TransDigest

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TRANSPORTATION & LOGISTICS COUNCIL

Register Now for TLC's 50th Annual Conference

- **International Trade Virtual Workshop**
- **Broker/Forwarder Financial Responsibility**
- **Uber & Lyft to Pay New York Drivers $328 Million**
- **Panama Canal Drought Restrictions**
- **Peak Season Surcharges**
- **New USPS Pricing**
- **Rail Demurrage Controversy**
- **Virtual Workshop Videos Available**

SOFT COVER EDITION!

FREIGHT CLAIMS IN PLAIN ENGLISH (4TH ED.)

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GUEST EDITORIAL

THE NEW ERA OF FINDING AN NMFC NUMBER AND FREIGHT CLASS

by a TLC Board Member

If you're like many old-school shippers, you depend on the annual National Motor Freight Classification ("NMFC") that is effective January every year. We also get the periodic supplemental notification for changes as the year progresses. Recently our organization decided to stop using the paper version and go to the online version. It is only a matter of time before the printed version stops, so the thinking is we had better adapt sooner than later. The National Motor Freight Traffic Association ("NMFTA") has a website that gives us the resources to replace our book with Class IT[*].

The NMFTA website is the gateway to get started with all they have to offer, via their internet portal.[†] In addition to replacing our NMFC hard copy, we can also use the website for our Standard Carrier Alpha Code ("SCAC") searches, eliminating another large book. The website has links for information about cybersecurity and digitizing the motor carrier industry. The NMFTA website declares it is focused on the interests of motor carriers, but the information found is valuable to us shippers also. There is a great video on the website concerning the freight classification system that is very helpful with explaining how the NMFC works.[‡] The NMFTA website is a valuable resource for both shippers and carriers.

If you are a shipper the way to access the website and products is by paying yearly fees as a non-participant. There are two ways carriers can join the NMFTA, as a member or as a participant. We are paying the yearly non-participant fees for Class IT ($390) and SCAC Online ($505). The NMFC hard copy is still available for $400 per year and the only access to the SCAC information is online.

We still have the NMFC hard copy effective January 2021 in our office library, as I can't bring myself to drop it in the recycle bin just yet. I must admit no one has had to refer to it for several months. As we become more comfortable with Class IT, it's obvious this is a superior tool for NMFC information. It makes it easy for everyone in the office to look up a commodity and find the correct NMFC number and freight class. There are many products and offerings available on the NMFTA website. I urge everyone to join, explore, and use this information that is valuable to your organization.

[*] https://classit.nmfta.org/all/Welcome.aspx

[†] https://nmfta.org/

[‡] https://youtu.be/dpmvn6bY2rA

ASSOCIATION NEWS

CONDOLENCES

Remembering Gilbert (Gil) Clifford Williams (1926-2023)

We are sad to report that Gil Williams, a long-time member and supporter of the Transportation & Logistics Council passed away after a brief illness on November 22nd. Gil was one of our first members and had attended virtually every one of our Annual Conferences for over 45 years

Gil started out in transportation at the age of 18 when he traveled to Utah and became an Agent Telegrapher for the railroad. He later joined a freight auditing company and took over in 1971, building it into Williams & Associates in Bloomington, Minnesota, which became a well-known transportation consulting company and one of the largest freight bill audit and payment services in the nation. He was known for his brilliant business mind and his work ethic and dedication as he continued to work six days a week up until his recent hospitalization.

Gil was proud to serve his country in the US Army and was active in local business and community service organizations where he shared his time and talents with many schools and universities, well as being a frequent speaker at transportation seminars throughout the country.

He will be best remembered as a true gentleman. Although he was a “man of few words”, when he spoke those words we all listened, and he was always with a smile and willing to help others out in any way.

From his son, Ron Wiliams: “No more going to work every day and now he can finally rest at peace”.

TRANSPORTATION & LOGISTICS COUNCIL UPCOMING VIRTUAL WORKSHOPS

International Trade Alert ! - Sourcing, Selling and Shipping in 2024

90-minute Virtual Workshop. December 13, 2023 12:00pm Central

For years we have been seeing “Made in China” labels on all sorts of goods, but things are changing. Political, environmental, social and labor conditions, quotas, tariffs and duties, as well as rising costs for shipping are causing importers to look elsewhere. And American manufacturers and producers would like to sell “Made in the U.S.A.” products and intellectual property in foreign markets, but often run into complicated restrictions. Panelists will cover:

- Laws and regulations governing international trade entities
- Protecting your supply chain - nearshoring and friendshoring
- Reversal of US support for liberal digital trade policies
- Supply chain impact of proposed “Manifest Modernization Act”
- Greenhouse taxes on import commodities under proposed “Foreign Pollution Fee Act”
- Changes to the “de minimis rule” for imports
- Export issues and sanctions
- Preparing for more labor strife in 2024
- Global warming - impact on Panama Canal capacity
- EU Emissions Trading System (ETS) - cost of compliance to importers
- More “blank sailings”

Moderator
Rennie Alston, CEO, American River Group of Companies

Panelists
Andrew M. Danas, Partner, Grove, Jaskiewicz and Cobert, LLP
Marianne Rowden, CEO, E-Merchants Trade Council, Inc.
Jerrod Slaughter, Sr. Director of Global Logistics, KEEN Inc.

To register online, visit https://tlcouncil.org/sourcing-selling-and-shipping-an-update-on-international-trade-90-minute-virtual-workshop-online-registration/

VIRTUAL WORKSHOP VIDEOS AVAILABLE

The 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 or visit https://tlcouncil.org/virtual-workshops/ for information on obtaining video recordings of past virtual workshops.

Thanks to our Virtual Workshop Sponsors

Gold Sponsors:

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SAVE THE DATE FOR TLC'S 50TH ANNUAL CONFERENCE

Register NOW and join us to celebrate the Transportation & Logistics Council's 50th Annual Conference, "Education for Transportation Professionals". The venue is the historic Francis Marion Hotel in downtown Charleston, South Carolina on March 18th through 20th, 2024.

