

TRANSDIGEST

Transportation & Logistics Council, Inc.

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EDITORIAL

A LITTLE KNOWLEDGE CAN BE A DANGEROUS THING

by George Carl Pezold, Executive Director

The world of transportation and logistics is constantly changing, with new laws, new regulations, new technology - and new problems that face transportation professionals. Whether you are an “old timer” or a neophyte just starting in the industry, there is much to learn and know about the ever-changing business of transportation.

When you earned that diploma or certificate hanging on the wall, you probably didn’t study the information or get the tools that are needed for your day-to-day work. And although learning “on the job” is invaluable, it is often not enough to fully prepare you to avoid surprises and mistakes that can be costly to your company.

The proverb “A little knowledge is a dangerous thing” goes back to Alexander Pope in 1709 - but it is equally valid more than 300 years later. That’s why the mission of the Council is to educate transportation professionals and, for almost 50 years, the Council has been recognized as the premier educational organization in the industry with our annual conferences, seminars, virtual workshops, texts and materials.

As you can see, this 49th Annual Conference lives up to its name, “Education for Transportation Professionals”, with coverage of all modes of transportation and addressing a wide range of topics. We have assembled an impressive list of speakers and presenters for the educational sessions, including top experts and experienced practitioners who can give you practical information and advice that you can take back and use in your everyday business.

I believe you will leave this Conference not only with some valuable knowledge that will benefit you in your work, but also with an enjoyable experience networking with other transportation professionals, as well as making new friends or catching up with old ones. And, if you are not already a member of the Council, I sincerely hope that you will consider the benefits of joining this fine organization.

ASSOCIATION NEWS

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[TransAudit](#) has generously donated an Apple iPad for the Conference Grand Prize

VIRTUAL WORKSHOP VIDEOS AVAILABLE

The Transportation & Logistics Council is making available videos of recent virtual workshops. These recordings are an excellent resource for those who were unable to participate or those participants who would like a reference or review what they learned. See order form below.

MEMBERSHIP COMMITTEE

The Council's Membership Committee is looking for volunteers, ideas and suggestions to help get the word out and attract new members. Interested parties please contact Membership Committee Chairman, Grant Ashe at gashe@kllm.com for more information.

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LOGISTICS

TURNING SHIPPING INVOICES INTO REVENUE

by Tony Nuzio, ICC Logistics Services, Inc.

Many companies employ outsourced firms to pre-audit and pay their freight invoices. This is not only helpful to catch all invoicing errors, but it also is a much less costly way to process freight invoices than typical in-house operations. Utilizing a pre-audit firm does not, and should not preclude companies from also using a post-audit firm to audit the results.

Post-auditing of freight invoices refers to the process of reviewing and verifying the accuracy of freight invoices after they have been paid. The purpose of post-audit operations is to identify any errors or overcharges in the billing process and recover any funds that were incorrectly paid during the initial audit process. And yes, millions of dollars are recovered each year during the post-audit process.

The post-audit process typically involves the following steps:

1. **Collecting Data** from the carrier, such as invoice files, bills of lading, and delivery receipts.
2. **Collecting Freight Payment Data** from the initial pre-audit firm, or in-house payables departments.
3. **Checking for Errors** such as incorrect, or improper charges, incorrect weights, and incorrect classifications.
4. **Verifying Charges** against the contracted rates to ensure that the charges are consistent with the terms of the contract.
5. **Resolving Discrepancies** that are identified during the audit process directly with the freight carriers.
6. **Recovery of Funds** for any overcharges that are identified during the post-audit process. This may involve issuing a credit memo or receiving a refund.

There are several critical points to consider:

Freight invoice errors are quite common

Post-audit firms are usually paid on a contingency basis

Many post-auditing firms offer free advice to assist their clients to further reduce their shipping costs

There are several common errors or discrepancies that are frequently identified during post-audit of freight invoices. Some of the most common ones include:

1. **Inaccurate Charges** are the most common errors. This could be due to incorrect weight or volume measurements, incorrect rates, or incorrect application of surcharges or discounts.
2. **Duplicate Charges Paid** are often found.
3. **Incorrect Carrier Identification** on the invoice, resulting in incorrect billing or routing of the shipment and payment to the wrong service provider.
4. **Billing Discrepancies** can occur when the billing information on the invoice does not match the actual shipment or service provided. This could be due to incorrect address information, incorrect service levels, or other billing errors.
5. **Tariff or Regulatory Non-Compliance:** Carriers are required to comply with various tariffs and regulations when billing for freight services. Non-compliance with these regulations can result in additional charges or penalties for the shipper.

Freight invoice errors are quite common as a result of continuing changes to rates, freight classifications, fuel related surcharges, delivery surcharges, dimensional surcharges, accessorial fees, etc.

