

TRANSDIGEST

Transportation & Logistics Council, Inc.

George Carl Pezold, Executive Director
William J. Augello (1926 – 2006), Founding Director

Raymond A. Selvaggio, General Counsel
Stephen W. Beyer, Editor

VOLUME XXIII, ISSUE NO. 241, MARCH 2018

Report on 44th Annual Conference!

- **ELD Impacts**
- **Autonomous Transport of HazMat?**
- **FMC to Investigate Detention & Demurrage Charges**
- **Saving Transportation \$\$\$**
- **Another California Driver Classification Case**
- **STB to Allow Some ex Parte Communications**
- **More Q&A's**

AVAILABLE ON DISK!

Q & A IN PLAIN ENGLISH – BOOKS 7, 8 & 9 - A COMPILATION

Published by the TRANSPORTATION & LOGISTICS COUNCIL, INC.
120 Main Street • Huntington, NY 11743-8001 • Phone (631) 549-8984 • Fax (631) 549-8962
Website: www.TLCouncil.org • email: tlc@transportlaw.com

Table of Contents

44TH ANNUAL CONFERENCE	2	PARCEL EXPRESS.....	14
ASSOCIATION NEWS	4	QUESTIONS & ANSWERS	15
CLASSIFICATION	10	RAILROAD	15
HAZMAT.....	10	TECHNOLOGY	16
INTERNATIONAL	11	CCPAC NEWS.....	17
MOTOR	12	ADVERTISE IN THE TRANSDIGEST	18
OCEAN	13		

44TH ANNUAL CONFERENCE

PRESIDENT’S REPORT

By Brandon Arnold, T&LC President
Intelligent Logistics, LLC

As your new President I am pleased to report that the Council’s 44th Annual Conference, “Education for Transportation Professionals”, was a great success! This year’s event took place in the beautiful and historic city of Charleston, SC. Our goal each year is to provide the most relevant and usable information for all in the transportation and logistics community, and I believe we certainly met this goal again this year.

Both new and seasoned professionals from shippers, carriers, brokers, 3PL's and other service providers attended. Updates and pertinent information affecting the transportation industry were among the many topics covered, which included the economy, new laws and regulations, contracting, cargo claims, insurance, international trade, compliance and logistics outsourcing.

In addition to these great workshops and sessions, pre-conference seminars kicked off the event on Sunday. Many companies believe that sending their employees to these full-day seminars is imperative for the success of their business. These four seminars included Contracting for Transportation & Logistics Services, Freight Claims in Plain English, and Transportation Logistics and the Law, as well as a CCP Primer Class for members preparing for the Certified Claims Professional Accreditation Council exam. TLC is a proud supporter of this program and looks forward to the continued partnership and success of the CCPAC program.

Monday’s Conference began with a Transportation Industry Updates and Trends. Transportation Intermediaries Association President & CEO, Bob Voltmann, moderated the kickoff session with Bill Cassidy of the Journal of Commerce; Dr. Robert C. Lieb of Northeastern University; and Marianne Rowden, Pres. & CEO of the American Association of Exporters and Importers, on the panel. Amongst many of the topics included were impending regulations, consolidations and mergers, ELD’s, and policies of the new administration affecting international trade.

Our luncheon guest speakers, Tonn Ostergard, Chairman & CEO for Crete Carrier Corp., provided us with an overview of his company, and how he operates in a fluctuating economy, including the driver shortage issues he is encountering as an asset based carrier.

Following the luncheon, we all had the opportunity to enjoy the ever popular and spirited “Law of the Land, Law of the Jungle” session. Spearheaded by Gerry Smith, this well attended session included Jeff Blakeman, Wes Chused, Bob Voltmann, Ray Selvaggio, and Les Vaagen. If you have never been to this

session, I suggest you make it a point next year to catch this one. It is a fun and lively session with lots of bantering back and forth, and tons of valuable information.

Tuesday's session on "How Good is Your Security Program" provided an extensive overview of how to spot threats and prevent them, and how to respond and react once they do happen. Both Sandor Lengyel and John Tabor are amongst the best in the industry and provided great insight into the minds of criminals that intend to do our businesses harm.

After wrapping up our morning sessions on "Impacts of New Laws and Regulations" and "Insurance and Transportation Contracts", we had the pleasure to meet the Council's first time Luncheon speaker, Cynthia Hetherington, President of the Hetherington Group. Cynthia explained how cyber and social media threats many times go unprotected in our businesses. We also found out creative ways to recover our freight on the "Dark Web" and through social web sites and online auction sites. If you want more information, visit our website at www.tlcouncil.org and we will provide a link to her information.

Tuesday afternoon began with the "Transportation Attorney Panel" headed up by our Executive Director, George Pezold, with Dirk Beckwith, Marc Blubaugh and Jason Tutrone, providing great commentary and responses to the attendees in the Q & A session that followed.

"Meet the Experts", our final session for the day, was a chance for all attendees to get a chance to meet with panelists and moderators they saw during the workshops and sessions for a one-on-one. This has always been well requested and attended. This year was no exception.

Tuesday finished with our popular "President's Reception", and was a chance for everyone to enjoy the great food of the historic Francis Marion Hotel, and to meet and network with all other transportation professionals.

Our final day began with Martha Payne leading a group of panelists discussing loss prevention and mitigation of damages. We wrapped up the sessions with freight claims and a great Q & A session. George Pezold closed the conference thanking everyone for attending and inviting everyone to attend next year's conference in Memphis, TN. A special thankyou goes to Vikki Van Vliet and TransAudit for donating our Grand Prize this year, an LG 55" TV, and congrats to Patrick Pascale for being the big winner.