The Council is assembling an impressive list of speakers and presenters for the educational sessions, including top experts and experienced practitioners who will give attendees practical information and advice that they can use in their everyday business – with a program chock full of "must attend" educational sessions:

General Sessions:

- Past Present & Future
- Freight Claims Back to the Basics
- Law of the Land, Law of the Jungle
- Security -- The "Fraud Pandemic"
- Transportation Attorneys Panel
- Food & Produce Claims
- Freight Claims – Questions & Answers

Workshops:

- Bills of Lading – What You Need to Know
- Transportation Insurance
- Selecting Transportation Service Providers
- LTL Pricing
- International Trade: Sourcing, Selling & Shipping in 2024
- Meet the Experts

And, for those that want an in-depth educational experience, before the Conference on Sunday, March 17th, three optional full-day seminars -- *Contracting for Transportation & Logistics Services*; *Freight Claims in Plain English*; and *Transportation, Logistics and the Law*. All presented by leading transportation attorneys.

Not only is it the best educational conference in the industry, but a great opportunity to meet and greet both old and new friends for networking at our Hospitality Suites and President's Reception, so REGISTER NOW and take advantage of special Early Bird pricing!

Click the attached links for:

Full Conference Program
https://tlcouncil.org/2024-annual-conference-program-2/

Online Registration
https://tlcouncil.org/2024-annual-conference-online-registration/

Click the attached links to:

Be an Exhibitor
https://tlcouncil.org/2024-annual-conference-exhibitor/

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https://tlcouncil.org/2024-annual-conference-sponsor/

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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.

LEGISLATION

BILLS TO REPEAL OVERTIME EXEMPTION FOR TRUCKERS

By Henry Seaton, Seaton & Husk, L.P.

Legislation (H.R. 6359, S. 3273) has been introduced in the House and Senate that would eliminate the longstanding provision that exempts truck drivers from the overtime provision of the Fair Labor Standards Act of 1938. If enacted, the measure would require that truckers receive overtime compensation when they work more than 40 hours a week. The Senate bill's primary sponsor is Sen. Alex Padilla (D-California), and prominent co-sponsors include Sen. Bernie Sanders (I-Vermont) and Elizabeth Warren (D-Massachusetts). The House bill is sponsored by Rep. Jefferson Van Drew (R-New Jersey) and co-sponsored by Rep. Mark Takano (D-California). For more on the bills, visit https://www.congress.gov/bill/118th-congress/house-bill/6359 and https://www.congress.gov/bill/118th-congress/senate-bill/3273.

MOTOR

FMCSA FINAL RULE ON BROKER/FORWARDER FINANCIAL RESPONSIBILITY

By Henry Seaton, Seaton & Husk, L.P.

More than 11 years after directed to do so by Congress, the Federal Motor Carrier Safety Administration ("FMCSA") in November published a final rule concerning financial responsibility requirements for brokers of property and freight forwarders. The rule is effective January 16, 2024, but the implementation dates for the rule's provisions are one to two years beyond that date. The rule addresses five areas:

- **Assets readily available** – FMCSA modified its proposal to provide an explicit list of acceptable asset types. The notice of proposed rulemaking ("NPRM") took the opposite approach by listing the asset types that would not be acceptable. Under the final rule, acceptable assets in a trust fund are limited to cash, irrevocable letters of credit issued by federally insured depository institutions, and Treasury bonds. Compliance with the provision will be required on January 16, 2026.

- **Immediate suspension of broker/freight forwarder operating authority** – As proposed, a broker's or freight forwarder's operating authority will be suspended when the available financial security falls below $75,000 and the entity fails to replenish it within seven days. Compliance with the provision will be required on January 16, 2025.

- **Surety or trust responsibilities in cases of broker/freight forwarder financial failure or insolvency** – The final rule defines financial failure or insolvency as "any payment made or other default pursuant to § 387.307(e)(1) not cured in accordance with § 387.307(e)(5) or (6) but does not include, in and of itself, a broker filing for bankruptcy protection pursuant to Title 11 of the United

States Code." The rule outlines the procedures for a surety company or financial institution and for FMCSA once the company or financial institution is aware that a broker or forwarder has experienced financial failure or insolvency. Compliance with the provision will be required on January 16, 2025.

- **Enforcement authority** – As proposed, the rule implements MAP-21's requirement for suspension of a surety provider's authority and adds penalties for violations of the new requirements. The rule specifies monetary penalties and provides for a mandatory three-year ineligibility period for providing broker financial security. The new enforcement measures are in addition to those that FMCSA and other federal entities might already have in place. Compliance with the provision will be required on January 16, 2025.
- **Entities eligible to provide trust funds for BMC-85 filings** – As proposed, FMCSA removed the provision that allows loan and finance companies to serve as BMC-85 trustees. Compliance with the provision will be required on January 16, 2026.

For the Federal Register notice, visit https://www.federalregister.gov/d/2023-25312.

TOUGH TIMES IN THE FREIGHT INDUSTRY

According to a November 7, 2023 CNBC article, the global freight recession will continue in 2024 and freight trucking will remain soft.[*]

> The freight recession has been hard for the industry and for those companies that were not diversified enough to withstand downturns, leading companies like Jeff Bezos-backed trucking startup Convoy to shut down. According to Tank Transport, rising fuel costs and falling freight rates caused a total of 31,278 trucking companies to either close or shifted their services to larger fleets.

