concerned about the ability of Chinese factories to deliver, now it is the Chinese asking customers if they should still deliver products as they were ordered.

Visit <https://www.bloomberg.com/news/articles/2020-03-26/the-second-virus-shockwave-is-hitting-china-s-factories-already> to view the article.

GLOBAL PLASTIC TRASH ISSUE

We have previously discussed [see TRANSDIGEST 262] the recent changes in the international trade in recyclables and waste, and the need to manage the production and use of materials that are difficult or impossible to recycle or reuse.

In a recent article (3/3/20) in *Rolling Stone* by Tim Dickenson, the author provides an interesting history of the development and use of plastics from the beginning in the late 1860s to the present. He discusses how we got to where we are, the economic and political forces involved along with current legislation that has been proposed, H.R. 5845 and S 3263, the Break Free From Plastic Pollution Act of 2020.

Visit https://www.rollingstone.com/culture/culture-features/plastic-problem-recycling-myth-big-oil-950957/?utm_source=pocket-newtab to view the *Rolling Stone* article.

Visit <https://www.tomudall.senate.gov/news/press-releases/udall-lowenthal-merkley-clark-unveil-landmark-legislation-to-break-free-from-plastic-pollution> for a press release on the proposed legislation and visit <https://www.congress.gov/bill/116th-congress/house-bill/5845> to view the bill

LEGAL BRIEFS

CONTRACTS AND FORCE MAJEURE

By Kelly Mennemeier & Steven W. Block
Foster Garvey PC

Date: March 19, 2020

The global coronavirus pandemic is disrupting industry on an enormous scale, and its effects are likely to be significant and long-lasting. Under the swiftly evolving conditions created by the outbreak, many transportation service providers and consumers find themselves unable to meet their contractual obligations to business partners, or learn that their business partners are unable to perform contractual duties owed to them. Such businesses are turning to their contracts in search of provisions that might excuse breaches of contract under these circumstances.



Many transportation contracts contain force majeure clauses that expressly excuse nonperformance in the event of an “act of God” or other extreme, unforeseeable occurrence outside either party’s control that thwarts contractual performance. At first blush, force majeure clauses seem perfectly suited to the extreme, unpredictable conditions created by the novel coronavirus outbreak. However, whether such a clause excuses a given type of nonperformance depends greatly on the contract and the circumstances.

How can a transportation service provider or consumer determine whether a force majeure provision excuses contractual performance in the environment COVID-19 has created? Three key questions control:

(1) How does the contract define force majeure?

Look for a correlation between the types of force majeure events described in the contract and the reason a business cannot perform. Some force majeure clauses expressly include epidemics or pandemics. Others don’t mention pandemics but might include other occurrences occasioned by COVID-19, such as embargoes, quarantines or travel restrictions. If a party can’t perform its contractual obligations for a reason stated in the contract’s force majeure clause, the party likely will be excused from its performance obligation without penalty.

Most force majeure clauses include a catch-all provision defining force majeure as an unforeseeable event beyond the parties’ reasonable control, or stating that force majeure events “include but are not limited to” events enumerated in the provision. COVID-19 generally falls within these catch-all provisions. However, businesses should be aware that some force majeure provisions are limited to the events specified in the clause. If pandemics or related events (like embargoes and travel restrictions) aren’t included, force majeure might not be available as a breach of contract defense.

(2) What performance does the force majeure clause apply to?

Evaluate whether the force majeure clause applies to the type of breach being contemplated. Some provisions allow a party to terminate the contract altogether, while others simply suspend performance during the force majeure event. Some provisions apply to all contract obligations; others apply only to certain aspects of performance. Some force majeure provisions provide a defense to liability for a failure to perform; others directly excuse performance when a force majeure event prevents performance.

(3) What is required for a party to invoke force majeure?