Here are some key steps a company can take to set up an effective post-audit program for freight invoices:

1. **Define Objectives and Metrics:** Before setting up a post-audit program, it's important to define the objectives of the program and establish metrics for measuring success. For example, the objective may be to identify and recover overcharges, and the metric may be the amount of savings achieved.
2. **Establish Processes and Procedures:** Once the objectives and metrics are defined, the company should establish clear processes and procedures for conducting post-audit reviews. This may include developing a checklist of items to review, defining roles and responsibilities for team members involved in the process, and establishing communication protocols with carriers.
3. **Collect and Analyze Data:** The next step is to collect and analyze data related to freight invoices. This may involve collecting invoice data from multiple sources, such as carriers, freight forwarders, and internal systems, and analyzing the data for inaccuracies or discrepancies.
4. **Conduct Reviews and Dispute Errors:** After analyzing the data, the company should conduct post-audit reviews and dispute any errors or discrepancies identified. This may involve communicating with carriers and requesting additional documentation to support charges or resolve disputes.
5. **Track and Report Results:** Finally, the company should track and report the results of the post-audit program on a regular basis. This may include providing regular updates to management, identifying trends or patterns in the data, and making recommendations for process improvements for negotiating better rates with carriers.

Conducting post-audit of freight invoices can provide several benefits for companies, including:

1. **Cost Savings** as a direct result of identifying billing errors and discrepancies. By correcting inaccurate charges and duplicate payments, companies can reduce their freight spend and improve their bottom line.
2. **Improved Payment Accuracy** can help ensure that payments to carriers are accurate and comply with contractual terms and conditions. This can help build stronger relationships with carriers and reduce the risk of payment disputes or discrepancies in the future.
3. **Process Improvement** can help identify areas for improvement within the company's shipping operations. By analyzing the data and identifying trends, companies can implement changes to improve efficiency, reduce errors, and enhance overall performance.
4. **Carrier Accountability** can help hold carriers accountable for their billing practices and ensure compliance with applicable laws and regulations. This can help prevent carriers from overcharging or billing for services not provided.

There are several challenges or obstacles that can arise during the post-audit process, including:

1. **Data Availability** involves obtaining the necessary data from carriers and other third-party vendors. This can be overcome by establishing data sharing agreements with carriers and other vendors and utilizing technology solutions to automate data extraction.
2. **Data Accuracy** is ensuring the accuracy of the data used for post-audit. This can be addressed by implementing quality control measures, such as data validation checks, and regularly monitoring the accuracy of the data used.
3. **Contractual Ambiguity** is when contractual terms and conditions may be ambiguous or open to interpretation, making it difficult to determine whether charges are accurate or not. This can be addressed by reviewing contracts and negotiating clearer terms with carriers.
4. **Time Constraints** are time-consuming, especially for companies with large shipping volumes. This can be addressed by leveraging technology solutions that automate the post-audit process and streamline data analysis.
5. **Carrier Resistance** is when carriers resist post-audit efforts, either due to concerns about data privacy or a desire to avoid scrutiny of their billing practices. This can be addressed by working with carriers to establish mutually beneficial post-audit programs and addressing any concerns they may have.

Technology also plays a significant role in post-audit of freight invoices, as it can help automate many of the tasks involved and streamline the process. Here are some examples of how technology can be used:

1. **Automated Data Capture** software can be used to automatically capture data from freight invoices, including carrier name, shipment details, charges, and other relevant information. This can help reduce errors and save time compared to manual data entry.
2. **Invoice Validation** software can be used to validate freight invoices against carrier contracts, shipping documents, and other relevant information to ensure accuracy and compliance. This can help identify discrepancies and errors more efficiently and effectively.
3. **Data Analysis and Reporting** software can be used to analyze freight invoice data and generate reports on key metrics, such as carrier performance, cost savings, and process improvement opportunities. This can help companies make more informed decisions and optimize their shipping operations.

4. **Integration with ERP [Enterprise Resource Planning] Systems** software can be integrated with a company's ERP system to automatically reconcile freight invoices with purchase orders, receipts, and other financial data. This can help improve payment accuracy and reduce manual data entry.

Some examples of software or tools available for post-audit of freight invoices include:

- Freight Audit and Payment Systems (FAPS)
- Transportation Management Systems (TMS)
- Enterprise Resource Planning (ERP) systems with freight auditing modules
- Electronic Data Interchange (EDI) systems
- Robotic Process Automation (RPA) tools

Ensuring compliance with applicable laws and regulations is critical to the success of any post-audit program. Here are some steps that companies can take to ensure compliance:

1. **Stay Up-to-Date on Regulations** and guidelines related to freight billing and transportation, including those issued by federal, state, and local authorities.
2. **Establish Compliance Policies and Procedures** for post-audit of freight invoices that align with applicable laws and regulations. These policies should be documented and communicated to all relevant stakeholders.
3. **Monitor Compliance** of the post-audit program to ensure that it is operating in compliance with applicable laws and regulations. This may include regular internal audits, as well as external audits by third-party auditors.
4. **Work with Experienced Providers** that have a strong track record of compliance and adhere to industry standards.
5. **Seek Legal Counsel** from qualified attorneys with experience in freight billing and transportation regulations. Legal counsel can provide guidance and advice on compliance issues and help companies avoid legal pitfalls.