Another CNBC article from November 2, 2023 states:[†]

> The freight transport sector has faced a volatile year, with a series of bankruptcies as a result of diminished freight rates and a lack of cargo as demand waned, but Lior Ron, CEO of Uber's logistics subsidiary Uber Freight, says the freight recession may be at a new "tipping point."
>
> The reason is fuel prices.
>
> Ron said Uber Freight is witnessing more carriers giving back lanes after bids, which could be an indicator of carriers unable to afford to run certain shipping routes.
>
> * * *
>
> "Numbers don't lie," Ron said. "If you look at the asset side, the cost of managing a fleet is increasing and it's hard to escape that. I believe the contract pressure will continue. The non-diversified brokers and subscale, less financially sound players are feeling a lot of pressure."

Lifestyle changes during the pandemic caused a surge in trucking demand that peaked post-pandemic, but as the economy has weakened, demand has declined significantly. Although there are still more than

[*] https://www.cnbc.com/2023/11/07/freight-recession-will-continue-in-2024-cnbc-supply-chain-survey.html

[†] https://www.cnbc.com/amp/2023/11/02/freight-recession-is-at-a-new-tipping-point-says-ubers-shipping-ceo.html

100,000 additional carriers on U.S. roads than existed in pre-pandemic 2019, data from the FMCSA shows the number of active US motor carrier operating authorities dropped 16,521 from last December through September, a 4.5% decline.

More specifically, compared with the end of 2019, the number of active operating authorities is 46.4% higher, according to the FMCSA. The number of carriers with operating authority rose 12.6% in 2020, 28.7% in 2021 and 5.7% in 2022. All told, the number increased by 128,115 from 2019 through 2022.[*]

Despite this increase in operating authorities, most of which were small carriers, there were some significant layoffs and bankruptcies in 2023, with Yellow Corp. and Convoy being amongst the largest. For a more thorough list of layoffs and bankruptcies in 2023, visit https://www.freightwaves.com/news/the-biggest-freight-brokerage-layoffs-and-bankruptcies-in-2023.

The key for a healthy freight industry is a balance between capacity (supply) and the need to move goods and materials (demand). But it is not that simple, as costs of fuel, labor and vehicles impact carriers' ability to supply capacity.

With respect to labor costs, as noted in an article above, there is proposed legislation that would eliminate the overtime pay exemption that currently exists for truck drivers. There is also the push to eliminate the ability of truck drivers to be classified as independent contractors, which would increase the labor cost to carriers.

While there has been a slight decline in fuel prices recently, it is a volatile market and one that is difficult to predict with government regulations and world events all impacting the ultimate price.

The push for cleaner burning trucks and the use of alternative fuels imposes costs as older vehicles have to be replaced. The demand for these newer vehicles is being pushed by regulations that force older vehicles off the road, but the transition is very expensive with new trucks costing hundreds of thousands of dollars. There is some proposed relief in the form of a repeal of the 12% federal excise tax on all new trucks (imposed in the World War I era) that has widespread industry support, but its outcome is uncertain.[†] If passed, it could save purchasers tens of thousands of dollars.

ADDRESSING CRIMINAL FRAUD

By Henry Seaton, Seaton & Husk, L.P.

The Federal Motor Carrier Safety Administration ("FMCSA") is taking steps to identify identity theft by fraud, the hijacking of carrier data by misuse of personal identification numbers ("PINs"), and more appropriate vetting for the 100,000 new applicants per year seeing carrier or broker authority without any vetting of the carrier's application or other required data.

In the FMCSA's multipage discussion on changing its bond replenishment requirements, it shows its concern for data integrity with the following, "FMCSA is dedicated to ensuring the integrity of the trucking sector and refers incidents of criminal conduct to appropriate authorities. Criminal enforcement is handled by the Office of Inspector General ("OIG") and the Department of Justice ("DOJ")."

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[*] https://www.joc.com/article/oversupply-weighs-heavily-us-truckload-market-keeping-prices-check_20231116.html

[†] https://www.ttnews.com/articles/house-panel-excise-tax-repeal

The OIG enforcement initiative the Agency endorses has congressional support and has been championed by participating stakeholders and other large trade groups. An initial meeting with OIG is scheduled before the end of the month to explore the creation of a task force together with DOJ to prosecute major scamsters to the full extent of the law including RICO.

The FMCSA apparently appreciates that criminal fraudsters are gaming the system, engaging in identity theft, double brokerage, and bait and switch fraud which is made worse by the creation of new carriers and brokers that submit fraudulent applications, have no principal place of business, and are never vetted by the Agency.

In addition to an application which must be submitted under penalty of perjury, carriers must submit for public use evidence of insurance and a list of resident agents in each state who can be served with legal due process. In this regard, it is highly recommended that registered carriers, brokers, and freight forwarders take steps to ensure that both they and their customers have reliable attorneys acting as their agents.

The FMCSA has been auditing process agent companies over the past year. Process agent companies that are unable to comply will no longer be valid to file or maintain the BOC-3 for motor carriers. As a result, companies with their BOC-3 filed by one of these invalid process agents have been receiving Show Cause Orders from the FMCSA which requires them to retain a new process agent within 30 days or their operating authority will be revoked. Many of the FMCSA's current blanket companies who are still going through the audit process have invalid resident agents listed that have retired or that only have a mail drop and not a person at the address to accept legal process.

It is important that all companies that could receive a Show Cause Order take action now to avoid a possible revocation notice. It is also important to make sure that your current process agent company has valid agents who can accept legal documents on your behalf and that your list of actual agents reflects knowledgeable attorneys in each state which can help you navigate state law issues involving summons, complaints, interpleader actions and contract issues as local counsel if you are taken to court or need to file suit.

Service of Process Agents, Inc. has been recertified to file BOC-3s by the FMCSA and is the only blanket company with transportation attorneys serving as resident agents for each state. Visit us at www.serviceofprocessagents.com for more information and to register.

UBER & LYFT TO PAY NEW YORK DRIVERS $328 MILLION IN SETTLEMENT

In the continuing fight over worker classification, the New York State Attorney General has reached a settlement with ride-share companies Uber and Lyft over alleged wage theft. The investigation involved examining the practice of classifying drivers providing trips to passengers as independent contractors under New York Labor Law.