Some clauses require parties to take certain steps before invoking force majeure as an excuse for nonperformance. Commonly, contracts require notice, sometimes in prescribed forms or within specified timeframes. Some contracts also require that parties explore measures to remove or mitigate the effects of force majeure, such as by taking “reasonable” or “best” efforts to secure performance. Businesses should identify any such obligations and take steps to document their efforts to comply with them before seeking to invoke force majeure.

What if there is no applicable force majeure clause?

It depends. In some cases, businesses may have to bear the cost of their inability to perform, for instance by paying cancellation or late penalties. In other cases, businesses may be able to rely on the equitable doctrines of impossibility or frustration of purpose.

Where circumstances change in a way that would create extreme or unreasonable difficulty, expense, injury or loss to a party if it were held to its contractual commitments, a court might excuse nonperformance on the grounds of “impossibility” or “impracticability”—if the change in circumstances was unforeseeable. Similarly, if a party can show that its principal purpose in entering into a contract has been frustrated by an unforeseeable event outside its control, its duties to perform might be discharged. In both cases, the event must be unforeseeable such that the parties couldn’t have directly guarded against it in the contract.

The coronavirus pandemic likely will be regarded as an unforeseeable occurrence; after all, few of us can recall an event with the global impact on travel and trade that we are now experiencing. However, a court confronting a coronavirus defense could conclude that while the pandemic itself was unforeseeable, certain impacts were not unforeseeable. For instance, in the transportation industry, it’s not unforeseeable that

deliveries may be delayed on occasion, such that many parties negotiate allocation of risk of delay, and agree that delay occasioned by any reason is compensable in a certain manner.

Thus, businesses seeking to escape—or enforce—contract performance affected by the coronavirus are advised to pay close attention to the terms of their contracts. If you have any questions about the enforceability of a transportation contract in light of the COVID-19 outbreak, contact a knowledgeable transportation attorney for guidance.

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MOTOR

FMCSA WAIVES HOS RULES

On Friday, March 13, 2020 the Federal Motor Carrier Safety Administration (“FMCSA”) issued a national emergency declaration to provide hours-of-service (“HOS”) regulatory relief to commercial vehicle drivers transporting emergency relief in response to the nationwide coronavirus (COVID-19) outbreak. This declaration is the first time FMCSA has issued nation-wide relief and follows President Trump issuing of a national emergency declaration in response to the virus.

From the declaration:

FMCSA’s declaration provides for regulatory relief for commercial motor vehicle operations providing direct assistance supporting emergency relief efforts intended to meet immediate needs for:

- Medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19.
- Supplies and equipment, including masks, gloves, hand sanitizer, soap and disinfectants, necessary for healthcare worker, patient and community safety, sanitation, and prevention of COVID-19 spread in communities.
- Food for emergency restocking of stores.
- Equipment, supplies and persons necessary for establishment and management of temporary housing and quarantine facilities related to COVID-19.
- Persons designated by Federal, State or local authorities for transport for medical, isolation or quarantine purposes.
- Personnel to provide medical or other emergency services.

To ensure continued safety on the nation’s roadways, the emergency declaration stipulates that once a driver has completed his or her delivery, the driver must receive a minimum of 10 hours off duty if transporting property, and 8 hours if transporting passengers.

Visit <https://www.fmcsa.dot.gov/newsroom/us-department-transportation-issues-national-emergency-declaration-commercial-vehicles> to view the 3/13/20 FMCSA announcement and to view the declaration visit <https://www.fmcsa.dot.gov/emergency/emergency-declaration-under-49-cfr-ss-39023-no-2020-002>.

On March 18, 2020 the FMCSA announced an expanded national emergency declaration:

FMCSA’s expanded declaration provides for regulatory relief for commercial motor vehicle operations providing direct assistance supporting emergency relief efforts intended to meet immediate needs for:

- Medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19.

- Supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants.
- Food, paper products and other groceries for emergency restocking of distribution centers or stores.
- Immediate precursor raw materials—such as paper, plastic or alcohol—that are required and to be used for the manufacture of essential items.
- Fuel.
- Equipment, supplies and persons necessary to establish and manage temporary housing, quarantine.
- Persons designated by federal, state or local authorities for medical, isolation, or quarantine purposes.
- Persons necessary to provide other medical or emergency services.