Typically post-audit firms charge a contingency fee based on a percentage of the recoveries they actually recover for the shipper. In this regard it is a "no brainer." Performing a Post-Audit on your PAID shipping invoices is a "**Win-Win**" scenario. This is especially true for firms paying their freight bills in-house.

Strategic By-Products offered by Quality Post Auditing firms:

1. Identifying shipment consolidation savings opportunities
2. Carrier selection recommendations for improved services as well as lower shipping costs
3. Freight rate negotiation recommendations
4. Freight cost allocation strategies to control shipping costs
5. Identifying routing irregularities that incurred significantly higher shipping costs
6. Ground vs. Express shipping service and cost comparisons

To summarize, Post-Audit Reviews will provide these benefits:

- Identify and correct inaccuracies or discrepancies
- Identify and correct these errors and discrepancies
- Help identify and recover overcharges, improve accuracy of billing
- Provide significant benefits for companies, including cost savings, improved payment accuracy, process improvement, and carrier accountability, improving the bottom line

By establishing a well-planned and organized post-audit program, utilizing technology solutions to automate data extraction and analysis, and maintaining open communication with carriers, the post-audit ultimately results in cost savings and improved efficiency in shipping operations.

Unless you have the capacity to perform these operations in-house, look to knowledgeable experts for help. They can leverage technology to automate many of the tasks involved in post-audit reviews reducing errors, saving time, and optimizing your shipping operations while maximizing your savings.

In doing so, companies can ensure their post-audit program is compliant with applicable laws and regulations, minimize legal risk, and build stronger relationships with carriers and other stakeholders in the transportation industry.

MOTOR

CARRIER LIABILITY FOR LOSS, DAMAGE OR DELAY

By George Carl Pezold

Liability for loss, damage or delay is one of the most contentious areas of disputes between shippers and carriers.

Small, occasional and unsophisticated shippers usually don't have any kind of formal transportation agreements. They merely get a rate - over the phone or in an email - from a carrier (or a broker) and never ask about liability for loss or damage. The only "contracts" are the rate quote and (hopefully) a receipt or bill of lading when the truck picks up their shipment.

Most larger and more sophisticated shippers today have some kind of a more formal shipper-carrier contract. These usually do have provisions governing carrier liability, *but carriers most always want to include the National Motor Freight Classification ("NMFC") and their rules tariffs as the governing publications in the contract.*

The National Motor Freight Classification

Liability limitations in the form of "released rates" were recognized by the Motor Carrier Act of 1935 and Section 20(11) of the Interstate Commerce Act ("ICA") was made applicable to motor carriers by Part 2, Section 219 of the ICA.

Section 20(11)

Provided, however, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply . . . to property . . . received for transportation concerning which the carrier shall have been or shall hereafter be *expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property*, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section 10 of this part to regulate commerce, as amended; and any tariff schedule which may be filed with the Commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed

upon ; and the Commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions.

The NMFC lists about 10,000 articles, each of which has one or more classes. Only 31 of these articles have “released rates” where the rate is “dependent on value” - in dollars per pound - and all of these were approved or authorized by the Interstate Commerce Commission (“I.C.C.”) in a series of “Released Rate Orders” between 1936 and 1980.

All of these Released Rate Orders stated:

The released value must be entered on the shipping order and bill of lading in the following form:

"The agreed or declared value or the property is hereby specifically stated by the shipper to be not exceeding ____ per pound".

The Uniform Straight Bill of Lading, published in the NMFC, provided a box for this purpose:

Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property as follows:

The agreed or declared value of the property is specifically stated by the shipper to be not exceeding ____ per ____ .

These items still appear in the current versions of the NMFC. To ship under a released rate item the shipper must enter a value per pound in the box on the Uniform Bill of Lading (“UBOL”) which applies a higher or lower class upon which the freight charged will be assessed. Failure to enter a value typically results that the charges will be assessed on the basis of the class for the highest valuation provided in the item.

Prior to deregulation and the abolition of filed tariffs courts generally held that the entry of a released value on the bill of lading acted as agreement to the limit the carrier’s liability to the value declared. Subsequent decisions have been less consistent about the consequences of a failure to enter a value and whether it limits the carrier's liability.

Comment: Practitioners should understand that the box on the Uniform Straight Bill of Lading was intended to apply only to those collectively-made released rates made pursuant to the exemption from antitrust laws that were authorized by the I.C.C. and published in the NMFC. While independently published carrier rules tariffs could, in theory, contain other released rate provisions where “the rate is dependent on value”, none of them do so. The current trend is for most NMFC classifications to be tied to the *density* of the article. It is simple logic that where an article is assigned a class that is not based on value, such as density, and the freight charge is determined by that class, the rate is based on density and not upon any monetary declared value of the article. Thus, any entry or failure to enter a value in that box cannot have any effect whatsoever as to other kinds of liability limitations published in carrier rules tariffs.

Comment: The use of the provisions contained in the NMFC, including the Uniform Straight Bill of Lading and its terms and conditions, is reserved exclusively for carriers that participate in the NMFC. It should be noted that many carriers that are not participants in the NMFC use similar bills of lading that purport to incorporate the NMFC - and many shipper-prepared bills of lading also incorporate the NMFC. Such language has no legal effect and is not binding on the shipper or the carrier.