According to the November 2, 2023 press release:*

> New York Attorney General Letitia James today announced two landmark settlements totaling $328 million with rideshare companies Uber and Lyft for cheating drivers out of hundreds of millions of dollars. The settlements resolve multi-year investigations into Uber and Lyft, which found that the companies' policies withheld hard-earned pay from drivers and prevented them from receiving valuable benefits available under New York labor laws. The settlements

* https://ag.ny.gov/press-release/2023/attorney-general-james-secures-328-million-uber-and-lyft-taking-earnings-drivers

> announced today will return $328 million in back pay to drivers and institute a minimum driver "earnings floor," paid sick leave, proper hiring and earnings notices, and other improvements in drivers' working conditions. Uber will pay $290 million and Lyft will pay $38 million into two separate settlement funds which will be entirely distributed to current and former drivers.
>
> * * *
>
> Uber and Lyft drivers will now also receive guaranteed paid sick leave. Drivers will earn one hour of sick pay for every 30 hours worked, up to a maximum of 56 hours per year. Drivers completing rides outside of New York City will be paid a minimum of $26 per hour for sick leave, adjusted annually for inflation. To reflect the New York City minimum driver pay rules that already include an amount for paid time off, drivers completing trips covered by the TLC minimum driver pay rules will be compensated at $17 per hour for sick leave, adjusted annually for inflation. Uber and Lyft will also make updates to their apps to allow drivers to request sick leave through the apps.

It is expected that more than 100,000 drivers throughout New York stand to receive settlement funds and the benefits afforded to them under these settlements.

The AG's press release also included the following statement, which has broad implications for the worker classification debate in New York: "My office will continue to make sure that companies operating in the so-called 'gig economy' do not deprive workers of their rights or undermine the laws meant to protect them."

OCEAN

PANAMA CANAL

The situation in the Panama Canal (previously discussed in TD #s 304, 306 & 307) has gotten worse, with October 2023 being the driest month of October since 1950 according to the Panama Canal Authority ("PCA"). According to an October 31, 2023 announcement from the PCA.[*]

> In October 2023, there has been 41% less rainfall than usual, lowering Gatun Lake to unprecedented levels for this time of year.
>
> Therefore, with less than two months left until the end of the rainy season, the Canal and the country face the challenge of the upcoming dry season with a minimum water reserve that must guarantee supply for more than 50% of the population and, at the same time, maintain the operations of the interoceanic waterway.

According to the PCA, it takes around 50 million gallons of fresh water to move a vessel through one of the locks. The older Panamax locks lose more water compared to the Neo-Panamax locks. The Neo-Panamax locks have a water recovery system which can reclaim 60% of the water used during a vessel's transit through the locks. The Panamax lanes do not have the water-recapturing ability of the Neo-Panamax locks.

[*] https://pancanal.com/en/the-driest-month-of-october-since-1950/

The canal is currently operating with a tropical fresh water ("TFW") draft restriction of 44 feet, as compared to the maximum draft of 50 feet TFW during normal operations. Larger vessels lose approximately 350 TEUs [twenty foot equivalent units] of capacity for each foot of draft lost due to reduced water levels.[*]

In order to postpone the need for additional draft reductions, the PCA has been limiting the number of canal transits to about 32 per day since July 30, 2023 (normally 34-36 per day), but effective November 3, 2023 the number of booking slots was reduced to 25, and then ratchets down to 18 beginning February 1, 2024.[†] However, these reductions are causing delays for vessels waiting to transit the Canal, with queues of 55 for booked vessels and 68 for non-booked vessels as of 11/27/23 and waiting times, depending on vessel type and direction, ranging from 8 to 23 days.

In an effort to provide some relief to vessels that have not pre-booked, on November 25, 2023 the PCA began offering (on a temporary basis) a special auction of an additional slot in the Panamax Locks (depending on the level of Gatun Lake). According to the November 24, 2023 PCA advisory:[‡]

> The purpose of this measure is to provide greater opportunity of obtaining a slot for vessels in the Panamax Locks that have been waiting in the transit queue for an extended period.
>
> This special auction will be available to all supers and regular vessels that have already arrived at Canal waters, have been in the transit queue for at least 10 days from the date the auction is held, and do not have a booking slot. The auction will normally be announced three (3) days prior to the transit date and will be held two (2) days prior to the transit date. The initial bid for this auction will be $55,000.00.

While not as acute as the complete blockage of the Suez Canal by the MV Ever Given in 2021, this is a chronic situation whose impacts will be felt for an undetermined period of time whereas the Suez Canal was fully operational after only six days.

Fallout from the Canal capacity reductions include ocean carriers imposing surcharges, and also redirecting routes to other ports.

As a result, on November 21, 2023 French carrier CMA CGM was the first to announce that it will impose a $150 per TEU Panama Adjustment Factor starting January 1, 2024.[§] On November 23, 2023 Mediterranean Shipping Company ("MSC") announced it will impose a $297 per TEU surcharge beginning December 15, 2023.[**]

Additionally, carriers have been rerouting their vessels, either to other ports or the other way around, through the Suez Canal. However, the U.S. East Coast is approximately 2,200 nautical miles farther from Shanghai via the Suez Canal than via a Panama Canal routing, or a difference of around 35 days as opposed to 41 days. The advantage of the Suez route is that arrival times can be predicted.

