TransDigest

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TLC
TRANSPORTATION & LOGISTICS COUNCIL

Still Time to Register for TLC's 50th Annual Conference

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SOFT COVER EDITION!

FREIGHT CLAIMS IN PLAIN ENGLISH (4TH ED.)

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EDITORIAL

LEVERAGING NEARSHORING TO HELP OFFSET "BLACK SWAN EVENTS"

By Chae Pak, Sr. Director, Transportation, Spectrum Brands

In recent years, it seems like "black swan events" that disrupt supply chains are happening more frequently. From COVID-19 to the war in Ukraine, and most recently the disruptions in the Red Sea due to the conflict in Gaza, these unpredictable events have severe consequences—within the supply chain and for transportation.

Nearshoring has emerged as a strategic direction for businesses seeking to optimize their supply chains, mitigate risks, and capitalize on operational efficiencies. The US is now buying more from Mexico than China for the first time in 20 years. There are real advantages to bringing manufacturing closer to home.

One of the obvious advantages of nearshoring is the reduction in transportation distances between production facilities and consumer markets. By relocating manufacturing closer, companies can significantly decrease transit times and transportation costs associated with erratic ocean containers. This reduction in transportation distances translates to lower fuel consumption, decreased emissions, and less variability in transit times.

Nearshoring facilitates just-in-time inventory management practices, enabling companies to operate with leaner inventories and minimizing the need for large warehousing facilities. This streamlined supply chain model not only enhances operational efficiency but also reduces reliance on ocean transportation networks, which are susceptible to disruptions such as natural disasters, geopolitical tensions, or unexpected black swan events.

Nearshoring helps diversify sourcing locations. This helps companies reduce their exposure to risks associated with a single region. This decentralization of manufacturing/sourcing helps build resilience against black swan events by enabling companies to adapt more swiftly to disruptions, maintain continuity of operations, and mitigate the impacts of unforeseen crises.

Nearshoring presents a compelling opportunity for businesses to enhance their competitiveness, improve supply chain resilience, and reduce their environmental impact while being better positioned for future black swan events.

Is nearshoring part of your company strategy?

ASSOCIATION NEWS

TLC'S 50TH ANNUAL CONFERENCE – COMING SOON!

There's still time to register 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.

Whether you are a newcomer or a seasoned professional it is critical to keep up to date and sharpen your skills, and TLC's Annual Conferences are recognized as the best in the industry.

An impressive list of top experts and experienced practitioners will give you lots of practical information and advice that you can take back and use in your everyday business. Just takea look at the 50th Annual Conference program and you will see this is an opportunity you can't afford to miss!

"Zoom" and "Teams" are great, but there is no substitute for actually meeting someone face-to-face, building friendships and networking with other transportation and logistics professionals. That's why we have two luncheons, Hospitality Suites on Sunday and Monday evenings and the President's Reception – all included when you register for the Conference!

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 networking opportunity, so REGISTER NOW! Click on the link for full conference information and online registration: https://tlcouncil.org/50th-annual-conference/

ENJOY BEAUTIFUL AND HISTORIC CHARLESTON

The City of Charleston has an important place in the history of our country and the Port of Charleston continues as a modern gateway for international trade. Rising high over the Historic District at the corner of King and Calhoun Streets, the Francis Marion Hotel stands as a Landmark in the Charleston Skyline and the city's rich history. Now restored to its 1920's elegance this grand old lady of Charleston shines again as a symbol of Hospitality to all who visit.

Visit https://www.francismarionhotel.com/ for the hotel website and visit https://charleston.com/ for the official website of the City of Charleston.

SUPPORT THE CONFERENCE

In addition to the benefits of great educational sessions and networking opportunities, we thought that you might want promote your company's services and/or products to others in the industry. There are 3 ways you can do this.

Be an Exhibitor:

Each year we invite companies that may be interested in exhibiting their products and services to our attendees. This is an excellent opportunity for companies to show off their products and services to a select group of attendees representing shippers, carriers, intermediaries and related transportation service providers.

Exhibitor information available at https://tlcouncil.org/2024-annual-conference-exhibitor/

Be a Sponsor:

Among the traditional amenities of the Transportation & Logistics Council's Annual Conferences are the Hospitality Suites on Sunday and Monday night of the Conference. Complimentary hors d'oeuvres and cocktails help create a welcoming atmosphere for attendees, an opportunity to meet both old and new friends, and to network with other transportation professionals.

These Hospitality Suites are funded entirely by contributions from our sponsors, and we would like to ask you make a contribution. We have three sponsorship levels:

- Bronze $500
- Silver $1000
- Gold $2500

Your company name will be prominently displayed at the entrance to the Hospitality Suite area, and will be published in the conference program, the TransDigest and on the website.

Sponsorship information available at https://tlcouncil.org/2024-annual-conference-sponsor/

Donate Door Prizes:

A door prize can be anything with your company logo on it or something that represents your company. Examples: Pens, mugs, T-Shirts, keychains

Door Prizes can be sent directly to the hotel. Please have them arrive no sooner than March 13th.

Francis Marion Hotel - Attn: TLC/Diane Smid
387 King St, Charleston, SC 29403

Please let TLC Headquarters know if you are sending an item so you can be properly acknowledged.

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Donations:

A special thank you to Freightclaims.com for donating the Apple Watch for the grand prize drawing and to TransAudit for donating the Lanyards and the Microsite app for the conference.

LUNCHEON SPEAKERS ANNOUNCED

Barbara Melvin, President and CEO, South Carolina Ports, will be our luncheon speaker on Monday. As the first woman to lead a top 10 U.S. operating container port, her skilled leadership guided many of the port's significant achievements, including deepening the Charleston Harbor to 52 feet, making it the East Coast's deepest harbor.