Carrier Rules Tariffs

Carriers’ rules tariffs come in all sizes and flavors. Almost all major less-than-truckload (“LTL”) carriers publish these and many of them are over 200 pages long. Typically, they have one or more items applicable

to carrier liability for loss or damage, excess and maximum liability coverage, articles of extraordinary value, prohibited and restricted items, limited liability commodities, “spot rate” liability, released value declaration, etc. Unless otherwise provided in a separate transportation agreement or contract, these rules may be incorporated into the contract of carriage by the language in the bill of lading that says:

RECEIVED, subject to individually-determined rates or contracts that have been agreed upon in writing between the carrier and shipper, if applicable, *otherwise to the rates, classifications and rules that have been established by the carrier and are available to the shipper, on request;*

And they don't understand the small notice at the bottom of the bill of lading that says:

Liability Limitations for loss or damage on this shipment may be applicable. See 49 U.S.C. § 14706(c)(1)(i) and (B).

Even though most larger carriers do have their rules tariffs available on their websites, it is unrealistic to require a shipper to wade through a voluminous and incomprehensible rules tariff in order to determine what if any limitations of liability might apply to its shipments - or to know what to do if there are any. The obvious answer is to cover this subject in a well-drafted transportation contract.

Waiver of rights and remedies in contracts

It should be noted that many shipper-carrier contracts contain waiver language such as:

WHEREAS, this Agreement is being entered into between Shipper and Carrier as authorized under 49 U.S.C. Section 14101(b) and provides for Carrier to perform specified services under the rates and conditions specified herein; and

WHEREAS, the parties expressly waive any and all rights and remedies provided under Part B of Subtitle IV of Title 49, United States Code (the Interstate Commerce Act) for the transportation provided hereunder to the extent they are inconsistent with the terms and conditions herein (except provisions governing registration, insurance, or safety fitness).

Few shippers realize what this does. As for carrier liability for cargo loss or damage it nullifies the Carmack Amendment, 49 USC §14706, as well as important federal regulations such as 49 CFR Part 370. Thus, when drafting contracts with such a waiver it is important that these subjects are excluded from the waiver language or need to be "put back in" and dealt within the four corners of the contract.

CALIFORNIA TO MANDATE ELECTRIC TRUCKS

On March 31, 2023 the U.S. Environmental Protection Agency (“EPA”) approved California’s plan to require that half of all heavy duty trucks sold in California be “zero emission” by 2035. The California Air Resources Board (“CARB”) had sought waivers from the Clean Air Act that would allow California to set more restrictive engine emission standards than the federal government. This makes California the world’s first government to require zero emission trucks.

California has been joined by Massachusetts, New Jersey, New York, Oregon, Washington and Vermont in adopting the more restrictive rules. These states comprise some 22% of the national truck market.

This move is not without its detractors. According to an American Trucking Associations 3/31/23 press release:*

* <https://www.trucking.org/news-insights/epa-erring-allowing-california-create-regulatory-patchwork>

American Trucking Associations President and CEO Chris Spear said the Biden Administration's Environmental Protection Agency's decision to allow California to move forward with damaging and unrealistic emissions rule will harm the industry nationwide.

"By granting California's waiver for its so-called 'advanced clean trucks' rule, the EPA is handing over the keys as a national regulator," Spear said. "This isn't the United States of California, and in order to mollify a never satisfied fringe environmental lobby by allowing the state to proceed with these technologically infeasible rules on unworkable and unrealistic timelines, the EPA is sowing the ground for a future supply chain crisis.

"As we learned since the pandemic, our supply chain is fragile, and even small disruptions can cause huge problems nationally and globally, and by allowing this incredibly disruptive, ill-conceived regime to move forward, EPA is creating a terrible mess for the hard-working men and women of our industry and the country to clean up," he said.

"We have, and will continue to work tirelessly with the EPA on aggressive, achievable timelines for reducing emissions. Over the past 35 years, that collaboration has produced a 98% reduction in truck emissions," Spear said. "We continue to be committed to the path to zero, and we hope EPA will, as it becomes clear that California's rhetoric is not being matched by technology, reverse course and create a single, achievable national standard."

In a separate move, California is also seeking to require all new light-duty cars and trucks sold in California to be either electric or plug-in electric hybrids by 2035. California needs a separate waiver for that regulation.

While perhaps well intentioned, it is not clear how realistic these goals are. As reported in TRANSDIGEST #298, a report released by the American Transportation Research Institute ("ATRI") December 6, 2022 found significant problems with converting the U.S. vehicle fleet to battery electric. Some of the reported issues include: lack of electrical supply; lack of charging infrastructure; limited raw materials necessary to produce the batteries and even lack of adequate truck parking spaces.

In order to meet these goals, these issues must be resolved.

DRIVER CLASSIFICATION

In the never-ending saga of driver classification, the 9th Circuit Court of Appeals ruled on March 17, 2023 that plaintiffs, Postmates and Uber drivers, could proceed in their lawsuit on claims that California's Assembly Bill 5 ("AB5"), as amended, violates the Equal Protection Clause of the U.S. Constitution.