The expanded declaration stipulates that direct assistance does not include routine commercial deliveries, including mixed loads with a nominal quantity of qualifying emergency relief added to obtain the benefits of the emergency declaration.

To ensure continue safety on the nation’s roadways, the emergency declaration stipulates that once a driver has completed his or her delivery, the drive must receive a minimum of 10 hours off duty if transporting property, and 8 hours if transporting passengers.

Visit <https://www.fmcsa.dot.gov/newsroom/us-department-transportation-expands-national-emergency-declaration-commercial-vehicles> to view the 3/18/20 announcement and to view the expanded declaration visit <https://www.fmcsa.dot.gov/emergency/expanded-emergency-declaration-under-49-cfr-ss-39023-no-2020-002-relating-covid-19>.

WHAT ARE THE TRUCKING IMPACTS FROM COVID-19?

The American Transportation Research Institute (“ATRI”) and the Owner-Operator Independent Driver Association Foundation (“OOIDA” Foundation) are conducting a joint research study to understand the numerous impacts that the Coronavirus pandemic is having on trucking operations. The research focuses heavily on a survey that solicits critical input from truck drivers and motor carrier staff who are encountering Covid-19 impacts such as limited shipper access, changing distribution patterns and traffic-related issues.

The survey seeks information on the role of the trucking industry in responding to food and medicine shortages among other critical supplies and to confirm what is known anecdotally.

“Our goal is to complete the data analysis as quickly as possible, as it can provide important guidance to public and private decision-makers. The Covid-19 pandemic is a moving target, and we can’t afford to design policies and supply chains around guesswork,” said Dan Murray, Senior Vice President at ATRI.

Anyone involved in trucking operations is urged to respond to the survey, available online at: <https://www.surveymonkey.com/r/ATRI-Coronavirus-Perspectives>

DRIVER CLASSIFICATION

We previously reported that California’s Assembly Bill 5 (“AB 5”) was halted in its tracks with regard to trucking and drivers. They were lucky in the sense that the Federal Aviation Administration Authorization Act (“FAAAA”), a federal law, would likely preempt the prong “B” provision of AB 5.

On February 14, 2020 California State Senator Cathleen Galgiani (D-5th District) introduced Senate Bill 1039. From the Legislative Counsel’s Digest:

Existing law, as established in the case of *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903 (Dynamex), creates a presumption that a worker who performs services for a hirer is an employee for purposes of claims for wages and benefits arising under wage orders issued by the Industrial Welfare Commission. Existing law requires a 3-part test, commonly known as the “ABC” test, to determine if workers are employees or independent contractors for purposes of specified wage orders.

Existing law establishes that, for purposes of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration is considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity’s business, and the person is customarily engaged in an independently established trade, occupation, or business. This test is commonly known as the “ABC” test. Existing law charges the Labor Commissioner with the enforcement of labor laws, including worker classification.

This bill, known as “The Independent Worker Rights Act of 2020,” would set forth legislative findings regarding the intent of the Legislature to develop a modern policy framework that facilitates independent work for those who voluntarily choose it by creating a third classification of workers with basic rights and protections relative to work opportunities, including minimum wage and occupational accident coverage.

It appears that the State of California is under the impression that classifying workers as either an employee or independent contractor is outdated and in desperate need of updating to reflect that class of workers that gravitate towards the “gig” industry. The language is silent on what this third class would look like, but plants the seed for the state to create it.

Visit https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1039 to view the text of the bill.