Barbara has held numerous leadership positions during her 25 years with SC Ports. What began as a career in government relations and external affairs, advanced to port operations and being named the SC Ports' Chief Operating Officer in 2018, before becoming CEO in 2022. Since taking the helm in 2022, she has been recognized as a 2023 Leading Woman by SC Women in Leadership, a 2023 Rainmaker by DC Velocity, and was unanimously selected to receive the Outstanding Women in Supply Chain Award from supply chain management students at the University of Tennessee.

Our Tuesday luncheon speaker will be Robert G. Zimmerman, President of R&L Carriers. Robert has almost fifty years of experience in the transportation industry, starting with Spector Freight System in 1977, moving to Yelllow Freight System for twenty years and rising to Senior VP of Sales and Operations, then to USF Holland where he was President & Chief Executive Officer and lastly to Atlas Van Lines as Senior VP of Operations until taking over R&L Carriers in 2008. He is a graduate from Millikin University in Decatur, Illinois.

NEW MEMBERS

REGULAR MEMBERS

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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.

INTERNATIONAL

TRADE DISRUPTIONS

As Chae Pak discussed in the guest editorial above, it is important for businesses to plan for possible "black swan" events impacting supply chains such as we are facing now. The global economy we live in has provided many benefits, but because raw materials and parts may be sourced far from where the final product is manufactured, which may then be far removed from the ultimate market, it takes a vast and complex transportation network for all this to work smoothly. Any disruption to this network has impacts that can be obvious, but also some that are much less foreseeable.

On February 22, 2024, the United Nations Conference on Trade and Development ("UNCTAD") released a rapid assessment titled "Navigating Troubled Waters: The Impact on Global Trade of Disruption of Shipping Routes in the Red Sea, The Black Sea and the Panama Canal".[*] From the assessment:

> For the first time, the world faces simultaneous disruptions in two major global maritime trade waterways, with far-reaching implications for inflation and food and energy security.
>
> Since November 2023, escalating attacks on ships in the Red Sea have been compounding disruptions in the Black Sea caused by the war in Ukraine and in the Panama Canal due to climate-induced droughts.
>
> The drop in monthly transits underscores the magnitude of overlapping shipping disruptions.
>
> In both the Suez and Panama canals, transits are down by more than 40% compared to their peaks. Most of the decline in the Suez Canal occurred over the last two months, while transits through the Panama Canal have been decreasing over the last two years.

The assessment includes comparisons of the importance of the Panama and Suez Canals to various countries and the impacts of rerouting trade on rates and transit times, warning of the potential far-reaching economic implications of these disruptions. The disruptions threaten global supply chains, causing delivery delays leading to higher costs and inflation. As a result, energy prices are surging as gas transits are discontinued, directly impacting energy supplies and prices, and potentially global food prices.

These disruptions also are having an environmental impact. The assessment points out that:

> The disruption in the Red Sea and Suez Canal, combined with factors linked to the Panama Canal and the Black Sea, could erode the environmental gains achieved through "slow steaming", as rerouted vessels increase speeds to cover longer distances.
>
> This is particularly evident among container ships, where a 1% increase in speed typically leads to a 2.2% rise in fuel consumption. For example, accelerating from 14 to 16 knots increases fuel use per mile by 31%.
>
> As a result, the longer distances caused by rerouting from the Suez Canal to the Cape of Good Hope imply a 70% increase in greenhouse gas emissions for a round trip from Singapore to Northern Europe.

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[*] https://unctad.org/publication/navigating-troubled-waters-impact-global-trade-disruption-shipping-routes-red-sea-black#anchor_download

MOTOR

TRUCKING BOTTLENECKS

On February13, 2024 the American Transportation Research Institute ("ATRI") released its 13th annual list highlighting the most congested bottlenecks for trucks in America. According to the press release:*

> The *2024 Top Truck Bottleneck List* measures the level of truck-involved congestion at over 325 locations on the national highway system. The analysis, based on an extensive database of freight truck GPS data, uses several customized software applications and analysis methods, along with terabytes of data from trucking operations to produce a congestion impact ranking for each location. ATRI's truck GPS data is also used to support numerous state and federal freight mobility initiatives. The bottleneck locations detailed in this latest ATRI list represent the top 100 congested locations, although ATRI continuously monitors more than 325 freight-critical locations.
>
> For the sixth year in a row, the intersection of I-95 and SR 4 in Fort Lee, New Jersey is once again the Number One freight bottleneck in the country. The remaining Top 10 bottlenecks include:
>
> - Chicago: I-294 at I-290/I-88
> - Chicago: I-55
> - Houston: I-45 at I-69/US 59
> - Atlanta: I-285 at I-85 (North)
> - Atlanta: I-20 at I-285 (West)
> - Los Angeles: SR 60 at SR 57
> - Houston: I-10 at I-45
> - Atlanta: I-285 at SR 400
> - Nashville: I-24/I-40 at I-440 (East)
>
> ATRI's analysis, which utilized data from 2023, found traffic conditions continue to deteriorate from recent years, in some instances due to work zones resulting from increased infrastructure investment. Average rush hour truck speeds were 34.4 MPH, down nearly four percent from the previous year. Among the top-10 locations, average rush hour truck speeds were 28.5 MPH.
>
> "Traffic congestion on our National Highway System inflicts an enormous cost on the supply chain and environment, adding $95 billion to the cost of freight transportation and generating 69 million metric tons of excess carbon emissions every year," said **ATA President and CEO Chris Spear**. "The freight bottlenecks identified in this report provide an actionable blueprint for state and federal transportation officials on where to invest infrastructure funding most cost-effectively. Increasing freight efficiency should be a top priority for the U.S. DOT, and alleviating these bottlenecks would improve highway safety, protect the environment and support interstate commerce."
>
> For access to the full report, including detailed information on each of the 100 top congested locations, please visit ATRI's website here. ATRI is also providing animations created with truck GPS data for select bottleneck locations, all available on the website.