This is an interesting turn of events as previous challenges to AB5 have been unsuccessful so far.

In this case, *Olsen v. California*,* the plaintiffs challenged AB5 on several grounds, alleging that the statute violates the Equal Protection, Due Process, Contract, and Bill of Attainder Clauses of the U.S. Constitution, and sought a preliminary injunction. The district court rejected each of these arguments. On appeal, however, the 9th Circuit revived the Equal Protection claim and returned the case to the District Court.

* *Olsen v. California*, No. 21-55757, 2023 WL 2544853 (9th Cir. Mar. 17, 2023) available online at <https://law.justia.com/cases/federal/appellate-courts/ca9/21-55757/21-55757-2023-03-17.html>

Ironically, the 9th Circuit ruled as it did not because of any defect in AB5 as it was initially passed, but because under pressure the California legislature passed amendments to AB5 that exempted a broad range of workers, including other gig workers, from the presumption of employment. It was this disparate treatment of similar workers that the 9th Circuit focused on.

According to the Court, the “piecemeal fashion” in which these exemptions were included in AB5 supported plaintiffs’ allegations that the California Legislature specifically disfavored ride-hailing companies, as there is no indication that many of the exempted workers are “less susceptible to being exploited by being classified as independent contractors.” The Court also took note of numerous remarks by legislators singling out ride-hailing companies as targets for AB5, concluding that these comments and the resulting legislation could plausibly be “attributed to animus rather than reason.”

It should be noted that the federal PRO Act does include any similar exemptions.*

And so the saga continues.

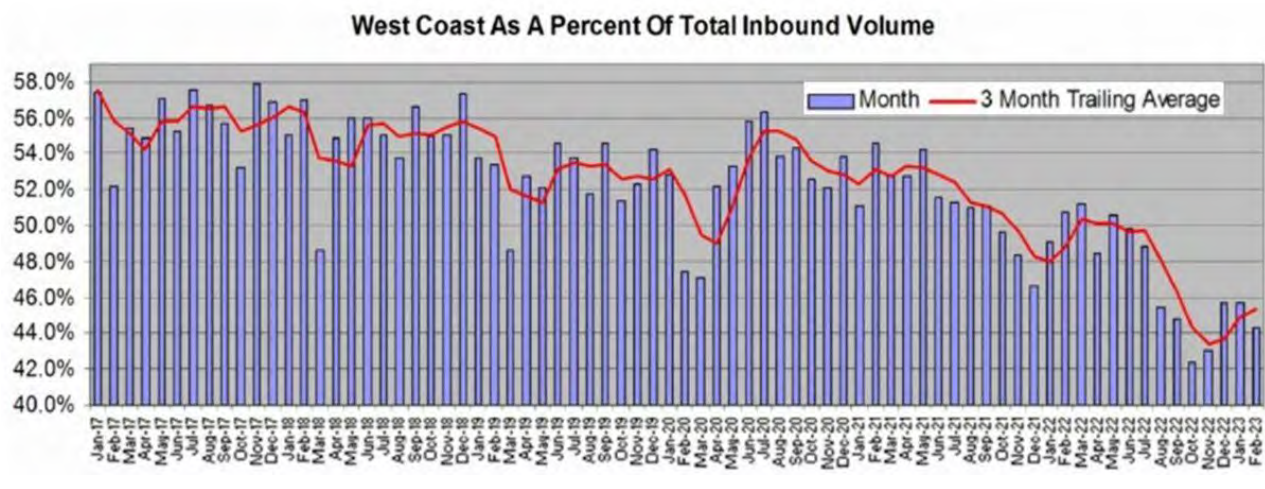
OCEAN

WEST COAST PORT STRIKE

While negotiations continue between the International Longshore and Warehouse Union (“ILWU”) and Pacific Maritime Association (“PMA”), there was a 24-hour shutdown of terminal operations at the ports of Long Beach and Los Angeles from Thursday night to Friday night, April 6-7. But this was not an “official” or organized action.

According to ILWU Local 13, the members didn’t show up Thursday night because they happened to be busy at a monthly membership meeting, where a new president was appointed. It said workers’ absence Friday was due to union members spending time with families for the religious holiday.

Whether “official” or not, this type of disruption validates shipper concerns over potential West Coast shutdowns and the need to shift supply chains to East and Gulf Coast ports, or make other contingency plans.



* See TRANSDIGEST #293 for a discussion of the PRO Act

This is a trend that has already continued for some 21 months according to a 4/9/23 article in *FreightWaves* with the West Coast's share of the country's imports falling to 44%.*

The stakes are high for all concerned, as the collective bargaining agreement covers 22,000 workers at 29 ports along the West Coast. There is the real risk that any shift in traffic away from the West Coast is not likely to return.

The article goes on to point out that:

The landscape for Asia-U.S. supply chains is much different today, courtesy of what happened after the last ILWU-PMA contract negotiations: the debut of the larger Panama Canal locks in 2016 and the concurrent expansion and dredging of East and Gulf Coast ports to accommodate the larger vessels that can traverse the newer locks.