Additional thanks for another successful conference goes out to Diane Smid, Ron Williams and Rob Strouse. Also thanks to all the board members for all the work they put in throughout the year to make sure that we continue to have well attended events, and great panelists and moderators for all the sessions and workshops. I would also like to congratulate our new Vice President, Angie Sutton, and Secretary Askia Shaheer. I appreciate the mentoring and assistance that all the board members have provided, especially Curtis Hart, our new Chairman, and Nadia Martin, our outgoing Chairperson.

As a final note, thank you to George Pezold, Ray Selvaggio, Gerry Smith and all the staff of the Transportation & Logistics Council, Inc. for a great conference once again this year. We are really looking forward to another successful and eventful 2018 and we look forward to seeing all of you, and many more, next year, March 25th - 27th 2019, at the Hilton Memphis in Memphis, TN.

NOTE: All the PowerPoint presentations from the Conference will be available online at the TLC's website.

ASSOCIATION NEWS

WELCOME TO THE NEW OFFICERS & DIRECTORS



2018 TLC Officers & Board of Directors



A FULL HOUSE

**TRANSPORTATION & LOGISTICS COUNCIL, INC.
2018 OFFICERS AND BOARD MEMBERS**

CHAIRPERSON
Curtis Hart, CCP
GEODIS
curtis.hart@geodis.com

PRESIDENT
Brandon Arnold
Intelligent Logistics
barnold@inlogistics.com

VICE PRESIDENT
Angie Sutton
ArcBest
asutton@arcb.com

SECRETARY/TREASURER
Askia Shaeer
Big Lots
ashaheer@biglots.com

<u>Region</u>	<u>Regional Directors</u>	<u>Assistant Regional Directors</u>
1	Wally Dammann, CCP Mitsui Sumitomo Marine Mgmt (USA) wdammann@msigusa.com	
2	David Nordt, CCP The Gilbert Company dave_nordt@gilbertusa.com	
3	Daniel Bohlman Butterball dbohlman@butterball.com	Jon Gehrts UniPro Foodservice gehrts@uniprofoodservice.com
4	Grant Ashe L&L Freight Services gashe@llfsi.com	Aaron Schmidt NFI Industries aaron.schmidt@nfiindustries.com
5	Douglas L. Arents Rite Hite Corporation darents@ritehite.com	Tom Dial Hilti, Inc. molloy.dial@hilti.com
6	Vikki Van Vliet Trans Audit vvanvliet@transaudit.com	Stephanie Castro John Soules Food scastro@jsfoods.com
7	Jerrod Slaughter Columbia Sportswear jslaughter@columbia.com	

OUR GRATITUDE

The Transportation & Logistics Council, Inc. would like to thank the following for helping to make this year's event special:

HOSPITALITY SUITE SPONSORS

Thanks to the following for their generous donations and sponsorship of the Hospitality Suites on Sunday and Monday evenings:

GOLD SPONSORS

American Truck & Rail Audits
MTI Inspection Services, Inc.
Perez & Morris LLC

SILVER SPONSORS

7PSolutions
AAGEX Freight Group
ABF Freight System, Inc.
Benesch, Friedlander, Coplan & Aronoff
Pezold, Smith, Hirschmann & Selvaggio, LLC
Transport Financial Services LLP
Transportation Intermediaries Association

BRONZE SPONSORS

Broussard LLC
Coyote Logistics
Logistic Concepts
Marwedel, Minichello & Reeb, P.C.
Williams & Associates, Inc.

DOOR PRIZE DONORS

Thanks also to the following companies that generously donated door prizes for the Conference:

Bay and Bay Transportation
Columbia Sportswear
Logistics Concepts
Perez & Morris LLC
Rite Hite

TranSolutions
Transportlawtexts.com
Veraction
Wooster Brush

A Special Thanks to Trans Audit for generously donating this year's Grand Prize:

LG 55" 4K UHD HDR Smart LED TV



along with a Special Thank You to Trans Audit for donating the lanyards.

SUPPORT OUR EXHIBITORS:

<p>7PSolutions 136 N Van Buren St. #1274 Nashville, IN 47448</p> <p>Dereck Middleton dmiddleton@7Pgps.com www.7pgps.com</p> <p>Tel (812) 988-4430 Cell (317) 654-4401</p>	<p>American Truck & Rail Audits PO Box 278 North Little Rock, AR 72118</p> <p>John Via jvia@amtr.com www.amtr.com</p> <p>Tel (501) 771-1944</p>	<p>Electric Guard Dog 55 Assembly Street, 5th Fl Columbia, SC 29201</p> <p>Trevor Fisher tfisher@electricguarddog.com www.electricguarddog.com</p> <p>Tel (803) 807-7439</p>
<p>Metro One Security & Loss Prevention Services 111 Barton Ave. Voorhees, NJ 08043</p> <p>Robert Babilino rbabilino@metroonelpsg.com www.metroonelpsg.com</p> <p>Tel (856) 206-6800</p>	<p>MGM Marketing 12732 S. Pflumm Road Olathe, KS 66062</p> <p>Michael Bear mbear@teammgm.com www.mgmbusinesspartners.com</p> <p>Tel (913) 451-0023 Cell (319) 360-4311</p>	<p>Transportation Data Source PO Box 27567 Salt Lake City, UT 84127</p> <p>Lyn Simon info@tdsource.com www.tdsource.com Tel (801) 441-5820</p>
<p>TranSolutions, Inc. 22015 N. Calle Royle Scottsdale, AZ 82555</p> <p>Joeseph Celestina Pete Celestina joe.celestina@myezclaim.com pete.celestina@myezclaim.com www.transolutionsinc.com</p> <p>Tel (480) 473-2453 Cell (443)910-0846 Cell (602) 723-0200</p>	<p>Veraction 3400 Players Club Pkwy Suite 300 Memphis, TN 38125</p> <p>Jerry Peterson jerry.peterson@veraction.com www.veraction.com</p> <p>Tel (512) 351-0691</p>	 <p>MGM Marketing</p>



TransSolutions, Inc.