* https://truckingresearch.org/2024/02/atri-releases-annual-list-of-top-100-truck-bottlenecks-7/

FMCSA SEEKS DATA ON DETENTION TIME

Last month we noted that the American Transportation Research Institute ("ATRI") announced that it was requesting motor carriers and owner-operators to participate in a survey on the costs of detention. On February 16, 2024 the Federal Motor Carrier Safety Administration ("FMCSA") published a Notice and Request for Comments in the Federal Register seeking comments on a proposed information collection titled Impact of Driver Detention Time on Safety and Operations. From the notice Summary:[*]

> This research study will collect data on commercial motor vehicle (CMV) driver detention time representative of the major segments of the motor carrier industry, analyze that data to determine the frequency and severity of detention time, and assess the utility of existing intelligent transportation systems (ITS) solutions to measure detention time. Approximately 80 carriers and 2,500 CMV drivers will provide data in the study. The study will provide a better understanding of the impact of driver detention time on driver safety and CMV operations and inform strategies that may be used to mitigate driver detention time.

From the notice Background:

> "Detention time" refers to the extra time CMV operators wait at shipping and receiving facilities due to delays not associated with the loading and unloading of cargo. Drivers are often not paid for this extra time. Although there is currently no standard definition of detention time, the CMV industry, the U.S. Government, and academic researchers in the United States have previously used dwell time—the total amount of time spent at a facility—exceeding 2 hours to define when detention time occurs.
>
> Detention time in the CMV industry is a longstanding issue and consistently ranks as one of the top problems for a large portion of CMV operators on an ongoing basis. Further, detention time often results in lost revenue for many drivers and carriers. Reducing detention time may reduce costs for carriers, increase pay for drivers, and improve CMV drivers' ability to make deliveries on time or arrive at a destination as planned without violating hours of service (HOS) requirements. Finally, drivers who experience less detention time may be more likely to drive safely to reach their destinations within the HOS limits and less likely to operate beyond HOS limits and improperly log their driving and duty time to make deliveries on time.

The study sample will include a variety of carrier operations, including longhaul/shorthaul, private/company fleets, for-hire fleets, port servicing (primarily chassis), owner-operators, hourly and mileage-based operators, truckload, less-than-truckload and dedicated local delivery. After agreeing to participate in the study, participants selected will collect and provide data over a 12 month period.

Comments on the notice must be received on or before March 18, 2024.

ATRI REQUEST FOR MOTOR CARRIER OPERATIONAL COST DATA

On February 26, 2024 the American Transportation Research Institute ("ATRI") announced that it was requesting motor carriers to participate in ATRI's annual update to its *Operational Costs of Trucking Report.*

[*] https://www.federalregister.gov/documents/2024/02/16/2024-03256/agency-information-collection-activities-approval-of-a-new-information-collection-request-impact-of

From the press release:*

> ATRI's *Operational Costs of Trucking* is one of the most trusted resources in the industry for benchmarking costs and operations. ATRI collects data confidentially from for-hire motor carriers of all sectors, regions, and sizes – from 1-truck owner-operators to 10,000-truck fleets – to produce insights on key industry trends that guide decision-makers of all kinds.
>
> Cost metrics requested by ATRI include driver pay, insurance premiums, and equipment lease or purchase payments. Carriers and owner-operators can submit these costs for the year 2023 on a per-mile or per-hour basis with an easy-to-use online data entry form or an emailed PDF form. Additional questions cover operational metrics such as the percentage of empty miles, dwell time per stop, and driver turnover.
>
> All participating motor carriers receive a customized report that compares their fleet's costs and operations to peer carriers of the same sector and size, as well as an advance copy of the full report.
>
> "We contribute data to ATRI's *Operational Costs* every year because its findings are indispensable to our operations," said **Jason Higginbotham, Ozark Motor Lines Chief Financial Officer**. "The customized peer-group analysis provides us an essential update on how our fleet performs, while the full report allows us to identify industry-wide trends and communicate them to our partners."
>
> For-hire motor carriers are encouraged to provide operational cost data to ATRI by Friday, April 26, 2024. ATRI's data collection form is **available online here**, along with a sample customized report and FAQ. All confidential information is protected, and it is published only in anonymized, aggregate form.

FMC DECISION IN FAVOR OF TRUCKERS IN CHASSIS DISPUTE

On February 13, 2024, the Federal Maritime Commission ("FMC") issued a ruling† that ordered ocean carriers to "cease and desist from the restrictive practices found to be unlawful under Section 41102(c) [of the Shipping Act of 1984] in the four regions covered by this ALJ's Initial Decision: Los Angeles/Long Beach, Chicago, Savannah, and Memphis." The case was remanded to the Administrative Law Judge ("ALJ") to resolve other claims in the action.

This proceeding was brought by the Intermodal Motor Carriers Conference ("Intermodal"), a conference of the American Trucking Association, Inc. which represents the interests of motor carriers hired to transport containerized cargo between U.S. ports and inland facilities, and the Ocean Carrier Equipment Management Association Inc. ("OCEMA") and Consolidated Chassis Management LLC ("CCM") are associations of ocean common carriers.

In essence, there are two different transportation arrangements between cargo owners and ocean carriers for the shore side movement of cargo, carrier haulage or merchant haulage as described in the decision:

> Customers of ocean common carriers can opt for door-to-port transportation (carrier haulage) or port-to-port transportation (merchant haulage). If the customer opts for carrier haulage, the

* https://truckingresearch.org/2024/02/atri-issues-call-for-motor-carriers-to-participate-in-operational-costs-data-collection/

† https://www2.fmc.gov/readingroom/docs/20-14/20-14%20Order%20(Public%20Ver).pdf/

> ocean common carrier is responsible for arranging and paying the cost of transporting the cargo between an inland facility and the port. If the customer opts for merchant haulage, the customer takes responsibility for arranging and paying the cost of transporting the cargo between an inland facility and the port.