OCEAN

ARE YOU PREPARED FOR CONTAINERGEDDON

By Paul Benfer, Kinetic Supply-Chain Services, LLC
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Are you prepared for the coming *Containergeddon* or *Portpocalypse*? If not, you better audit your organization’s program for managing container drayage, as the experts predict significant port delays once the backlog of containers hit our shores. Bill Mongelluzzo recently wrote in the Journal of Commerce that a perfect storm of containers will potentially wash up on our shores in late April as spring and summer merchandise, delayed by the coronavirus pandemic, arrives along with the back-to-school retail freight. Back-to-school season is normally a time of heavy retail container volume.

Do you rely on your freight forwarders to manage domestic container drayage for your company? Does your company manage domestic port drayage internally? If so, how many carriers do you work with at each port? If you or your freight forwarder rely on one or two carriers at each port, how many drivers does each carrier have to pull containers? What are your carrier’s plans if the expected bottlenecks come to pass? These are all important questions to ask yourself and your provider or carrier.

I compiled the list below of potential port issues when the expected container volume increases occur:

- General driver shortage due to container volumes.

- Carriers are unable to secure a ramp/pier appointment for pick-up or return within the allotted free time because of heavy volume, resulting in storage fees.
- Port congestion may result in carriers pre-pulling containers off hours to meet consignee delivery requirements. Additional charges for pre-pulling and storage of a container are assessed.
- Additional costs are incurred when a carrier is not given a return appointment for an empty container on the same day it is devanned. Extra charges are accrued for stop offs and storage.
- A chassis shortage, both rentals and carrier owned.
- Drivers running out of service hours.
- Container storage yards and carrier terminals at capacity.
- Consignees that require appointments for delivery. It would be beneficial for consignees to allow flexibility of delivery based on container availability at the port.
- A shortage of haz-mat and tanker endorsed drivers.
- Containers unavailable, as they are buried in the shipyards due to the volume of containers off the new, larger ships.
- Major delays picking up and delivering containers due to heavy port congestion, as the back to school season combined with the backlog from the coronavirus pandemic clogs ports.

Global Port Tracker estimated a 12.3% decrease in container volumes in February and forecasts an 18.3% decrease in March year-over-year. They forecast an increase of container volume of 9.3% in May and 9.6% in June. Gene Seroka, executive director of the Port of Los Angeles, is quoted as stating “The pendulum is going to swing back. The ports of Los Angeles and Long Beach, through their joint supply chain optimization group, are working with carriers, terminal operators, BCOs [beneficial cargo owners], labor, truckers, and railroads to move the empties back to Asia now while import volumes are still low.”

What can you do to reduce the potential port delays and additional costs associated with port bottlenecks? Develop a plan of attack. Below are steps to take to better manage the expected container volume increases:

- Increase your carrier base in key choke points. We see two primary choke points as Los Angeles/Long Beach CA and Chicago IL.
- Poll your primary carriers or freight forwarders within the next two weeks on their strategy to handle the predicted volume increases.
- Secure fleet size data to insure your overall driver pool is large enough to handle increased volumes.
- Increase communication with all key carriers in your heaviest volume ports before bottlenecks occur.
- Discuss a reduction in freight payment days-to-pay to partners who treat you as a *Shipper of Choice*.
- Ask your freight forwarders and customs brokers to notify you as early as possible of estimated container arrivals.

We believe if the above steps are taken, it will result in an improvement in your container drayage management program.

In light of the concern of potential port bottlenecks throughout the United States due to the coronavirus pandemic and back-to-school season, shippers and BCOs should take the necessary steps required to move volumes as expeditiously as possible and reach out to experts if they do not have the in-house expertise.

PARCEL EXPRESS

INTERNATIONAL MAIL DISRUPTIONS

by Tony Nuzio, ICC Logistics Services, Inc.

ICC Logistics has published a summary of international mail services that are seeing disruptions due to the Coronavirus, COVID-19. Much of this disruption is due to the suspension and/or reduction of international flights and connections, impacting inbound and outbound postal operations and delivery.

Customers should expect delivery delays.

<https://iccllogistics.com/update-international-mail-disruptions/>

<https://about.usps.com/newsroom/service-alerts/international/welcome.htm>

QUESTIONS & ANSWERS

by George Carl Pezold, Esq.