AMTR



7P Solutions



Reed Tepper & Luncheon Speaker Tonn Ostergard



Luncheon Speaker Cynthia Hetherington & George Pezold



TLC Executive Secretary Diane Smid



Brian Kiel receiving Award from George Pezold



Robert Lieb, Marianne Rowden & Bill Cassidy



Panel: Freight Claims – Questions & Answers



Panel: Law of the Land, Law of the Jungle



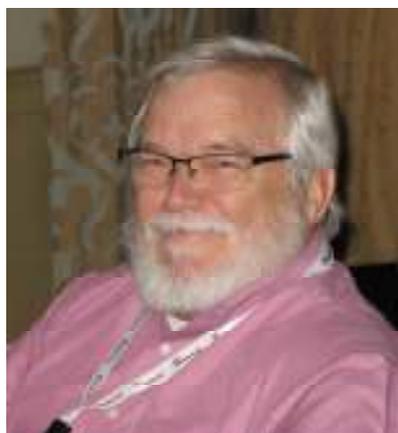
George Pezold receiving Award from Ray Selvaggio & Gerry Smith



Doug & Marie Arents



Steve & Ann Broussard



Tom Dial



Bill Cassidy



Stephanie Castro & Nadia Martin

NEW MEMBERS

The Transportation & Logistics Council would like to welcome the following new members:

Regular Members

Jeffrey Meyer

Nestle Purina Petcare Co
Checkerboard Square
St. Louis, MO 63021
jeffrey.meyer@purina.nestle.com

Gina Reckart

Reckart Logistics Inc.
929 S. Davis Avenue
Elkins, WV 26241
reckartg@reckartlogistics.com

Jodi Wellington

Forward Air, Inc.
300 Rohr Rd
Groveport, OH 43125
jwellington@forwardair.com

CLASSIFICATION

FUTURE COMMODITY CLASSIFICATION STANDARDS BOARD (“CCSB”) DOCKETS

	Docket 2018-2	Docket 2018-3
Docket Closing Date	April 12, 2018	August 16, 2018
Docket Issue Date	May 10, 2018	September 13, 2018
Deadline for Written Submissions and to Become a Party of Record	June 1, 2018	October 4, 2018
CCSB Meeting Date	June 12, 2018	October 16, 2018

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

HAZMAT

PHMSA SEEKS INPUT ON AUTONOMOUS TRANSPORT OF HAZMAT

On March 22, 2018 the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) published a “Request for Information” in the Federal Register seeking:

information on matters related to the development and potential use of automated technologies for surface modes (*i.e.*, highway and rail) in hazardous materials transportation. In anticipation of the development, testing, and integration of Automated Driving Systems in surface transportation, PHMSA is issuing this request for information on the factors the Agency should

consider to ensure continued safe transportation of hazardous materials without impeding emerging surface transportation technologies.

In the document, PHMSA stresses the importance of safety and testing as these technologies develop, and suggests that the Hazardous Materials Regulations (“HMRs”) are updated to account for these systems. The HMRs are designed to ensure that such materials are packaged safely during transport, to offer a communication line between transportation workers and emergency responders and to minimize the consequences of an incident.

The request for comments is meant to gather insight from industry experts and public organizations on how to best ensure that these regulations consider automated vehicles in the transportation of hazardous materials.

Amongst the questions the PHMSA asks are the following:

- What are the safety, regulatory, and policy implications of the design, testing, and integration of surface automated vehicles on the requirements in the HMR?
- What are potential regulatory incompatibilities between the HMR and a future surface transportation system that incorporates automated vehicles?
- Under what circumstances do freight operators envision the transportation of hazardous materials in commerce using surface automated vehicles within the next 10 years?
- What issues do automated technologies raise in hazardous materials surface transportation that are not present for human drivers or operators that PHMSA should address?
- What solutions could PHMSA consider to address potential future regulatory incompatibilities between the HMR and surface automated vehicle technologies?

Interested persons are invited to submit comments on or before May 7, 2018. Comments received after that date will be considered to the extent practicable.

Visit <https://www.federalregister.gov/documents/2018/03/22/2018-05785/request-for-information-on-regulatory-challenges-to-safely-transporting-hazardous-materials-by> for more information.

INTERNATIONAL

TARIFFS & TRADE WARS

In an effort to “level the playing field”, the Administration announced that it would impose tariffs of 25 percent on steel and 10 percent on aluminum. As a result, various trade partners sought exemptions and/or threatened retaliatory tariffs, giving the Administration leverage to seek concessions in an effort to strengthen the U.S. economy. While these actions roiled the stock market, it is still too early to reach any conclusion as to the success of this tactic. Historically, tariffs and trade wars have not been positive for the economy.

One of the particular areas of concern is our trade relationship with China, our largest trade partner. For a recent short overview of how this may play out, visit <https://www.bloomberg.com/view/articles/2018-03-26/trump-and-china-are-in-trade-spat-not-tariff-war>.