The dispute revolved around ocean carriers requiring truckers to use a specific intermodal equipment provider ("IEP") under merchant haulage agreements. In discussing the case, the Commission stated that:

> In most situations, motor carriers do not have a viable alternative to paying the price the designated IEP imposes. Chassis are a necessity and substituting trucker-owned wheels is generally not economically feasible. These restrictions also effectively shut out potential chassis provider competitors or at least markedly impede their ability to compete for motor carriers' merchant haulage business.

Of note, this decision is the first to specifically express in writing that the FMC's jurisdiction extends beyond the port.

> Respondents cannot use the Shipping Act's antitrust exemption to carry out activities that would otherwise be scrutinized by the Department of Justice (DOJ) or Federal Trade Commission (FTC) as possible antitrust violations, but then seek to exempt those same activities from the Commission's scrutiny. Their argument, if accepted, would effectively give Respondents free rein to adopt practices that restrain competition or impose unjust and unreasonable conditions on other transportation service providers or shippers. OCEMA's and CCM's role in framing and enforcing chassis-provisioning practices leaves no doubt that they were acting on behalf of their ocean common carrier members in promoting the challenged practices, and they are bound by the same Shipping Act prohibitions as their members.

This means that the FMC's authority under the Shipping Act does not end at the port's boundary, and rather that it:

> depends on the nature of the activity, namely, its connection to ocean transportation service for foreign shipment, not where the activity takes place or whether it is carried out at the port or offsite.

A possible implication of this, according to a February 14, 2024 article by Ari Ashe in the Journal of Commerce, is that this language:*

> could help the FMC's National Shipper Advisory Committee (NSAC), which has urged the agency to extend the interpretative rule on detention and demurrage from ports to rail terminals. NSAC argues that the FMC's authority extends inland on carrier haulage business, so demurrage is unenforceable if it violates the interpretative rule in both marine and rail terminals.

WORKER CLASSIFICATION

A cogent discussion of California's AB5 and the federal PRO Act on Mike Rowe's podcast "The Way I Heard It" was released February 24, 2024. The Protecting the Right to Organize Act ("PRO Act") is presented as a proposal to protect workers' rights to come together and bargain for higher wages, better benefits, and safer workplaces. Unfortunately, it also incorporates the same "ABC" test to determine whether a party is an employee or an independent contractor that makes it impossible to be an independent contractor if you fail

* https://www.joc.com/article/fmc-rules-truckers-chassis-dispute-ocean-carriers_20240214.html

the B part of the test, specifically, that the service you perform must be outside the usual course of the business of the employer.

As pointed out in the podcast, there are many people who want the freedom and flexibility of being an independent contractor and many businesses that rely on the flexibility to bring on additional help on an as needed basis.

It should be noted that during the California litigation that led to AB5 in 2019 (*Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903), the federal government weighed in on the side of the unions against independent contractors. One of the reasons was that a W-2 employee has their income taxes withheld, while a 1099 independent contractor files tax returns, paying income taxes based upon their net after expenses.

While this proposed legislation has broad impacts beyond the transportation industry, independent truckers play a significant economic role in logistics and should be protected.

Visit https://www.youtube.com/watch?v=RPYpdZ0oljA to view Mike Rowe's 10 minute podcast.

OCEAN

FMC PUBLISHES FINAL RULE ON DEMURRAGE AND DETENTION

According to a February 23, 2024, press release, the Federal Maritime Commission ("FMC") will publish its Final Rule on demurrage and detention charges in the February 26, 2024 Federal Register. The final rule establishes new requirements for how common carriers and maritime terminal operators ("MTOs") must bill for demurrage and detention charges, providing clarity on who can be billed, within what timeframe, and the process for disputing bills. According to the press release:[*]

> A key provision of this rule determines that demurrage or detention invoices can only be issued to either: (1) the person for whose account the billing party provide ocean transportation or storage of cargo and who contracted with the billing party for the ocean transportation or storage of cargo; or (2) the "consignee," defined as "the ultimate recipient of the cargo; the person to whom final delivery of the cargo is to be made". Demurrage and detention bills cannot be issued to multiple parties simultaneously.
>
> The rule also requires vessel-operating-common carriers ("VOCCs") and MTOs to issue detention and demurrage invoices within 30 calendar days from when charges were last incurred. Non-vessel-operating common carriers must issue demurrage and detention invoices within 30 calendar days from the issuance date of the invoice they received.
>
> Billed parties have at least 30 calendar days to make fee mitigation, refund, or waiver requests. If a timely filed request is made, the billing party must attempt to resolve the matter within 30 calendar days, unless both parties agree to a longer timeframe.
>
> The new rule will advance the Commission's goal of promoting supply chain fluidity by ensuring a clear connection between the failure to pick-up cargo or return equipment in a timely manner and the appropriate fee. The rule ensures that billed parties understand the demurrage or

[*] https://www.fmc.gov/fmc-publishes-final-rule-on-detention-and-demurrage-billing-practices/

> detention invoices they receive by requiring certain identifiable information be included by the billing party on the invoice. Failing to include any of the required information in a detention or demurrage invoice eliminates any obligation of the billed party to pay the applicable charge. Of course, if an invoice does comply, a charged party does have an obligation to pay charges billed. The new rule will provide relief to parties who should never have received a bill for detention or demurrage.
>
> Most of the rule takes effect on May 26, 2024. The "Contents of Invoice" section 541.6 involves information collection and must be approved by the Office of Management and Budget. The Commission will announce the effective date of section 541.6 once approved.