FREIGHT CLAIMS – TRAILER STOLEN AFTER ATTEMPTED DELIVERY

Question: Carrier misses his delivery appointment and arrives close to the consignee closing time. A receiving clerk advises the driver to drop the load in the parking lot adjacent to the consignee facility and to come back the next day.

The trailer gets stolen overnight.

Who is liable for the loss?

Answer: From the information provided it would appear to me that the carrier had not yet completed delivery to the consignee, and was therefore in possession and control of the shipment at the time the trailer was stolen, so it remained liable for the loss.

FREIGHT CLAIMS – LIABILITY UNDER INCOTERMS

Question: We purchased frozen strawberries. Incoterm is FOB Lirquen, Chile. The product was sealed at origin and arrived with original seal at destination in U.S.

However, product arrived with a fine white powder on the top layer of the boxes.

The supplier provided loading photos but no powder was noted on boxes or in container. The carrier says they didn't open, fumigate or otherwise open container.

Who is liable?

Answer: I assume that you are asking which party - the seller or the buyer has risk of loss in transit. If so, the Incoterm "FOB" states: "The buyer bears all risks of loss or damage to the goods from the time they are delivered" - which is usually to the vessel at the port of origin.

As to the cause of loss, this is clearly a question of fact, but from your description I would guess that there may have been some foreign material in the container, i.e. the fault of the carrier.

FREIGHT CHARGES – CONFLICT BETWEEN LOAD TENDER AND BILL OF LADING

Question: If the load tender and the bill of lading have conflicting information, which document is the controlling document?

Answer: Since the bill of lading is the “contract of carriage”, in the absence of some formal contract to the contrary, I would say that the information on the face of bill of lading (and any terms and conditions that are incorporated by reference) would govern.

FREIGHT CHARGES – INCLUDING FREIGHT CHARGES WHEN LIABILITY LIMITED

Question: The carrier damaged the entire shipment, has a limited liability of \$1.00 per lb., which is less than the actual value, and will not include freight charges into the payout. Are freight charges subject to a carrier’s limited liability?

Answer: The liability limitation applies to the total amount of the claim - even if it is for the invoice (delivered) price that would also include the freight or delivery charges.

SECURITY

CARGONET TO PROVIDE COMPLIMENTARY CARGO THEFT RESPONSE SERVICES

Crime never stops and unfortunately criminals will seek to take advantage of any disruptions. In a message to the industry, CargoNet, a nationally coordinated data-sharing system that “enables more efficient, accurate, and timely sharing of cargo theft information among theft victims, their insurers, and law enforcement” announced that it will provide complimentary cargo theft response services.

According the CargoNet announcement:

Many criminals will see this as an opportunity to take advantage of the fact that securing cargo may not be the immediate priority. To this end, **CargoNet will be providing complimentary cargo theft response services.** That means supply chain professionals can report a cargo theft event and will gain access to CargoNet’s 24/7/365 command center and subject matter experts which includes our cargo recovery network and award-winning investigative support.

Additionally, CargoNet provided the following Top 20 Driver Security Tactics:

- 1 Notify your dispatcher if you plan on stopping, via text, email or phone.
- 2 Pre-plan your stops prior to departure from the shipper.
- 3 Get it all done in advance: fuel, shower, eat, and rest prior to loading.
- 4 Even if you did a thorough pre-trip inspection earlier in the day, always do a walk-around when you stop. Give your truck and trailer a visual inspection of tires, brakes, air line, etc. Also—always check all trailer doors when you stop and prior to departing.
- 5 Always drive a minimum of 250 miles after accepting a load before stopping.
- 6 If you observe a suspicious vehicle following you for an extended period, call 911. If the patrol officer is unable to locate you, drive to a safe, well-lit location. While waiting for the officers, record license plate number as well as vehicle and occupant descriptions to provide to the responding officer.