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[*] https://apps.pancanal.com/t/TI/views/DashboardColadeEspera/DashboardCola-EN?%3AisGuestRedirectFromVizportal&%3Aembed=y&%3Ahighdpi

[†] https://pancanal.com/wp-content/uploads/2023/01/ADV48-2023-Reduction-in-Transits-Due-to-the-Ongoing-Deficit-in-Precipitation-in-the-Canal-Watershed.pdf

[‡] https://pancanal.com/wp-content/uploads/2023/01/ADV50-2023-REV1.-Additional-Auction-Slot-in-the-Panamax-Locks-and-Other-Modifications-to-the-Transit-Reservation-System-Rules.pdf

[§] https://www.cma-cgm.com/news/4491/panama-adjustment-factor-implementation

[**] https://www.msc.com/en/newsroom/customer-advisories/2023/november/panama-canal-surcharge

Forty percent of all U.S. container traffic travels through the Panama Canal every year, which in all, moves roughly $270 billion in cargo annually.

CHINA CLOSING GAP WITH GREEK FLEET

According to a November 19, 2023 article in the National Herald, China is closing the gap with Greece's shipping oligarchs to be the world's most dominant fleet.[*]

> COSCO Shipping Lines CO., LTD. is one of the largest shipping enterprises in the world and owns more than 1,300 ships with a combined shipping capacity of 111 million deadweight tons, ranking first in the world, noted China's state-run Xinhua news agency.
>
> The company's global shipping routes cover more than 1,500 ports in 160 countries and regions, with an annual cargo volume of 1.3 billion tons and is showing signs of catching the Greek owners.

ENERGY EFFICIENT SHIPS REDUCE UNDERWATER NOISE

A recently released study by the Southampton Marine & Maritime Institute of the University of Southampton highlighted the impact of shipping's energy efficiency measures on the reduction of underwater radiated noise ("URN").[†] The study was commissioned by the International Chamber of Shipping ("ICS").

Amongst the study conclusions, reducing vessel speed by 20% can result in a 6 decibel (dB) decrease in URN for fixed-pitch propeller vessels. The use of wind-assisted propulsion systems shows promising potential in reducing URN by up to 10 dB and air lubrication systems have the potential of URN reductions greater than 10 dB.

Combined with the International Maritime Organization's (IMO) revised greenhouse gas (GHG) strategy targets, compliance with the new regulations could lead to a reduction in URN from commercial vessels, the amount depending on the chosen pathway and strategy for meeting the revised GHG targets.

PARCEL EXPRESS

TIME TO TAKE A PEEK AT PEAK SURCHARGES

by Timothy Binkis, ICC Logistics Services, Inc.

Now that Thanksgiving has come and gone, we are into the prime shipping season, or Peak Season as everyone in the shipping world calls it. If you are not sure of that, take a quick look at the rates that you are being charged by your carriers. Even if you are not a large volume shipper, it is very likely that you will see some type of Peak Surcharges on your carrier bills now. Believe it or not, some of these have been in place since last year!

[*] https://www.thenationalherald.com/shipping-rival-china-builds-half-greeces-fleet-runs-piraeus-port/

[†] https://www.ics-shipping.org/wp-content/uploads/2023/11/Final-report-ver-4-02-11-Vahid-Without-track-changes.pdf

It is important to note that you do not need to be a large volume/ E-Commerce shipper to get hit with these unplanned/ unexpected charges. There are plenty of Peak Surcharges to go around for everybody!

For example, UPS has been charging “Demand Surcharges” on shipments coming to the US from Asia since August of 2022. They have been billing a Demand Surcharge for these shipments, that varies from $.65 to $1.54 per lb., depending on origin and service. There are also Demand Surcharges on other International shipments that have been in place since January of 2022!

FedEx has also had Demand Surcharges in place for International Shipments well in advance of Peak Season. Like UPS, these surcharges vary based on Origin, Destination, and Service. Some of the International Demand Surcharges that FedEx lists are as much as $1.90 per lb.

So, if you are thinking that you’re safe since you don’t do much international shipping, think again. There are Peak/ Demand Surcharges that are in place for some accessorials including: Additional Handling, Oversize/ Large Package Surcharges, and Over Limit/ Unauthorized Packages. Shippers should pay very close attention to these package size based charges for a couple of reasons.

First, some of these charges are extreme. For example, the Demand Surcharge for Large Packages will increase the cost of this accessorial charge by over $70 for both carriers (an increase of over 50% in some cases).

Next, Carriers weigh and measure in motions systems are not perfect. We have seen many examples of shippers being charged for Additional Handling, or Large Package surcharges on packages that don’t have the dimensions to qualify for these surcharges. The bottom line is that this is not a fine science. It’s bad enough to be improperly billed for these charges. But, having a Peak Demand Surcharge on top of this is like rubbing salt in the wound!

If you are a larger volume shipper (defined as a shipper that has sent out more than 20K packages in a week), you may have been paying Peak Surcharges on Residential shipments throughout the year. UPS literature indicates that certain larger shippers could be billed $.40 to $.60 more per package throughout the year. With both UPS and FedEx, these charges ramp up as you get into October and November.

At this point, you might be thinking “Why is this all so relevant?”. Well here’s why- **Don’t you find it interesting that carriers are still charging Peak/ Demand surcharges when volume has been lower, and there seems to be more capacity in the market place?**

We have all heard about the softness in the economy for the past 6 months, and the impact that this has had on Carrier volume. UPS has acknowledged a loss of volume due to their negotiations with the Teamsters during the summer. From what we can tell, both UPS and FedEx are fighting for volume. So why are they both still charging Peak/Demand Surcharges? The answer is simple- BECAUSE THEY CAN AND WILL IF YOU LET THEM!

Hopefully by now you are thinking- Well what can I, and should I be doing about this? You might be thinking that you could have some leverage with carriers to try to improve your rates and discounts. You may be right here. You also may be thinking about picking up the phone to call your carrier rep to kick off negotiations or request an improved agreement. But before you do that, you need to think about the complexity and reality of negotiating Small Parcel agreements.

We often see carrier offers that on the surface, provide the appearance that they will save the shipper money. We have even had carrier reps tell shippers that their new offers will save them X amount of dollars per year. However, when we performed our proprietary analysis, we have seen some interesting results. We have seen many scenarios where there are no savings at all, or even dis-savings! The bottom line is that the carrier pricing folks are experts at the “smoke and mirrors” game.