Visit https://public-inspection.federalregister.gov/2024-02926.pdf to view the Final Rule.

CANAL CONUNDRUM

With no apparent end in sight, traffic disruptions at the Panama Canal and Suez Canal continue unabated. The Panama Canal has been forced to restrict transits due to a lack of rainfall, from a typical 36 per day under normal conditions to the current 24. According to Deputy Administrator Ilya Espino, the canal expects to maintain the current 24 transits per day until April, and then increase the number if the rains arrive in May as expected.

She also noted, that "due to the transit restrictions, the Panama Canal Authority has forecast a reduction of up to $700 million in toll revenues for the current fiscal year ending in September. In 2024, the canal might miss a total 1,500 vessels that would pass through in normal conditions."[*]

On the other side of the world, the conflict in the Middle East continues to disrupt traffic transiting the Suez Canal that must pass through the Red Sea, and specifically the narrow strait of Bab al-Mandab. This choke point makes vessels easy targets for attacks from Yemen, attacks that continue despite strikes against the perpetrators, causing ocean carriers to divert traffic.

The system has proven itself able to adapt to the situation, although the situation is fluid and it is too early to determine the true impacts as there are many variables. According to a February 9, 2024 Journal of Commerce article, *Container Ship Supply Meeting Red Sea Challenge, But Market Much Tighter*[†]:

> With transit times increasing between 10 and 14 days from Asia to Europe and the US East Coast, the net effect has been a 6% cut to global capacity, Lars Jensen, CEO and partner at Vespucci Maritime, said during *Journal of Commerce's* Trans-Pacific Container Shipping Outlook webinar on Thursday. Yet that capacity cut is being met by a large order book for new vessels.
>
> The global container fleet is expected to grow 10% in 2024 with the addition of some 478 new ships totaling 3.1 million TEUs [twenty foot equivalent units] of capacity. Jensen, also a *Journal of Commerce* analyst, said the cut to capacity from the Red Sea diversions is also mitigated by still-weak demand on Asia-Europe container trades.

[*] https://www.reuters.com/business/panama-canal-does-not-plan-transit-restrictions-least-until-april-2024-02-07/

[†] https://www.joc.com/article/container-ship-supply-meeting-red-sea-challenge-market-much-tighter_20240209.html

> "That [6%] is a lot, but the one thing to keep in mind is that we came into this situation with a significant over-capacity problem," he said. "We have all the massive orderbooks that were placed in 2021 and 2022 [and] are now being delivered."

While this additional capacity coming online will act to buffer a capacity shortage, there's not much room in the system to handle any additional significant disruptions.

In order to avoid redirecting vessels from the Red Sea, some operators have adopted other measures in an attempt to reduce the possibility of attack. Some have disabled their onboard AIS [automatic identification system] tracking system making it harder for the Houthi to locate them. Others have taken to declaring "no link to Israel" on their location equipment, or "armed guards on board", or "all Chinese crew", in efforts to deter attacks.[*] There is no evidence that these efforts have provided any benefit as it appears no vessels are safe from attack in this complex situation.

The Houthi claim their attacks are in support of Gaza and against Israel and its supporters in the West. Traders and operators were relatively sure that cargoes of Russian origin wouldn't be targeted, but on January 26, 2024 there was a missile attack on the petroleum products tanker *Marlin Luanda* in the Gulf of Aden after transiting the Red Sea. The *Marlin Luanda* was carrying Russian naphtha, but even though the vessel was Chinese owned, operated by a multinational company domiciled in Singapore, it was also associated with operator Oceonix Services Limited, a company domiciled in Britain.[†]

SOMALI PIRACY UPTICK

Piracy off the coast of Somalia has been rising sharply in recent months according to a February 6, 2024 CNBC report on the issue:[‡]

> Over the past three months, there has been more piracy in the Horn of Africa region than at any point in the last six years, according to Royal United Services Institute (RUSI), an independent think tank, with high ransoms for seafarers or vessels, and robbing of ship passengers by pirates.
>
> Piracy off the coast of Somalia had been on the decline in recent years after peaking in 2011 when Somali pirates launched 212 attacks. The United Nations Security Council (UNSC) passed seven resolutions targeting Somalia piracy between December 2010 and March 2022, permitting foreign naval and air forces to enter and patrol Somali waters and authorizing the European Union Naval Force Operation Atalanta, working with a U.S.-led task force, to use "all necessary means to repress piracy and armed robbery at sea."

This uptick in attacks raises concerns as more vessels are transiting the area as they divert from the Red Sea. The International Maritime Bureau ("IMB") reported the first successful hijacking of a vessel off the coast of Somalia on December 14, 2023, the first since 2017.[§]

Unfortunately, the increase in piracy is not limited to the Horn of Africa region, as the IMB annual report recorded 120 incidents of maritime piracy and armed robbery against ships in 2023 compared to 115 in 2022.

[*] https://www.bbc.com/news/world-middle-east-68031732

[†] https://oilprice.com/Latest-Energy-News/World-News/Even-Tankers-Carrying-Russian-Fuels-Have-Started-Avoiding-the-Red-Sea.html

[‡] https://www.cnbc.com/2024/02/06/somali-pirates-are-back-on-the-attack-at-a-level-not-seen-in-years.html

[§] https://www.icc-ccs.org/index.php/1342-new-imb-report-reveals-concerning-rise-in-maritime-piracy-incidents-in-2023

> The 2023 annual report reveals that 105 vessels were boarded, nine attempted attacks, four vessels hijacked and two fired upon.
>
> Where the number of 2023 reported incidents has slightly increased compared to 2022, the IMB urges caution for crew safety as the number of crew taken hostage and kidnapped increased from 41 to 73 and from two to 14 in 2022 and 2023 respectively. A further 10 crew were threatened, four injured and one assaulted in 2023.