The container shipping industry [is building a massive amount of new tonnage](#) that is specifically designed for this route: so-called Neopanamax. According to Alphaliner, 60% of mainline new buildings due for delivery in 2023-2025 are Neopanamax.

Also from the article, as traffic shifts from the West Coast, another potential loser is U.S. exporters. According to Peter Friedmann, executive director of the Agriculture Transportation Coalition (AgTC):

Ocean carriers put vessels in service to carry the higher-value import consumer goods. They carry the relatively lower-value agriculture exports on the backhaul. As ships that carried imports that would have called on West Coast ports are now serving Gulf and East Coast ports, agriculture exports are jeopardized.

It is hoped there will be a resolution and a new contract soon so as to prevent further disruptions to our supply chains and economy.

PARCEL EXPRESS

UPS-TEAMSTER CONTRACT NEGOTIATIONS

by Erman Eyuboglu, ICC Logistics Services, Inc.

The UPS-Teamster contract is due to expire on July 31, 2023, and Teamster Leadership has [indicated](#) that they will strike if they do not have a new agreement by this date. So, it is imperative that shippers stay close to this situation, due to the major impact it could have on their supply chains.

There have been a couple of recent interesting developments in the news regarding the UPS Teamsters negotiations and we have seen both positive and negative developments related to the situation.

First on the positive side of things, Satish Jindel, president of Ship Matrix Inc., [made the bold prediction](#) that there will be an agreement between UPS and the Teamsters no later than June 30th, 2023. He has also publicly speculated that there is no chance that there will be a strike. Mr. Jindel does not claim to have any insider information, and is basing his predictions on "having lived through many contract cycles and knowing the current market dynamics to connect the dots and make a very credible forecast."

* <https://www.freightwaves.com/news/lalb-outlook-darkens-as-labor-unrest-briefly-shutters-ports>

Mr. Jindel has been known to make accurate forecasts in the past, as he was the first to report last year that Frederick W. Smith, founder of FedEx Corp., would [step down](#) as CEO after 50 years. So, apparently the accuracy and effectiveness of his crystal ball needs to be considered!

This prediction does align with UPS CEO Carol Tome's [position](#) that the Agreement will be completed in advance of the expiration. She has indicated that both sides are close on key issues, despite all of the noise that has been seen in the media. Also, as reported in our last article on the topic, Ms. Tome has made comments related to her desire to take care of her people when addressing large UPS audiences. So, maybe Mr. Jindel is onto something here.

However, Teamster publicity regarding the negotiations doesn't appear to be as rosy. UPS Teamsters work under nearly 40 supplements and local riders to the National Master contract, with different language on some key issues, from discipline to paid time off. UPS and the Teamsters have already kicked off negotiations for these Supplements and Riders.

Teamster websites have reported that "The Teamsters' supplemental negotiating committees are holding firm against UPS's concessionary proposals." They indicated that the Supplemental Committees continued to hold the line on issues ranging from the use of lower paid tier drivers, the use of Personal Vehicle drivers and other major areas of concern.

The Teamsters stated that UPS negotiators were initially dragging their feet and failed to take bargaining seriously. They claim to have seen more movement when their supplemental committee chairs reminded UPS of the looming April 17 deadline (the date that the National Negotiations are scheduled to kick-off).

The Teamster website also made the following statement:

"General President Sean M. O'Brien and General Secretary-Treasurer, Fred Zuckerman are making it clear to UPS that the company needs to make significantly more movement before national negotiations begin."

Earlier this year, the UPS Management team had been communicating that the Teamster negotiations would be "Loud and Late". So, at least one of the predictions that they made is coming to fruition. Obviously the comments posted on the Teamster website have been "Loud". Also, one can say that the negotiations are "Late", as the National negotiations are due to kick-off much later than they typically do.

However, it is interesting that we are now starting to see speculation both inside and outside of UPS, that suggests that the negotiations will be completed in advance of the agreement expiration on July 31, 2023. One could speculate that UPS and the Teamsters might agree on one very important thing - the longer that the negotiations drag on, the more packages and Teamster jobs UPS will lose.

We have heard of more and more shippers moving volume away from UPS, and adding other carrier shipping options to protect themselves from a work stoppage or slow down. So, maybe both sides are beginning to feel the pressure. The combination of a slowing economy along with volume bleed due to customer anxiety could have a major impact on UPS as well as the Teamsters. So, hopefully the increased tension that this creates will lead to a creative breakthrough for the negotiations.

Either way, it is imperative that shippers stay close to this situation to ensure that they are in a position to limit the impact to their businesses.

FEDEX ANNOUNCES MAJOR CHANGES

On April 5, 2023 FedEx Corp. announced major structural changes to its organization. According to the press release, FedEx will:^{*}

consolidate its operating companies into one organization, creating efficiencies that will enhance the company's ability to meet the evolving needs of customers and ultimately build a stronger, more profitable enterprise.