MOTOR

ELD MANDATE

Effective April 1, 2018 full enforcement of the electronic logging device (“ELD”) mandate that was effective December 18, 2017 will begin. This means that carriers can be issued Compliance, Safety, Accountability (“CSA”) points and drivers can be issued out-of-service citations.

To be compliant, drivers must have the device cab card in the cab. The regulation requires the following information to be available in the cab: a user manual describing how to use the ELD; an instruction sheet for producing and transferring data; an instruction sheet for reporting malfunctions and record-keeping procedures during malfunctions; and a supply of blank records of duty status for recording hours of service for at least 8 days. Any of this information can be in electronic form.

As of April 1, a driver can be placed out-of-service if:

- Using an unauthorized logging device not registered with the Federal Motor Carrier Safety Administration (“FMCSA”)
- Unable to produce and transfer data electronically from an ELD to an authorized law enforcement officer, or to produce the data via the display or print it out. A driver with an automatic onboard recording device (“AOBRD”) can be placed out-of-service if unable to display or produce records of duty status
- Driver indicates a special driving category when not involved in that category (considered a false log)
- Driver is required to have an ELD and the vehicle is not equipped with one (or an AOBRD until Dec. 17, 2019).

The FMCSA has granted ELD exemptions to certain specific operations, including truckers hauling agricultural goods and truck rental and leasing operations.

Visit <https://www.fmcsa.dot.gov/hours-service/elds/electronic-logging-devices> for the FMCSA’s ELD website.

ANOTHER DRIVER CLASSIFICATION SUIT

A new suit disputing driver classification at the Ports of Long Beach and Los Angeles was filed against XPO Logistics Cartage in late February. The claim filed in Los Angeles Superior Court says XPO Logistics Cartage LLC and a predecessor firm, XPO Cartage Inc., repeatedly misclassified drivers, depriving them of protections such as workers’ compensation and meal and rest breaks and violating the California state labor code. The lawsuit, a putative class action, seeks restitution of unpaid wages for nondriving work and other compensation, as well as an injunction to prevent the company from engaging in the practice in the future.

The lawsuit, on behalf of three truck drivers, is the latest such action aimed at trucking companies that haul goods at Southern California ports and is the first to seek injunctive relief.

Drayage trucking firms like XPO Logistics Cartage move cargo short distances between seaports and nearby rail yards and warehouses, a key link in the supply chain. The independent owner-operator model is common, and theoretically allows drivers to make more money than they might as employees, depending on how many loads they move each day.

But driver organizers say trucking companies push operational and other expenses onto drivers and don’t pay them for nondriving work, such as hours spent waiting to pick up loads. “Justice for Port Truck Drivers”,

a campaign to organize drayage drivers at U.S. ports, is backed by the International Brotherhood of Teamsters, whose membership could grow if port drivers are classified as employees rather than independent contractors.

This suit seeks class action status to represent as many as another 150 drivers along with asking for a permanent injunction against XPO's driver classification practices.

In previous suits XPO has consistently defended the contractor business model, while settling some cases and appealing adverse rulings.

For instance, the company in 2016 settled a suit and agreed to pay \$2.7 million to 520 drivers who alleged misclassification, through the agreement did not ban the firm from classifying the port drivers as contractors.

In May 2017, a federal judge upheld a California Labor Commissioner's ruling in favor of five port and rail truck drivers who charged they had been misclassified by XPO as independent contractors. The drivers were awarded \$958,660, but XPO has appealed and the case is pending.

OCEAN

FMC ORDERS FORMAL INVESTIGATION IN DETENTION & DEMURRAGE CASE

According to a March 5, 2018 Federal Maritime Commission ("FMC") press release, the FMC voted to launch an investigation into practices of vessel operating common carriers and marine terminal operators ("MTOs") related to detention, demurrage, and per diem charges. This was in response to claims made by a stakeholder coalition of beneficial cargo owners ("BCOs"), freight forwarders, and trucking companies, (the Coalition of Fair Port Practices) asserting that some detention, demurrage, and per diem fees are unfair because the stakeholders' ability to receive cargo and return equipment is often out of their control.

The investigation will be headed by FMC Commissioner Rebecca Dye and her final report of findings and recommendations is due to the FMC no later than December 2, 2018. Specifically, Commissioner Dye may develop a record on the following:

1. Whether, and if so, how, the alignment of commercial, contractual, and cargo interests enhance or aggravate the ability of cargo to move efficiently through United States ports.
 - a. Whether the commercial and contractual conditions in the United States are similar to the conditions in other maritime nations; and
 - b. Whether other maritime nations have practices to address detention or demurrage charges imposed due to conditions beyond carriers', MTOs, or shippers' control, and if so, whether they are effective.
2. Whether, and if so, when, the carrier or MTO has tendered cargo to the shipper and consignee.
 - a. Common practices for notification of when cargo is tendered; and
 - b. Impediments to cargo pickup when notified of tender.
3. Billing practices for invoicing demurrage or detention, specifically:
 - a. Billing relationships for VOCCs and MTOs, including which party bills for which services and charges relating to demurrage and detention;
 - b. Billing practices on describing or specifically identifying detention or demurrage charges imposed; and
 - c. Timeframes for issuance of demurrage or detention invoices.

4. Practices with respect to delays caused by various outside or intervening events;
 - a. Whether and when an MTO or VOCC determines to waive or reduce demurrage or detention charges when access to the terminal is impacted by such events; and
 - b. The role of truck and chassis issues in different types of container cargo movements (door-to-door versus port-to-port).
5. Practices for resolution of demurrage and detention disputes between carriers or MTOs and shippers.
 - a. Existing processes for reviewing or mitigating demurrage or detention charges;
 - b. Timeframes for the resolution of demurrage or detention disputes; and
 - c. Practices relating to the cancelation or mitigation of demurrage or detention invoices.