- 7 Never discuss your destination, type of cargo, or any personal information on the CB radio or at a truck stop whether you are loaded or just left the consignee. Thieves may be gathering intelligence for your next trip.
- 8 If you must stop, use reputable truck stops or a secured parking area.
- 9 When you park at a truck stop, be aware of anyone who seems to be loitering – that person could be a criminal waiting for you to leave your vehicle unattended.
- 10 If you must eat and/or shower with a loaded trailer, ensure that the rear doors are parked against a fixed object—fence, light pole, etc.—to eliminate the opportunity for a theft.
- 11 Check your padlock on the rear door, place a lock on both doors, and check the integrity of the seal before you leave your vehicle and after you return. If the seal was tampered with or the doors were breached, call 911 and report the incident. Also, call your dispatcher and let them know of the event.
- 12 Don't skip the basics. Every time you leave your truck, secure/ lock it, roll up windows, take all keys, and lock side compartments on the tractor.
- 13 Park as close as you can to the front of the truck stop to discourage would-be thieves.
- 14 To ensure your safety and security, avoid corporate logos on apparel that could reveal valuable loads.
- 15 When transporting a high value, high risk load, do everything you can to ensure that it is not left unattended, including using team drivers and/or running trucks in pairs.
- 16 When driving through urban, high traffic areas, don't forget the simple precautions of locking your doors and keeping windows rolled up.
- 17 Secure your trailer with an ISO 17712 compliant barrier seal and a best-in-class hardened padlock.
- 18 Use at least two theft deterrents to prevent a full trailer load theft: a pin lock and a glad hand lock are generally the best choices.
- 19 Never leave a loaded trailer unattended unless in an approved, secure location.
- 20 Keep important information concerning your tractor and trailer (VIN, license plate number, trailer number, trailer description, description of load) on you at all times. Know whom to contact in the event of a theft and make sure you have a primary and a secondary contact person.

Visit <https://www.cargonet.com/news-and-events/cargonet-in-the-media/covid-19/> to view the announcement.

CYBERCRIME – THE WORST NOT NECESSARILY WHAT YOU THINK

The Federal Bureau of Investigation (“FBI”) is the lead agency for investigating malicious cyber activity by criminals, nation-state adversaries, and terrorists. One resource the FBI has developed to enhance operations and collaboration is its Internet Crime Complaint Center (“IC3”) which provides the public with a trustworthy and convenient mechanism for reporting information concerning suspected Internet-facilitated criminal activity.

Each year the IC3 releases an annual report based upon the information it has collected along with a breakdown by state. It turns out the high-profile crimes we read about a lot, such as phishing and related

email scams that are high by victim count, are down at #14 by total dollars lost. Business email compromise and email account compromise (a special form of fraud where a business or individual is fooled into not only falling for the scam but also sending money to the scammer) are at the top in dollar amount lost, at \$1.776 billion, almost four times the next category, "Confidence Fraud/Romance".

Visit <https://www.ic3.gov/media/annualreports.aspx> for links to the 2019 IC3 Annual Report and State Reports and also links to previous year reports.

FBI WARNS OF COVID-19 RELATED FRAUD SCHEMES

Criminals and scammers are leveraging the current situation to steal your money, according to a March 20, 2020 alert from the FBI. In particular they mention fake emails purportedly from the Centers for Disease Control and Prevention ("CDC") or other organizations claiming to offer information on the virus, phishing emails asking you to verify your personal information in order to receive an economic stimulus check from the government or sales of counterfeit treatments or equipment.

Visit <https://www.ic3.gov/media/2020/200320.aspx> to view the alert.

CCPAC NEWS

CCPAC NEWS UPDATE

The Certified Claims Professional Accreditation Council ("CCPAC") Officers and Board of Directors are pleased to announce the newest Certified Claim Professionals ("CCP"). Kudos to those who after many hours of self-study successfully passed the CCP Annual Fall Exam held on the first Saturday of November each year nationwide.