LEGAL IMPLICATIONS OF RED SEA CRISIS

A February 20, 2024 article from *The Maritime Executive* provides some insight into the legal implications of the Red Sea Crisis.* It highlights the rights of the shipowner/carrier and what carriers should know in case they face the risk of being unable to fulfill their shipping contracts. The discussion is relevant to shippers, as they are on the other side of those contracts. And as always, it is important to review the language of the contract that is in effect.

The article discusses "deviation", whereby a carrier is allowed to make a deviation from the contractually agreed upon route to save life or property at sea.

"Force majeure", or "frustration" under English law, is a provision that relieves parties from performing their contractual obligations when circumstances beyond their control arise. Depending on the jurisdiction, a party claiming this defense may have to prove that the Red Sea situation has made further performance impossible, illegal, or radically different from that which was originally contemplated.

The article also discusses "safe port warranty", "war risk" clauses and insurance.

Finally, noting how attacks on vessels transiting the Red Sea have presented legal, commercial and practical challenges for carriers, charterers and cargo interests, such that it is even more critical to review contracts and shipping documents closely, it points out how there can be conflicts between the terms of the contract and the bill of lading:

> Where the parties to the charterparty agree that the cargo should be delivered at an alternative port, it is important to check whether the bill of lading names a specific discharge port. If the bill of lading does not allow for discharge at a port other than the one specified, delivery at an alternative port may constitute a breach of the bill of lading contract.

PARCEL EXPRESS

OPTIMIZE YOUR PARCEL SHIPPING

by Timothy Binkis, ICC Logistics Services, Inc.

Exploring the Impact of UPS and FedEx Financial Challenges and Unveiling New Avenues for Shippers

Back in October, we released a blog which described why conditions in the Parcel market made it attractive for shippers to renegotiate their Parcel agreements. At that time, both UPS and FedEx were pushing

* https://maritime-executive.com/editorials/red-sea-crisis-understanding-a-shipowner-s-rights

to increase volumes in their networks in advance of peak season. Based on our long term experience and unique insight, we felt that this battle for packages would drive deeper incentives for shippers, and from what we can tell, it did.

Some shippers have informed us that during the fourth quarter of 2023, they received offers from the carriers that included discounts and incentives that were significantly higher than offers they had received in the recent past. Some of these offers resulted in shippers moving volume away from their incumbent carrier. So, it did appear that the time was ripe to try to reduce costs.

But in a few short months it appears that things could be changing. Earnings announcements by FedEx and UPS were quite negative, and have led to stock price declines for both. Last month FedEx announced earnings and revenue results that fell short of expectations. Last week, UPS also announced bad results. They outlined plans to reduce 12,000 jobs to help offset their declining revenues.

So what does this mean for the Parcel Industry? Could the window of opportunity to reduce Parcel shipping costs be closing so quickly? What should shippers do to keep the window open? We will answer all of these questions for you today.

Impact of UPS and FedEx Challenges

Our opinion is that the bad financial results reported by the major carriers will result in a pullback in discounting by the major carriers. Prior to peak, the big carriers needed to "buy volume" to help fill their networks. This resulted in more aggressive pricing and discounting. Both carriers were willing to reward shippers for onboarding volume quickly before peak, even offering signing bonuses to some to encourage fast conversion.

For the coming months, we anticipate that there will be a more conservative approach to pricing by the big guys. Both carriers are in cut back modes, so they will be attempting to improve profit margins through cost reduction including the announced layoffs, mothballing planes and other equipment, along with adjustments to operational plans. We feel that this could be coupled with less of an appetite to offer aggressive discounts/ rates along with less flexibility with customer agreements.

What options do shippers have?

In the past, when the big carriers pulled back on discounting, there were not many options for shippers. The ability to reduce costs was often limited. Shippers that attempted to renegotiate their agreements when carriers were in "margin protection" mode, were not likely to experience major pricing improvements. Incumbent carriers might have offered to lock in rates, or extend rate caps for future years. Shippers were sometimes offered increased or new discounts on services/accessorials that they did not use that often.

Well, the good news is that there have been major changes in the Parcel market landscape in recent years. We have seen many new players enter the Parcel arena within the last five years. We have seen Regional Carriers expand and merge creating viable competitors for the two Parcel giants.

Many new First Mile, Middle Mile, and Final Mile delivery companies have emerged. Many of these companies have developed solid on-time performance, improved time in transit and continue to expand their serviceable zip codes at a rapid pace. We also feel that strategic mergers in this space could create even more full scale competitors for the big guys.

Next Steps

So, now that you understand the lay of the land as well as potential options, the million-dollar question is what do you do? Here are some of the questions that you might be asking yourself;

1. Should I attempt to engage with one of the now well established Regionals and or one of the other newer startups in the market?
2. If yes, which ones?
3. How do I know which start-ups have the best capabilities?
4. How will I know how to split up my volume between the large integrated carriers, Regionals, and smaller First/ Middle/ Final Mile carriers to drive maximum savings?
5. What impact will this have on service to my customers?
6. Will my existing shipping/ label creation processes be able to support these new carriers?
7. Will I need to continue to use UPS or FedEx for a portion of my volume?
8. If yes, how much and where?
9. Do I really need to consider the use of other carriers, or would it be possible to reduce my cost and stay with my incumbent carrier?

For some shippers the challenge and complexity of answering these questions will discourage them from making any changes. Many shippers are faced with the reality that they do not have the time to do the research, or resources to perform the analysis associated with trying to reduce costs, or make carrier changes. Let's face it, making carrier changes can be a risky proposition. Making the wrong decisions could cost a company a lot of money, or cost someone their job!