Visit https://www.fmc.gov/formal_investigation_in_detention_demurrage_case/ to view the FMC press release and visit https://www.fmc.gov/assets/1/Documents/ff28_ord_invst2.pdf to view the FMC “Order of Investigation”.

PARCEL EXPRESS

SAVING TRANSPORTATION \$\$\$

by Tony Nuzio, ICC Logistics

The Problem: A manufacturer of generic drugs was facing an interesting and often common business challenge; on the one hand business was exploding and expectations were that sales would double over the next 12 months. On the other hand, logistics expenses were spiraling out of control and slowly eating away at the company’s profit margin. Additional sales did little to help this ongoing issue. A revolving door within the transportation and logistics department made a big problem even bigger. With each new employee, decisions were being made without a clear and defined direction and arbitrary changes in service providers was creating total chaos.

The Solution: The Company asked ICC Logistics for help. Luckily, we’ve been through this scenario many times before. We performed an analysis of the company’s product shipping characteristics, shipping lanes, customer ordering habits, delivery time requirements and overall logistics spend by the various service providers for all shipment types, including small package shipments as well as LTL and Truckload shipments. ICC determined despite the “85% discount” the carrier reps were boasting about, the company was actually grossly overpaying for shipping. It was clear ICC needed to perform several benchmark analyses for parcel shipments as well as for less-than-truckload (“LTL”) and Truckload shipping.

The Results: The results of the parcel shipping analysis indicated that the company was overpaying for parcel shipments by approximately 12% compared to other shippers with similar shipping volumes and product characteristics. The company was able to negotiate with the parcel carrier and ultimately achieved parcel savings in excess of \$30,000 annually.

But the results didn’t stop at parcel. The LTL and Truckload benchmark analyses yielded a much greater savings opportunity. ICC negotiated a multi-year contract with the client’s major LTL carrier, changed the base rate level, drastically reduced the fees the carrier had been charging for expedited shipments, and implemented a reduced Fuel Surcharge Table that caps the fuel surcharge so the client will never have to worry about fuel costs if and when they get out of control. The multi-year savings will positively impact this

company's bottom line by over 30% annually, resulting in over \$600,000 in pure bottom line profit over the next two years.

NOTE: Although this is an ICC Logistics success story, the Transportation & Logistics Council, Inc. presents the above as an example of the benefits of utilizing the expertise of a freight audit company. TLC does not endorse any specific provider.

QUESTIONS & ANSWERS

By George Carl Pezold

FREIGHT CLAIMS – INCLUDING EXCISE TAX

Question: We included the excise tax paid by our customer as part of a freight claim. The carrier refuses to pay this charge. We have pointed out that the customer had to absorb this amount due to carrier negligence. They still refuse to pay it.

Is there any supporting information or case law as to why the carrier should pay the excise tax as part of the total claim payment?

Answer: I don't recall seeing any court decisions that deal with your question specifically, but the answer may depend on whether the claimant is the buyer/consignee or the seller/consignor.

If the buyer/consignee had risk of loss in transit and therefore was obligated to pay the seller's invoice amount, which included the excise tax, it would seem logical that the amount of the invoice (including the excise tax) is a proper measure of damage.

If the seller/consignor had risk of loss in transit, I assume the question is whether it would actually pay any excise tax if the item is lost or destroyed in transit, or just cancel its invoice to the customer, voiding the sale (and the tax). If the seller does have to pay the excise there may be some procedure for recovering excise tax on an item that has been lost or destroyed in transit. Perhaps a tax accountant could answer this for you.

FREIGHT CLAIMS – INCLUDING CUSTOMER CHARGE BACKS

Question: We are a freight broker. We receive charge backs from customers when a carrier is late for a delivery, misses a delivery, does not make a delivery appointment on time, or for whatever reason does not deliver within the requirements of the order. If the consignee sends a charge back to the shipper, would I be able to file a claim against the carrier to recoup those charges?

Answer: You can file a claim against the carrier, but it probably won't pay the claim unless you have a specific provision in your broker-carrier contract that makes it liable for such chargebacks.

RAILROAD

STB ISSUES FINAL RULE ON EX PARTE COMMUNICATIONS

On February 27, 2018 the Surface Transportation Board ("STB") served its decision in Docket No. EP 739 "Ex Parte Communications in Informal Rulemaking Proceedings":

. . . modifying its regulations to permit, subject to disclosure requirements, ex parte communications in informal rulemaking proceedings. The Board also adopts other changes to its ex parte rules that would clarify and update when and how interested persons may communicate informally with the Board regarding pending proceedings other than rulemakings. The intent of the modified regulations is to enhance the Board's ability to make informed decisions through increased stakeholder communications while ensuring that the Board's record-building process in rulemaking proceedings remains transparent and fair.

This final rule is effective April 4, 2018 and is available online at:

<https://www.stb.gov/decisions/readingroom.nsf/9855c1fb354da09b85257f1f000b5f79/7295037caceff9fa5852582420051f579?OpenDocument>

TECHNOLOGY

SELF-DRIVING VEHICLES

Recent Fatality

It was bound to happen. An autonomous vehicle (“AV”) struck and killed a pedestrian while driving at night in Tempe, Arizona. Video from inside car showed the safety driver distracted and looking down just before the impact, and video showing outside the vehicle showed the pedestrian appearing out of the darkness directly in front of the car. The pedestrian was not in a designated crosswalk or crossing at an intersection. There is no evidence that the AV attempted to brake or avoid the impact.*

As a result, Uber halted all AV testing and the Governor of Arizona has banned Uber from operating AVs on state roads indefinitely.