Even if you do have the ability to analyze a carrier proposal, and were able to confirm savings opportunities, how would you know that this is the best that you could expect from carriers? Do you really want to Bench Mark offers against your own rates? This does not seem to make a lot of sense.

What makes sense is to partner with a company that has had long term experience and success with helping shippers analyze carrier proposals, and that can drive optimum cost savings. After all, the savings that we drive can have a big impact on your profit margins and bottom lines.

Additionally, we do not limit our cost saving initiatives to improved Carrier contracts. Our solutions are often multi-faceted to ensure maximum value for our clients. We always look at the big picture, and seek to provide solutions that create customers for life. How else do you think we have remained in business for close to 50 Years!

BEYOND THE PRICE TAG

By Tony Nuzio, ICC Logistics Services, Inc.

Cultivating a Value-Centric Parcel Carrier Relationship

Navigating the intricate dance of a shipper/parcel carrier relationship requires more than a keen eye on the bottom line; it demands a shift in dialogue from the immediate allure of price to the enduring promise of value.

This philosophy is not just about deflecting attention but about guiding clients to a vantage point where long-term benefits outshine short-term savings. It's here that the client-focused consultants can truly excel, helping decision-makers to see beyond the price tag and embrace the holistic value of their investments.

Understanding the Price-Value Dichotomy

The fixation on price is a natural inclination for clients seeking to maximize their immediate gains from parcel carriers. However, this narrow focus can eclipse the broader picture of total cost and long-term value. The art of consulting is not just about presenting a product or service; it's about leading a client through a paradigm shift—from price-conscious to value-aware.

How to Shift from Price-Conscious to Value Aware

1. From Price to Total Cost:

A good logistics consultant helps a client to see beyond the tip of the iceberg. The dialogue should illuminate how your carrier's offering reduces not just the monetary cost but also the cost of time, potential waste, and inefficiency. By articulating the broader cost implications, a good consultant can reframe the conversation to focus on the comprehensive value your provider's solution provides.

2. From Savings to Differentiation:

The allure of savings is potent, but it's the differentiation that sustains a business relationship. When price is the only factor, it's crucial to help clients pivot the conversation to what sets a carrier's offering apart. This shift is about showcasing the unique benefits and superior outcomes that justify the price difference. It's not just about what the service is, but what the service does differently—and better.

3. From Narrow to Broad Needs:

Simplistic needs invite simplistic solutions. By broadening the conversation to encompass the full spectrum of the client's complex needs, you create more value for your client. A parcel carrier should be a partner, not just a provider.

Empathy as the Gateway to Value

Each conversational shift begins with two powerful words: “I understand.” This empathetic bridge reassures the client that their concerns are heard and validated. A good logistics consultant will work with you to find a parcel carrier that understands this important dynamic. It’s the starting point for a dialogue that transitions from a transactional interaction to a consultative relationship.

The Focal Point

In the end, what remains focal is what becomes important. By maintaining a steadfast focus on value, our clients can elevate the conversation, transcend the commoditization trap, and make better decisions that are not just good for today but great for tomorrow.

NEW U.S.P.S. PRICING PROPOSED

By Tony Nuzio, ICC Logistics Services, Inc.

U.S. Postal Service Proposes New Prices for 2024

New prices scheduled to take effect Jan. 21, 2024

Postal Service prices remain among the most affordable in the world, this of course is known as “USPS Speak.”

First-Class Forever stamp will be 68 cents

On Friday, October 6, 2023,the United States Postal Service filed notice with the Postal Regulatory Commission (“PRC”) of mailing services price changes to take effect Jan. 21, 2024. The new rates include a 2-cent increase in the price of a First-Class Mail Forever stamp, from 66 cents to 68 cents.

The proposed adjustments, approved by the governors of the Postal Service, would raise mailing services product prices approximately 2 percent. If favorably reviewed by the commission, (and there is no reason to believe the PRC will not approve these latest increases), the price changes would include:

Product	Current Prices	Planned Prices
Letters (1 ounce)	66 cents	68 cents
letters (metered 1 ounce)	63 cents	64 cents
Domestic Postcards	51 cents	53 cents
International Postcards	$1.50	$1.55
International letter (1 ounce)	$1.50	$1.55

There will be no change to the 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.

As inflationary pressures on operating expenses continue 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 Postal Service remain among the most affordable in the world.

The PRC will review the changes before they are scheduled to take effect. The complete Postal Service price filing, with prices for all products, can be found on the PRC website under the Daily Listings section at https://prc.arkcase.com/portal/docket-search/advanced/filing-details/126548. The mailing services filing is Docket No. R2024-1. The price tables are also available on the Postal Service's Postal Explorer website at pe.usps.com/PriceChange/Index.

THE RISE OF AMAZON

A November 27, 2023 article in the Wall Street Journal[*] claims that Amazon has grabbed the title of largest private delivery business in the U.S., as it has surpassed both United Parcel Service ("UPS") in 2022 and FedEx in 2020. Only the United States Postal Service("USPS"), which handles many deliveries for all three companies, remains the largest parcel service.

RAIL

JURISDICTION - RAIL DEMURRAGE FEES FOR OCEAN CONTAINERS

According to a November 20, 2023 Journal of Commerce article, Congress may be stepping into the debate over jurisdiction of rail fees for ocean containers.

The issue is who should have the authority to police storage fees railroads charge for ocean containers in international intermodal freight, the Federal Maritime Commission ("FMC") or the Surface Transportation Board ("STB"). Both agencies have punted on the issue, questioning whether they have authority (FMC) and conflicts with a law, the 1980 Staggers Act, that legalized private contracts between shippers and railroads (STB), that preclude agency intervention.