The unfortunate result of this is that many shippers and individuals will chose to accept the status quo. They may just try to figure out a way to absorb the never ending carrier rate increases. This might involve raising prices of their products, or increasing shipping costs for customers. Some might even choose to take a hit on their profit margins! But do any of these approaches really make sense? All of these could result in lost customers, lost revenues, and even worse… LOST PROFITS!

The bottom line is that accepting the status quo should be the last thing that you are doing. There is no need to feel overwhelmed by the challenges associated with assessing your Parcel carrier options. There are companies that have the resources and capabilities that can simplify the process of driving cost control and cost reduction. A lot of the heavy lifting associated with answering the questions above has already been completed.

QUESTIONS & ANSWERS

By George C. Pezold, Esq.

FREIGHT CLAIMS – COST OF FILING A CLAIM

Question: I am involved in logistics and transportation and have a question regarding filing transportation claims. A counterpart of mine was at one of your conferences a few years back and stated that at the time, it was about $300 to file/process a claim. Is still an accurate figure or has it increased?

Answer: My guess is that an experienced claims person would need at least an hour – with support from other departments - to gather all the required information (bill of lading, delivery receipt, invoice, inspection report, photos, etc.) to put together and file a loss & damage claim. This could easily be $300 – so it may not be cost effective to process little claims.

The only exception would be if you have a lot of small ones with the same carrier and/or consignee.

For a large enterprise that handles lots of claims including smaller ones I suggest you consider MY EZClaim, the product of one of our sponsors of the Council's Virtual Workshops. Visit https://www.transolutionsinc.com/myezclaim-tm for more information.

TECHNOLOGY

EVS, EMISSIONS, AND CRASHES

It appears that the push for zero emissions electric vehicles ("EVs") is running out of juice, at least for the time being. It is expected that the rollout of a new technology would face some hurdles, and given time, it is likely that some of the issues will be resolved. In the meantime, the Biden administration is considering relaxing stringent vehicle emissions rules it proposed last year, according to a February 18, 2024 CNN article[*], in order to give automakers more time to meet requirements that would make them sell more EVs.

In an effort to reduce carbon emissions, local, state and the federal government have spent billions on electric buses, only to have a significant portion of them sitting unused due to a combination of software issues, mechanical problems and an inability to obtain replacement parts.[†]

Personal EVs are also are suffering reliability issues. From a November 29, 2023 *Consumer Reports* reliability report, while hybrids have 26% fewer problems than cars powered by internal combustion engines ("ICE"), EVs have 79% more problems than ICE vehicles and plug-in hybrids are even worse with 146% more problems than ICE vehicles.[‡]

EVs are heavier than their ICE counterparts, so besides more wear on roadways and tires, crash tests indicate the nation's guardrail system can't handle these heavier vehicles. EVs typically have lower centers of gravity and weigh 20% to 50% more than comparable ICE vehicles, with the result that an EV crashing into a roadside barrier could have 20% to 50% greater impact energy than an ICE vehicle traveling at the same speed. Crash test data released by the University of Nebraska Lincoln ("UNL") appears to show EVs easily crashing through steel highway guardrails that are not designed to withstand the extra force from the heavier vehicles.[§]

Another hurdle to widespread adaptation of EVs relates to "range anxiety" and the time it takes to charge the vehicle. Battery swapping, which sees dead EV batteries replaced with fully charged ones in a process that can take less than five minutes, might provide a solution — and it's an approach being used by one of Tesla's biggest Chinese rivals according to a February 3, 2024 *Business Insider* article.[**]

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[*] https://www.cnn.com/2024/02/18/politics/emissions-rules-ev-growth-biden-administration/index.html

[†] https://www.foxbusiness.com/politics/electric-buses-sitting-unused-cities-across-the-us

[‡] https://www.consumerreports.org/cars/car-reliability-owner-satisfaction/who-makes-the-most-reliable-cars-a7824554938/

[§] https://news.unl.edu/newsrooms/today/article/nebraska-experts-weigh-highway-safety-and-electric-vehicles/

[**] https://www.businessinsider.com/ev-battery-swapping-china-rescue-us-revolution-2024-2

The Chinese EV company, Nio, has built a network of more than 2,000 battery swap stations in China. According to the article:

> The company allows customers to buy their cars without paying for the full cost of the battery, and then charges them a monthly subscription fee to simply swap out their dead batteries whenever they run out of charge.

It should be noted that only about 20% of Nio's swap stations are breaking even and the company has yet to make a profit.

Battery swapping is also being used in the U.S. by Ample[*], a company that has deployed more than a dozen robotic battery swap stations around the San Francisco Bay area and its newer stations can swap out a dead battery in about five minutes.[†]

One of the advantages of the Ample system is that the company builds its own modular battery packs that can be configured for any vehicle by use of custom designed removable adapter plates. So far, the company has signed partnerships with five vehicle manufacturers and designed adapter plates for 20 EV models.

CCPAC NEWS

CERTIFIED CLAIMS PROFESSIONAL ACCREDITATION COUNCIL, INC. NEWS

By: David Nordt, CCP – CCPAC Executive Director

Welcome to a bright, promising new year, 2024! The Certified Claims Professional Accreditation Council's ("CCPAC") vision is to grow its membership this year. We look forward to welcoming an abundance of talented individuals within the transportation industry into our CCPAC family, along with renewals from our existing members. The annual fee for membership is $125.00. Visit our website at www.ccpac.com for more details.

Those who aspire to become a Certified Claims Professional ("CCP") will be offered an opportunity to achieve that goal. Membership in the organization provides those interested with a Primer Course in readiness for the CCP Exam, followed by the CCP Exam. Both the Primer and Exam are available online, but both will also be offered at our annual conference in March. Upon completion and passing of the Exam, members become Certified Members. Members are not obligated to take the CCP Exam. Those who choose to remain Associate Members continue to enjoy the benefits of CCPAC membership. Associate Members have all the rights and privileges as Certified Members, except Associate Members do not have voting privileges during CCPAC business meetings or on Council matters.