This phased transition, with full implementation expected in June 2024, will ultimately bring FedEx Express, FedEx Ground, FedEx Services, and other FedEx operating companies into [Federal Express Corporation](#), becoming a single company operating a unified, fully integrated air-ground network under the respected FedEx brand. FedEx Freight will continue to provide less-than-truckload freight transportation services as a stand-alone company under Federal Express Corporation. Raj Subramaniam will serve as President and CEO of the combined organization.

Fedex expects the changes to generate \$4.0 billion of permanent cost reductions in fiscal 2025 with an incremental \$2.0 billion of savings in fiscal 2027. FedEx projects costs of up to \$2.0 billion by the end of fiscal year 2025 to implement its business optimization initiatives.

Some of the changes include restructuring its air network by shifting to traffic to surface transportation where possible, outsourcing more flights, implementing more direct routes and streamlining ancillary support functions like maintenance to save \$700 million annually. Forty percent of global air savings will stem from using less jet fuel, with crew and maintenance each representing 20% of the value associated with reduced flight hours.

It also appears that on the ground side FedEx will make use of a "hybrid" model of using employee drivers and independent contractor drivers (Note that the independent contractor model may face significant problems as legislation is passed making it near impossible to drive for a carrier as an independent contractor.)

While the independent contractor model potentially offers savings on labor costs, competitor United Parcel Service, Inc. ("UPS") has always operated profitably with unionized drivers. In fact, UPS' adjusted operating margin for 2022 was 13.8% as compared to 6.1% for FedEx.[†]

It will be interesting over the next few years to see just how successful FedEx is with these changes and whether they can maintain service standards.

USPS SEEKS TO RAISE RATES

On April 10, 2023 the United States Postal Service ("USPS") filed notice with the Postal Regulatory Authority ("PRC") of price changes to take effect July 9, 2023.[‡] Prices will change as follows according to the press release:

^{*} <https://newsroom.fedex.com/newsroom/global-english/fedex-announces-planned-consolidation-of-operating-companies>

[†] <https://www.seattletimes.com/business/fedex-overhaul-contemplates-a-future-with-no-drivers-on-payroll/>

[‡] <https://about.usps.com/newsroom/national-releases/2023/0410-usps-files-notice-with-prc-for-new-mailing-services-pricing.htm>

The price for 1-ounce metered mail will increase to 63 cents, and the price to send a domestic postcard will increase to 51 cents. A 1-ounce letter mailed to another country would increase to \$1.50. There will be no change to the single-piece letter and flat additional-ounce price, which remains at 24 cents. The Postal Service is also seeking price adjustments for Special Services products including Certified Mail, Post Office Box rental fees, money order fees and the cost to purchase insurance when mailing an item.

The proposed Mailing Services price changes include:

Product	Current Prices	Planned Prices
Letters (1 oz.)	63 cents	66 cents
Letters (metered 1 oz.)	60 cents	63 cents
Domestic Postcards	48 cents	51 cents
International Postcards	\$1.45	\$1.50
International Letter (1 oz.)	\$1.45	\$1.50

As operating expenses fueled by inflation continue to rise and the effects of a previously defective pricing model are still being felt, these price adjustments are needed to provide the Postal Service with much needed revenue to achieve the financial stability sought by its [Delivering for America](#) 10-year plan. The prices of the U.S. Postal Service remain among the most affordable in the world.

While the PRC must approve the proposed changes, it is expected that they will.

QUESTIONS & ANSWERS

FREIGHT CLAIMS – FAILURE TO NOTE DAMAGE TO LOAD

Question: We are a specialized brokerage dealing in refrigerated transportation. I have a question on a temperature (“temp”) issue. We had a load that shipped frozen, but the customer is saying it was received thawed. They notated on the proof of delivery (“POD”) the temp at time of delivery and took pictures, but the receiver did not tell the driver it was out of temp. The receiver also kept the product that was out of temp.

We filed a claim, but it was denied by the carrier (denial emails from carrier attached). Is the carrier correct in denying this claim? It was not a downloadable reefer.

1/26/23 carrier email:

I’m only able to see ambient air temperature readings that are specified at 11.3 in the nose, 18.2 in the mid and 21.8 on the tail. I don’t see any product temperature readings on the BOL. Also on the inspection report it’s stated that our driver’s doors were opened at 1:20PM, the first box being removed at 2:10PM and the last box being removed at 2:35PM. That is 1 hour and 15 minutes of unload time, in addition on the first page of the BOL it shows the departure time of 3:24PM which is over 2 hours past when our driver originally first opened his door. So the excess

unloading times with our driver's trailer door opened can be the reasoning of why the box temperature was ranging from 11-21 degrees.

2/20/23 carrier email:

I'm sorry but we will not be able to honor any claim on this shipment. The product was received by your customer and we were not notified of any possible temp issues until the following day. We were not given an opportunity at the time of delivery to check into this ourselves and have our driver take his own product temps, etc. If the temp and integrity of the product was in question it should have been refused and put back on our truck at the time of delivery. Please feel free to reach out with any other questions or concerns.

Answer: I reviewed the information you provided. I note that the bill of lading does specify that the reefer must be set at -10F and that there are handwritten notations that the "temp was off" and there were three readings (nose, mid & tail). Also the load was delivered on January 25th in Ohio where it probably was quite cold.