A key question is whether Uber's AV's systems detected the pedestrian in any manner, and if not, why not? The vehicle's sensors are supposed to operate in a full 360 degrees and utilize radar and LiDAR†, neither of which should be affected by the lack of light.

This tragic accident is the sort of situation self-driving vehicles are supposed to address. After all, these systems are supposed to be able to see through the dark and cannot get distracted by a cell phone.

This accident will be thoroughly investigated and systems will be tweaked to hopefully avoid similar situations in the future as the technology evolves.

AV Summit

On March 1, 2018 the U.S. Department of Transportation (“DOT”) held a listening summit on AV policy with senior leadership from the DOT, state and local partners, industry, academia, and safety advocates at DOT Headquarters. The event focused on key cross-modal issues that are important to the successful integration of automated vehicles into our nation's surface transportation system. The event was web casted live (see archived below) and a docket (Docket No. [DOT-OST-2018-0017](#)) has been opened so that stakeholders and the public can submit information both before and after the summit.

* Visit https://www.youtube.com/watch?v=R8Up9Ph_a0Y for report on and video from the accident.

† Visit <https://www.autoblog.com/2018/03/26/lidar-maker-velodyne-fatal-uber-crash/> for more on LiDAR.

Amongst others, DOT Secretary Chao addressed the summit, indicating that updated federal guidance for manufacturers and states seeking to deploy self-driving vehicles could be released as early as summer. The new policy, to be called AV 3.0, will specifically address automated policy guidance for trucks as well as cars, rail and mass transit, Chao told some 400 executives.

“As you may know, human error is a factor in 94% of highway accidents,” Chao said at the March 1 summit. “Autonomous technology can help improve safety across all modes of transportation, not just automobiles. But there are challenges, as well.”

Secretary Chao shared the DOT’s six basic principles guiding its work on autonomous vehicle policy:

First, safety remains the Department’s top priority.

Second, the Department’s approach will be flexible and tech neutral, not top down, command and control. We are not in the business of picking winners or losers. The market will determine the most effective solutions.

Third, when regulations are needed, they will be as non-prescriptive and performance-based as possible. At the same time, in all our regulatory actions and policy decisions going forward, the Department will not automatically assume that the driver of a vehicle is a human – it may be a computer.

Fourth, the Department will work with the states and other authorities to avoid a patchwork approach that could inhibit innovation and make it more difficult for automated vehicles to cross state lines.

Fifth, the Department will provide stakeholders with guidance, best practices, pilot programs, and other assistance to facilitate the safe integration of automated vehicles into our transportation system. The Department will also prepare for complementary technologies that enhance the benefits of automation, such as vehicle-to-vehicle and vehicle-to-infrastructure communications.

And sixth, the Department recognizes that there will always be the need for autonomous vehicles to operate side-by-side with traditional vehicles, in both rural and urban areas. We will not assume universal implementation of these technologies.

Visit <https://www.transportation.gov/AV/avsummit> for access to a video of the summit and visit <https://www.transportation.gov/briefing-room/av-30-summit-event> for a transcript of DOT Secretary Chao’s comments. Visit <https://www.transportation.gov/AV> for general status of DOT activities regarding AVs.

CCPAC NEWS

CCPAC

Established in 1981, the Certified Claims Professional Accreditation Council (“CCPAC”) is a transportation cargo claim accrediting organization with a global membership and is comprised of shippers, manufacturers, freight forwarders, brokers, logistics companies, insurance companies, law firms and transportation carriers including air, ocean, truck and rail and various related transportation organizations. CCPAC seeks to raise the professional standards of individuals who specialize in the administration and negotiation of cargo claims. Specifically, it seeks to give recognition to those who have acquired the necessary

degree of experience, education, expertise and who have successfully passed the CCP Certification Exam covering domestic and international cargo liability, warranting acknowledgment of their professional stature.

The next CCP Exam will be Saturday Morning, November 5, 2018, in most major cities nationwide and in Canada. Registration for the Annual Fall Exam will be available on our website May 15, 2018.

Information can be obtained by contacting John O'Dell, Executive Director of CCPAC, by phone: 904-322-0383 or email: jodell@ccpac.com or visit <http://www.ccpac.com/>.

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, 12 monthly issues, and include both print and electronic issues. For information contact Diane Smid or Stephen Beyer at (631) 549-8984.



**The Next Generation
of Freight Audit and
Payment is Here.**

VERACTION
SEE. SAVE. CONTROL.

www.veraction.com | 800-755-0110



BEYOND CLAIM FILING

A full collection of software applications that will enable you to easily handle and manage any type of claim.



LOSS AND DAMAGE



OVERCHARGE



RETURN
AUTHORIZATION



VENDOR CLAIM



CARRIER WISE



OS&D INCIDENT



CARRIER CLAIM

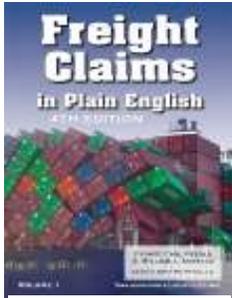
TranSolutions

480.473.2453 • TranSolutionsInc.com • Sales@MyEZClaim.com

Save Money with Online Freight Claim Management, please call 480-473-2453 or visit <http://www.transolutionsinc.com/moneytoday> for more details.