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

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

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

CCPAC also has the following online presence:

- FaceBook: www.facebook.com/certifiedclaimsprofessional
- FaceBook Blog: www.facebook.com/groups/410414592821010/
- LinkedIn Group: www.linkedin.com/groups/4883719/
- Twitter: twitter.com/ccpac_1
- Website www.ccpac.com

CLASSIFICATION

FUTURE COMMODITY CLASSIFICATION STANDARDS BOARD (“CCSB”) DOCKETS

| | Docket 2020-2 | Docket 2020-3 |
|--|----------------------|----------------------|
| Docket Closing Date | April 2, 2020 | August 6, 2020 |
| Docket Issue Date | April 30, 2020 | September 2, 2020 |
| Deadline for Written Submissions and to Become a Party of Record | May 21, 2020 | September 25, 2020 |
| CCSB Meeting Date | June 2, 2020 | October 6, 2020 |

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

ADVERTISE IN THE TRANSDIGEST

TRANSDIGEST ADVERTISING

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.

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APPLICATION FOR ANNUAL MEMBERSHIP

Membership in the Council is open to anyone having a role in transportation, distribution or logistics. Membership categories include:

- **Regular Member** (shippers, brokers, third party logistics and their representatives);
- **Multiple Subscriber** (non-voting additional representatives of a **Regular Member** firm); and
- **Associate Member** (non-voting members – carriers and freight forwarders).

All members receive:

- An email subscription to **TRANSDIGEST** (TLC's monthly newsletter). NOTE: To receive the printed version of the **TRANSDIGEST** by First Class Mail a fee of \$50, in addition to applicable membership fee, will apply.*
- **Reduced rates** for **ALL** educational programs, texts and materials.

New Members also receive:

- A complimentary copy of "Shipping & Receiving in Plain English, A Best Practices Guide"
- A complimentary copy of "Transportation Insurance in Plain English"
- A complimentary copy of "Transportation & Logistics – Q&A in Plain English Books 4, 5 & 6 on CD Disk"

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

How did you hear about TLC?

- Internet** **Email**
 Seminar/Meeting. Please specify location _____
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*Please return completed Membership Application Form along with your payment to:
TLC, 120 Main Street, Huntington, NY 11743*

Membership Application Form

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| Non-Member Introductory Subscriber [email subscription to TRANSDIGEST only] | | \$150.00 | \$ |
| * <i>Optional</i> : Printed version of TRANSDIGEST by USPS [added to membership fee] | | \$50.00 | \$ |
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It's Back Again! Now in Soft Cover

Freight Claims in Plain English (4th Ed.)

The hard-cover edition of Freight Claims in Plain English (4th Ed.) was out of stock, so the Council has arranged to have it reprinted in a soft-cover edition.