According to the article:[†]

> Rep. John Garamendi, D-Calif., is working on draft legislation that would "compel" the FMC and STB to draft a memorandum of understanding over which agency has authority over international intermodal freight, according to Rich Roche, a vice president at third-party logistics provider Mohawk Global and member of the FMC's National Shipper Advisory Committee.
>
> * * *
>
> Garamendi's proposed bill regarding rail demurrage would also seek to codify that rail demurrage fees be billed to the ocean carrier, which would then pass along the charge to the responsible shipper or beneficial cargo owner, Roche said. He added that NSAC also recommended that rail storage billing be included in the pending rules the FMC plans to issue about detention and demurrage.
>
> Bob Connor, vice president at Mallory Alexander Logistics and an NSAC member, told the *Journal of Commerce* that in many instances, the billing for rail storage has fallen to the notify party, or even their trucker, to pay.

[*] https://www.wsj.com/business/amazon-vans-outnumber-ups-fedex-750f3c04?mod=hp_lead_pos2

[†] https://www.joc.com/article/congress-steps-debate-over-jurisdiction-rail-fees-ocean-containers_20231121.html

> "Our opinion is that demurrage bills should be issued to the steamship line because the steamship line is the railroad's customer," Connor said. Even when rail demurrage is correctly billed to the party responsible for the freight costs, Connor said that the lack of jurisdictional oversight results in instances where shippers have nowhere to turn in case of billing disputes.

RECENT COURT CASE

BROKER FOUND NOT LIABLE FOR FATAL ACCIDENT

An ongoing area of contention involves the liability of brokers when the motor carrier they hire is involved in an accident. Unfortunately, when there is serious injury or death, the motor carrier may not have the financial ability to pay a large settlement or judgment. Plaintiffs looking to be made whole will look for deep pockets, which may be the broker that hired the carrier, under a negligent hiring theory.

While the results of these types of claims have varied and depend upon the specific facts, with some courts finding brokers liable and others not, defenses to these claims have often involved the federal preemption of the Federal Aviation Administration Authorization Act (F4A). Two recent decisions on this issue are *Ye v. GlobalTranz Enterprises, Inc.*, 74 F.4th 453 (7th Cir. 2023) (finding that plaintiffs' claims were barred by F4A preemption) as opposed to the Ninth Circuit's ruling in *Miller v. C.H. Robinson*, 976 F.3d 1016 (9th Cir. 2020) (allowing such claims against a broker under the F4A's safety exception to preemption).

In a recent summary judgment decision from the U.S. District Court for the Middle District of Pennsylvania, when defendant Coyote Logistics, LLC raised F4A federal preemption, the court agreed and granted the motion.

This case involved a load that was double brokered, which means that Coyote did not hire the carrier involved in the October 2020 wreck on Interstate 81 in Lackawanna County, Pennsylvania that killed two people. The judge, after going through an extensive review of previous F4A preemption cases, including the *Ye* and *Miller* cases referenced above, ruled in favor of Coyote.

When Coyote raised the F4A preemption issue, plaintiffs argued it did not apply because the "safety exemption" of the statute was not applicable to brokers.

The F4A expressly provides preemption of state regulation of the trucking industry, 49 U.S.C. § 14501(c). That provision provides, in relevant part:

> a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property.

Several exceptions then follow. See 49 U.S.C. § 14501(c)(2), (3), (5). Relevant here, the "safety" exception in § 14501(c)(2)(A) provides that express preemption:

> shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

In reaching its conclusion and granting Coyote summary judgment dismissing the claims against it with prejudice, the Pennsylvania Court reviewed the definitions in the statute and noted that the exemption applied to "motor vehicles" and that "a broker is a person other than a motor carrier", that motor carriers are not brokers, and that a "motor vehicle" is "a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation."

> In light of these definitions, a claim against a broker is necessarily one step removed from a "motor vehicle" because the "definitions make clear that . . . a broker . . . and the services it provides have no direct connection to motor vehicles." Miller, 976 F.3d at 1031 (Fernandez, J., concurring in part and dissenting in part). Therefore, Plaintiffs' claims do not concern the regulation of motor vehicle safety because Coyote, a broker, and the services it provides, arranging transportation of shipments by a motor carrier, have no direct connection to motor vehicles.

The Court also noted that Coyote did not own or operate motor vehicles and did not even hire the carrier that caused the accident, as the load was double brokered without their knowledge and contrary to its contract.

Michael Lee, et al.v. Golf Transportation, Inc. et al., Docket No. 3:21-CV-01948 (November 7, 2023)

To view the decision, visit https://www.gallaghersharp.com/wp-content/uploads/2023/11/LEE-MSJ-OPINION-GRANTED.pdf

CCPAC NEWS

CCPAC

The Certified Claims Professional Accreditation Council ("CCPAC") is now accepting Associate Memberships from those wishing to join CCPAC and be a part of this progressive and professional organization. One does not need to take the exam to join CCPAC, although certification is our purpose.

CCPAC does administer the test for those Associate members who want to become Certified Claims Professionals ("CCPs"). Online testing for those who cannot travel is available. Both the CCP Exam Primer Class and the CCP Exam are available on-line to all who qualify, 24/7.

Applicants wishing to take the on-line version of the CCP Primer Class and/or the CCP Exam must pre-register and be preapproved by CCPAC. Candidates can pre-register by clicking on the Exam Portal link of the home page of the website and create an account with their name and email address. Once your account has been completed you can enter the CCP Exam Portal to purchase the Class and/or the Exam.

It's time to renew your CCPAC membership for 2024. Certified members must renew their membership each calendar year and pay the annual membership dues to retain their certification and remain a professional member in good standing. CCPs also need to earn 30 credits continuing education every 3 years to maintain certification. There are many ways and resources available to members to meet the continuing education requirement.