Freight Claims in Plain English, Fourth Ed.

by George Carl Pezold and William J. Augello



\$285.00

"Freight Claims in Plain English" is now available again in this completely revised and updated Fourth Edition. The text has been expanded to cover many new subjects, recent developments and court decisions affecting transportation in general and claims for loss and damage to cargo in particular, including developments in international ocean and air transportation, intermodal, and cross-border trade with Canada and Mexico.

This Fourth Edition contains extensively revised sections on all aspects of the law and citations to hundreds of new court decisions. The page numbering has been simplified in order to facilitate finding answers to your questions. As with prior editions, a well organized and detailed table of contents, topical index, and table of authorities are included, as well as extensive appendices containing valuable resource materials.

Major topics include:

- SURFACE CARRIER LIABILITY
- BURDENS OF PROOF
- LIMITATIONS OF LIABILITY
- TIME LIMITS (SURFACE MODES)
- AIDS TO CLAIM RECOVERY
- THE IMPACT OF DEREGULATION
- WATER CARRIER LIABILITY
- INTERMODAL AND MULTIMODAL LIABILITY
- BEGINNING AND ENDING OF CARRIER LIABILITY
- CONTRACTS OF CARRIAGE AND BILLS OF LADING
- CLAIMS PROCEDURES & ADMINISTRATION
- LIABILITY OF SURFACE FREIGHT FORWARDERS AND INTERMEDIARIES
- COMMON CARRIER LIABILITY
- CARRIER DEFENSES TO LIABILITY
- DAMAGES
- SPECIFIC CLAIM PROBLEMS
- WAREHOUSEMAN'S LIABILITY
- AIR CARRIER LIABILITY
- CANADIAN ANNOTATIONS
- MEXICAN ANNOTATIONS

www.transportlawtexts.com

\$285.00

info@transportlawtexts.com



Transport Financial Services



www.tfsmall.com

Thank You

I, Marold O. Studesville, am a new member of the Transportation & Logistics Counsel. I wish to thank Mr. George Pezold, TLC members, and all participants of the 44th Annual T & LC Conference for providing me with such a positive experience with such a diverse group of "Transportation Professionals".

Your mission was to identify, and reconcile transportation problems was met. The manner in which each "TLC Panelist", and "Moderator" presented **Issues, and Answers was truly innovative.**

I received answers to problems that I was unaware of. Thank you.

Finally, unless precluded by "Act of God" I look forward to attending, and participating in TLC's scheduled events, and pledge my continued support to strengthen the Partnership between Shippers...Carriers...and Brokers to protect the most precious commodity in this industry, the Carriers. "My attorney, Mr. John P. Manning of Beaverton, Oregon joins in these sentiments.

"Thank You"

Marold Studesville
CEO/Owner

TFS Mall
Transportation 1 Stop Shop

Transport Financial Services, LLC
850 W. Garden Street
Pensacola, FL 32502 Cell: 662-542-2908
Marold@TFSMall.com
WWW.TFSMALL.COM
850-433-2294
Fax 850-438-0668



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.

How did you hear about TLC?

- Internet** **Email**
- Seminar/Meeting. Please specify location _____
- Referred by _____
- Other _____

*Please return completed Membership Application Form along with your payment to:
TLC, 120 Main Street, Huntington, NY 11743*

Membership Application Form

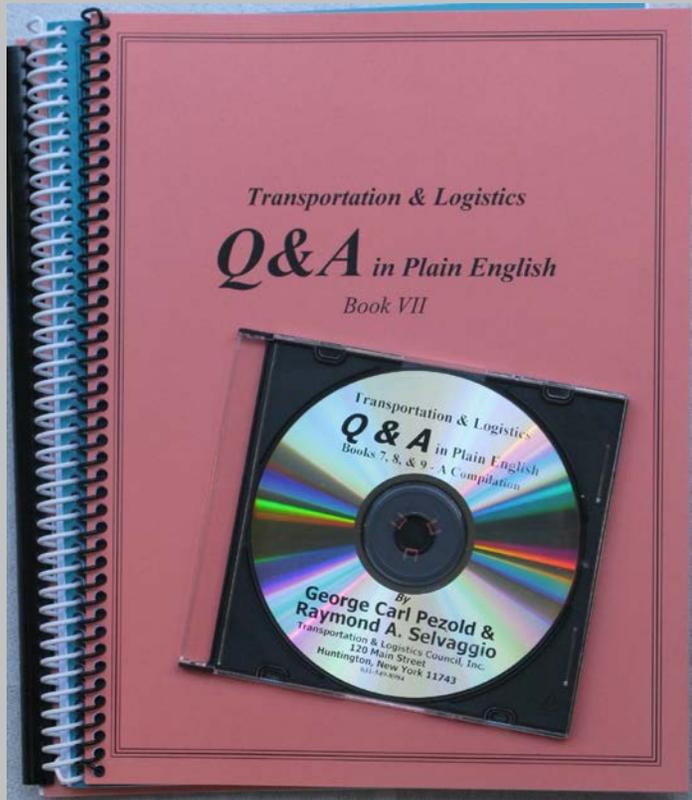
Name:		Title:	
Company Name:			
Address: (STREET ADDRESS ONLY - UPS DOES NOT SHIP TO P.O. BOXES)			
City:	State:	Zip: -	
Phone: ()	Fax: ()	Email:	

Description / Type of Membership	Quantity	Fee	Total
Regular Member [includes email subscription to TransDigest]		\$395.00	\$
Multiple Subscriber [includes email subscription to TransDigest]		\$200.00	\$
Associate Member [includes email subscription to TransDigest]		\$345.00	\$
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	\$
TOTAL PAID (Make Checks Payable to "TLC"):			\$

Credit Card Information

• MasterCard • VISA • AmEx	Credit Card No.	Exp: (/)
Name on CC :	Address (if different than mailing address) :	CVV:

ALL NEW!
A 3-IN-1 BARGAIN!
Q & A IN PLAIN ENGLISH – BOOKS 7, 8 & 9
A COMPILATION



NOW AVAILABLE IN A SINGLE CD!