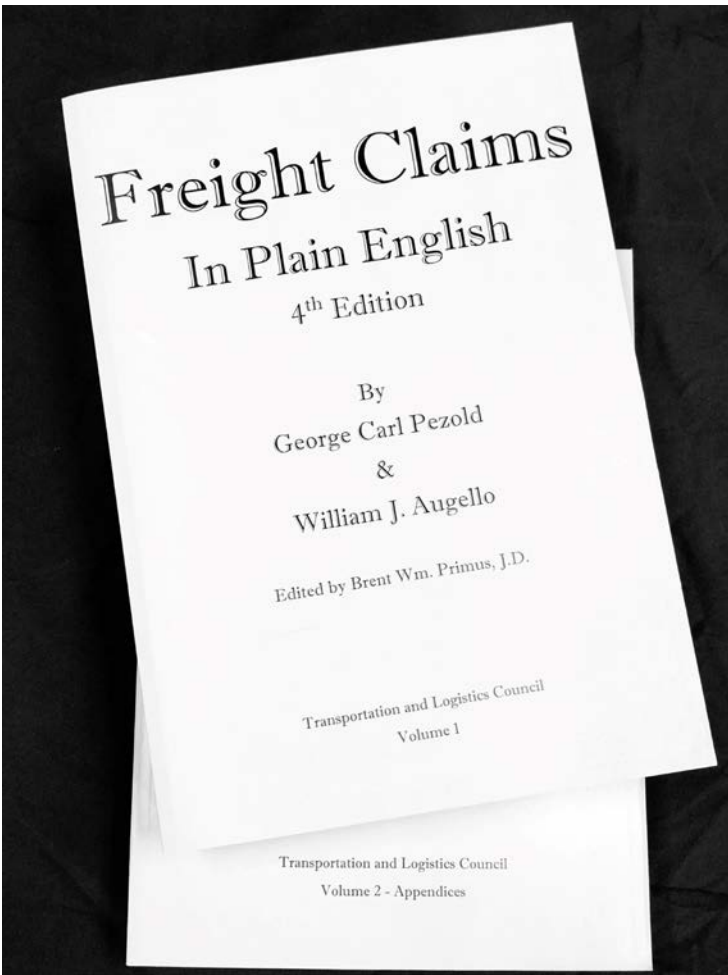
Often referred to as “the Bible” on freight claims, as the title suggests it remains the most readable and useful reference on this subject for students, claims professionals and transportation attorneys.

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

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

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

New York State residents sales tax applies.

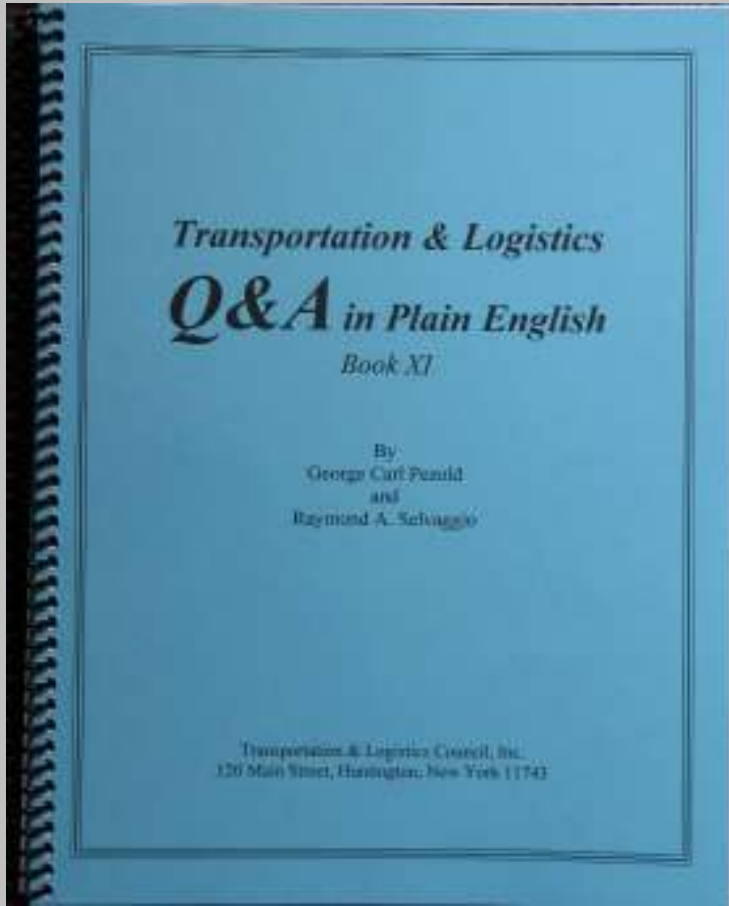


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Transportation & Logistics Q&A in Plain English – Book XI

"*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.

AVAILABLE NOW in soft cover (175 pages, with Table of Contents), or on searchable CD (with instructions on "How to Use this CD"). Price: Members \$60; Non-Members \$70 This includes FREE shipping in the 48 Contiguous United States! To order, log on to www.TLCouncil.org or call (631) 549-8984.

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