The problem with the claim is that there is nothing in the file to indicate any damage to the goods and, in fact, the consignee retained and kept the shipment.

Unless there is some other information, I think you would have difficulty in prevailing with this claim.

CCPAC NEWS

CERTIFIED CLAIMS PROFESSIONAL ACCREDITATION COUNCIL ("CCPAC")

Welcome T&LC Conference Attendees and CCPAC Members

On behalf of the Officers and Board of Directors of the Certified Claims Professional Accreditation Council, welcome to San Diego and the Transportation & Logistics Council 49th Annual Claim Conference.

If you are not familiar with who we are you can pick up our **CCPAC** pamphlet on the literature table in the conference area of the hotel or you can visit our website at www.ccpac.com. The Certified Claims Professional Accreditation Council provides certification and accreditation to those individuals and companies and institutions or organizations within the industry desiring to be recognized as the best of the best in transportation claims and education. You can join CCPAC on-line at www.ccpac.com or pick up a CCPAC Membership Application at the conference literature table.

Existing CCPAC Members are reminded that to maintain your certification and continuing education credits you must complete an annual Membership Renewal each calendar year. You can renew your membership for 2023 online and you can opt to pay the annual dues either online or check by mail. Our mailing address is:

CCPAC, Inc.
P O Box 600249
Jacksonville, FL 32260

Important Announcement:

Delta Nu Alpha Transportation Fraternity is now an affiliate of CCPAC, Inc. The all new Delta Nu Alpha Transportation Fraternity website is <https://deltanualpha.org/>. We are currently enrolling new

individual and corporate members. Check our website to learn more about us and to complete an online member application.

CCP EXAM PRIMER CLASS & PRIMER EXAM – SAN DIEGO

The CCP Primer Class will be held on Sunday April 30, 2023 at the Catamaran Resort in San Diego, CA. Check to verify the conference room.

A continental breakfast is included in the class fee for CCPAC registered attendees. To attend you must register and prepay on the CCPAC website and be preapproved by CCPAC to attend either the class or the exam or both. This is a separate registration and fee and is in addition to the conference registration fee.

The class begins promptly at 8:30 AM and runs to 4:00 PM. The CCP Exam will also be held at the Catamaran Resort (in a conference room to be announced) on Wednesday afternoon, May 3, 2023, from 12:30 PM to 3:30 PM.

Email jodell@ccpac.com with any additional questions or comments.

The on-line versions of the CCP Primer Class and CCP Exam can be accessed on the website by clicking on the Exam Portal link.

For further announcements or for general information and membership in CCPAC, it 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

TRANSPORTATION ARBITRATION BOARD

GOOD DAY FELLOW CERTIFIED CLAIMS PROFESSIONALS (“CCP”)

TAB – Transportation Arbitration Board, which is endorsed by the Certified Claims Professional Accreditation Council (“CCPAC”) and the Transportation & Logistics Council, Inc. (“TLC”), is currently in need of filling out our list of volunteer arbitrators. I am reaching out to you in an effort to save TAB from having to dissolve. Presently our list of volunteer arbitrators stands at 24 and TAB has 13 pending cases which need to be assigned.

Some of you may know of me, Wally Dammann, CCP. I was previously on the Board of Directors of TLC and was past President of CCPAC. I am presently the Administrator of TAB and had served as a TAB arbitrator since 1997 until taking over the Administrator position in 2007.

I would really appreciate your assistance in clearing up a backlog of cases TAB presently has in house. Each arbitration takes 2 different CCP’s to decide the case in a unanimous decision after discussion of the case at hand. I would expect that only one or maximum of 2 cases to be sent your way per year depending on your availability. I have not attached any files to this email request at this time; should you decide to help us and join TAB as a volunteer arbitrator, let me know via email and I will send you all the TAB attachments outlining the arbitration process for your review.

Should you have kept in touch with any other CCP’s that you would like to work with on a case, let me know their email contact information and I will reach out to them. Your participation in the TAB volunteer

program also counts to your continuing education requirement as a CCP and I will report same to the CCPAC organization. If you have any further questions about TAB or regarding a case that may be assigned to you, feel free to reach out to me at wallycd3@gmail.com.

Thank you,
Wally C. Dammann, CCP / TAB Administrator

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Full page and one-half page ads are now being accepted for the TransDigest. Reach a highly selective audience with information on your products and/or services at a reasonable cost. Rates are available for 3, 6 and 12 monthly issues, and include both print and electronic issues. For information contact Diane Smid 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.
- Access to the **Members Only** section of the website.

New Members also receive:

- A complimentary copy of "Shipping & Receiving in Plain English, A Best Practices Guide"
- A complimentary copy of "Transportation & Logistics – Q&A in Plain English Book 11" 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**
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*Please return completed Membership Application Form along with your payment to:
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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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Fill out the information below, detach and send with your payment to: **TLC, 120 Main St., Huntington, NY 11743**

Or email diane@transportlaw.com

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

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

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

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

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

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

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