Individuals who earn the "CCP" certification will achieve the highest recognition in the cargo claims profession, recognized internationally. The "CCP" designation is a symbol of excellence that is valued in the competitive marketplace. Those who work to attain this level of competency earn the opportunity to serve

[*] https://ample.com/

[†] https://www.bloomberg.com/news/articles/2023-05-18/ev-battery-swapping-could-help-solve-the-us-charging-problem

on the Transportation Arbitration Board ("TAB") as an arbitrator or board member. This is a great way for one to distinguish themselves as the elite in their profession.

The CCPAC Creed can be perused on the CCPAC website. CCPAC can also be found on Facebook, Linkedin, and X (Twitter), courtesy of the Social Media Director. Additionally, the organization publishes a biannual newsletter called *ProClaim*.

John O'Dell, past Executive Director of CCPAC, served from 2006 to 2023. He is also the Council Founding Member and Past President. John is currently serving as our Historian and Advisory Consultant. We thank John for his continual leadership and guidance.

I, David Nordt, became the new Executive Director of CCPAC on May 1, 2023 in San Diego, Ca. I have had the most extensive term as CCPAC President, running from 2015 to 2022. My tenure in the transportation industry is a culmination of 45 years, with 28 of those years dedicated to The Gilbert Company, my current employer.

The CCPAC organization possesses a phenomenal board of directors. What makes them exceptional is that they represent all the modes of transportation in the industry. These savvy individuals readily respond to email and phone inquiries, and so much more.

CCPAC is a member of the Transportation & Logistics Council and Transportation Arbitration Board that assist with litigation disputes. TLC will celebrate their 50th annual conference from March 17-20, 2024 in Charleston, SC., and CCPAC will be there. CCPAC will conduct a CCP Primer Class on Sunday, March 17, from 8:30 a.m.to 4:00 p.m. On Monday, March 18, CCPAC will host a General Session called, "Freight Claims - Back to the Basics." This will be followed by the CCPAC Annual Board Meeting at 5:15 p.m. that day. The CCP Exam will be administered on Wednesday, March 20 from noon to 4 p.m.

Each year, the TLC conference is a valuable venue for shared ideas and information, networking, and fellowship among those in attendance. Consider joining us! For more information visit www.tlcouncil.org. May the new year bring you prosperity, joy, and boundless achievements.

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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"**

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EDUCATIONAL MATERIALS

Item		Item#	Price
Freight Claims in Plain English (4th Ed. 2009) – 2 volume set By George Carl Pezold and William J. Augello **Reprint in Soft Cover**	**Member**	**597**	**$199.00**
	Non-Member	**597-NM**	**$229.00**
*Transportation & Logistics - Q&A in Plain English – **Book XI** (2018)* by George Carl Pezold and Raymond Selvaggio	**Member**	**595**	**$60.00**
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Shipping & Receiving in Plain English, A Best Practices Guide (2009), by George Carl Pezold	**Member**	**586**	**$60.00**
	Non-Member	**586-NM**	**$80.00**
Contracting for Transportation & Logistics Services (rev. 2001), by George Carl Pezold	**Member**	**576**	**$40.00**
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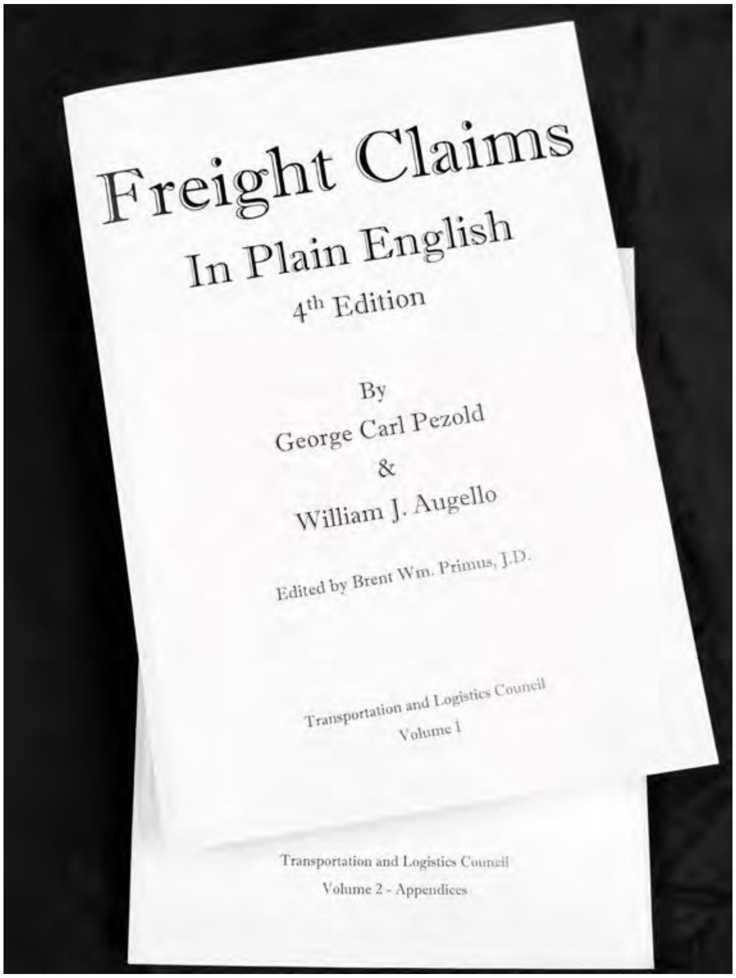

Freight Claims in Plain English (4th Ed.)

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.

Best of all, the soft-cover edition is reasonably priced only $199 for T&LC members and $229 for non-members. Free shipping in the contiguous U.S.

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