Associate Members must renew each year and pay membership dues to remain an active Associate Member in good standing with CCPAC. New applicants and members can join or renew membership easily and pay on-line with a major credit card by clicking on the "Join Now" or "Renew Membership" tabs. Members can also download the Renewal Application from the on-line Renewal page by clicking on the download application.pdf, then print and mail the completed form with your check made payable to CCPAC and mail to: Renewal Dept. CCPAC Inc. P O Box 600249 Jacksonville, FL 32260.

The dates for the next "live" CCP Exam & Primer Class and annual membership meeting have been announced by the officers and Board of Directors as follows: CCP Exam Primer Class will be Sunday, March 17, 2024, 8:30 am to 5:00 pm; CCP Exam will be Wednesday, March 20, 2024, 12:30 pm to 3:30 pm; CCPAC Annual Membership Meeting, Monday, March 18, 2024, 5:30 PM to 6:00PM. The Class and the Exam and Annual Membership Meeting will be held at the Francis Marion Hotel in Charleston, SC. Mark your calendars now and plan to attend these events.

Who Do You Know? Who Do You Know that would Benefit with Membership in CCPAC? For information on becoming an Associate or Certified Member of CCPAC, contact any Officer or Board Member or Council Headquarters at www.ccpac.com.

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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"**

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

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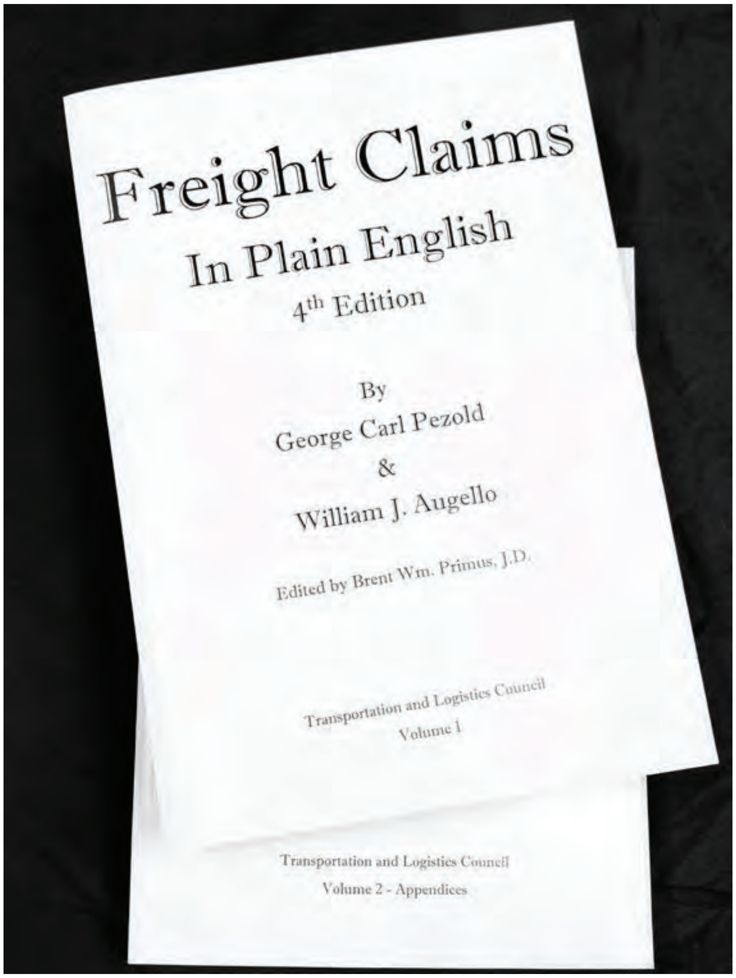

Freight Claims in Plain English (4th Ed.)

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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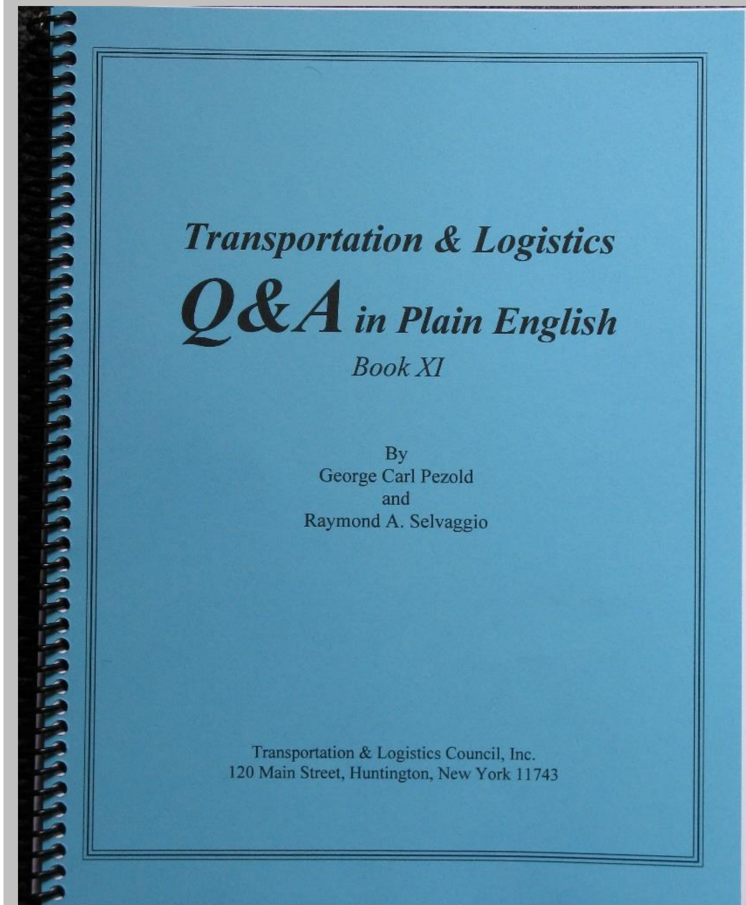

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Transportation & Logistics Q&A in Plain English – Book XI

"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.

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