Transportation & Logistics
Q&A in Plain English
Books 7, 8 & 9 – A Compilation

"Transportation & Logistics - Q&A in Plain English - Books 7, 8 & 9" is a compilation of the seventh, eighth and ninth books in this series of the Council's popular texts that were originally published in 2009 through 2013. Since these were about to go out of print, the Council decided to re-publish this valuable reference material in a single CD version.

Based on hundreds of actual questions submitted to the Council's "Q&A" forum and published in the TransDigest, these are real questions, from business people – shippers, carriers and logistics professionals – with a wide range of day-to-day transportation and logistics problems. The answers are by George Carl Pezold and Raymond A. Selvaggio, two leading transportation attorneys, and are clear, concise and to the point.

This compilation is a "gold mine" of valuable information with almost 500 questions and answers, a table of contents and topical index – some 337 pages if produced in a print version, and now available on a single CD.

The text is intended to be a useful deskbook, and a refresher and handy reference for experienced transportation and logistics professionals. It will also serve as an indispensable teaching aid for students and newcomers to the transportation and logistics field.

If purchased separately, the total cost of all three books would be \$110 (for members) \$150 (for non-members). The CD version is a big savings - only \$70 (for members) and \$90 (for non-members). This includes FREE shipping!

Order Form

Fill out the information below, detach and send with your payment to: **TLC, 120 Main St., Huntington, NY 11743**
Fax to: 631-549-8962 Email to: diane@transportlaw.com

Name:		Position:	
Company Name:			
Address: (STREET ADDRESS ONLY – UPS DOES NOT SHIP TO P.O.BOXES)			
City:		State:	Zip:
Phone: ()	Fax: ()	Email:	

Item #	Description	Qty	Price	Total
594	Q & A in Plain English – Books 7, 8 & 9 on CD (T&LC Member)		\$ 70.00	\$
594-NM	Q & A in Plain English – Books 7, 8 & 9 on CD (Non- Member)		\$ 90.00	\$

CREDIT CARD INFORMATION

CREDIT CARD #	<input type="checkbox"/> MC <input type="checkbox"/> VISA <input type="checkbox"/> AE	
Name on Card:	Exp. Month/Year: /	
Billing Address on card (If different than above):		
City:	State:	Zip:

The Transportation & Logistics Council, Inc.

Phone: (631) 549-8984

120 Main Street, Huntington, NY 11743

Fax: (631) 549-8962

EDUCATIONAL MATERIALS

Item		Item#	Price
Shipping & Receiving in Plain English, A Best Practices Guide (2009), by George Carl Pezold	Member	586	\$70.00
	Non	586-NM	\$90.00
Contracting for Transportation & Logistics Services (rev. 2001), by George Carl Pezold	Member	576	\$40.00
	Non	576-NM	\$60.00
Transportation & Logistics - Q&A in Plain English – Books VII, VIII & IX A Compilation on CD Disc by George Carl Pezold and Raymond Selvaggio (2015) ***NEW***	Member	594	\$70.00
	Non	594-NM	\$90.00
Transportation & Logistics - Q&A in Plain English – Books IV, V and VI A Compilation on CD Disc by George Carl Pezold and Raymond Selvaggio (2004 – 2007)	Member	589	\$60.00
	Non	589-NM	\$80.00
Transportation & Logistics - Q&A in Plain English – Book X (2014) by George Carl Pezold and Raymond Selvaggio	Member	592	\$50.00
	Non	592-NM	\$70.00
Transportation & Logistics - Q&A in Plain English – Book X (2014) on CD Disc by George Carl Pezold and Raymond Selvaggio	Member	593	\$50.00
	Non	593-NM	\$70.00
Transportation & Logistics - Q&A in Plain English – Book IX (2012) by George Carl Pezold and Raymond Selvaggio	Member	590	\$35.00
	Non	590-NM	\$55.00
Transportation & Logistics - Q&A in Plain English – Book VIII (2010) by George Carl Pezold and Raymond Selvaggio	Member	587	\$35.00
	Non	587-NM	\$55.00
Transportation & Logistics - Q&A in Plain English – Book VII (2008) by George Carl Pezold and Raymond Selvaggio	Member	584	\$35.00
	Non	584-NM	\$55.00
Transportation Insurance in Plain English (1985), by William J. Augello	Member	521	\$13.00
	Non	521-NM	\$25.00

FREE SHIPPING in the 48 Contiguous U.S States
(Call for shipping costs outside the US)

Order Form

Fill out the information below, detach and send with your payment to: **TLC, 120 Main St., Huntington, NY 11743**
Fax to: 631-549-8962 Email to: diane@transportlaw.com

Name:		Position:
Company Name:		
Address: (STREET ADDRESS ONLY – UPS DOES NOT SHIP TO P.O.BOXES)		
City:	State:	Zip:
Phone: ()	Fax: ()	Email:

Item #	Description	Qty	Price	Total
			\$	\$
			\$	\$
			\$	\$

CREDIT CARD INFORMATION

CREDIT CARD #	<input type="checkbox"/> MC <input type="checkbox"/> VISA <input type="checkbox"/> AE	
Name on Card:	CVV:	Exp. Month/Year: /
Billing Address on card (If different than above):		
City:	State:	Zip: