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A publication of Benesch Friedlander Coplan & Aronoff LLP's Transportation & Logistics Group

Transportation Complexity in the Era of Supply Chain Sustainability

In this issue:

Jonathan R. Todd

Megan K. MacCallum

The growing prevalence of supply chain sustainability and related environmental, social, and governance (ESG) principles signals a shift requiring attention. Despite some vocal holdouts across the supply chain, the speed of ESG adoption and the resulting changes and influence across industries have accelerated in the face of pandemic and war. The transportation and logistics vertical is no exception. Because transportation and logistics providers are the backbone of global trade, ESG principles necessarily increase the industry's operating complexity as well as increasing the value it contributes. This article explores certain key ESG dynamics—electric vehicles, autonomous vehicles, global sourcing initiatives, and trade controls—and their place in the industry.

Electric Vehicles

Electric vehicles are over a century old. What is new, apart from renewed interest in sustainability of the supply chain, is the battery technology and other advancements. The drive to exit use of internal combustion engines is simple in its logic, although the assumption of "cleaner" operations remains questionable. The traditional coal power grid generates the power to charge those batteries, which themselves are produced from lithium mining and suffer from environmental and practical questions involving effective disposal and recycling. The net effect is that this very well may be an advancement, but it is an imperfect solution.

The legal issues related to electric vehicles that we are seeing as a practice are in some manner industry wide, such as hazardous materials regulation compliance for the handling of batteries and fluids, but many issues are highly localized in their nature. For example, those transportation providers that have already adopted the technology frequently opine of difficulty in certain states when ordered by authorities to limit use of the power grid, thereby limiting the viability of the

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Transportation Complexity in the Era of Supply Chain Sustainability

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technology. Another emerging issue is the push from state authorities or internal initiatives to track adoption and the purported quantified benefit in terms of carbon footprint, whether for the operator or those the operator services. The complexity of doing so accurately and remaining truthful in those representations will, in our estimation, only grow in importance. This will have immediate and longer-term consequence and, on the immediate side, may even impact financial performance due to the use of monetary reward and penalty under state programs.

Automated Vehicles

Parallel with the development of electric vehicles is the development of autonomous vehicles, which are attractive for a different kind of sustainability. Autonomy purports benefits of maximum efficiency for equipment output, the potential for longer run times, reduced occurrence of human error, and presumably the ability to save lives. In the same way electric vehicles aim to curb reliance on a finite resource, so too do autonomous vehicles. The vehicles not only have the potential to reduce life-altering and life-taking human mistakes but could also alleviate driver shortages, such as the one faced by the U.S. motor carriage industry, by expanding the pool of resources so there are more options for carriage than the finite and stagnant industry of human drivers.

The legal issues we are seeing related to autonomous vehicles result from the need for concrete clarity around legal obligations and risk. Despite the U.S. DOT's many years of work on the issue, and the input delivered from industry over that period, the present state of law and regulation does not address the technology. As a result, providers together with their brokers and enterprise shippers are left to determine how to negotiate traditional transportation agreements, including the application of safety regulations that developed around the use of human drivers. The playbook for this space, its best practices, and liabilities is being written in real time by those of us with hands in the process. This presents unique challenges as well as exciting opportunities to operate at the forefront of an industry that is likely here to stay.

Global Sourcing Practices

In addition to thinking about the environmental and human impact of transportation, lawmakers, businesses, and consumers are paying more

attention to the operations that go into sourcing and delivering inputs and finished goods essential to our domestic supply. Consumers and businesses are driven by internal aspirations and by governmental impetus to pay closer attention to the origins of supply than ever before. Businesses increasingly contract with suppliers and manufacturers to ensure that forced and child labor are not part of sourcing or production. This has the triple benefit of ensuring ethical operations, alleviating consumer concern, and protecting businesses in the U.S. from certain federal investigations and penalties. For example, the current Administration, acting through Customs and Border Protection, has increased its use of withhold release orders to prohibit the import of goods believed to be produced by forced labor (particularly from the Xinjiang Uyghur Autonomous Region of China).

The legal issues we encounter due to this trend focus on the need for clear strategies in procurement, contracting for supply, and documenting chain of custody throughout the supply chain. For example, an emerging compliance burden is the need for businesses to map out supply chains through to the earliest input, investigate the possibility of forced labor, and receive certificates of origin from manufacturers. Even after making such efforts, it is always possible that, without continuous monitoring and oversight, local suppliers or manufacturers could misrepresent their practices or change them after review. The result is a sourcing scenario where an entire toolbox of resources is necessary to tailor an appropriate compliance program for each enterprise's supply chain. That may involve stronger diligence at the outset, thoughtfully developed corporate policies, boots-on-the-ground confirmation of representation, and visibility into cargo movements and documentation, as well as new certifications from suppliers. In sum this is a tall and pragmatic task where, yet again, many of the rules and standards are being written as we speak.

Trade Controls and Economic Sanctions Compliance

Traditional compliance activities, such as anti-corruption, anti-bribery, import and export controls, and economic sanctions, have a place in sustainability discussions and have been increasingly active in recent years. From the United States' Section 301 duties on imports from China to its swift and wide-ranging sanctions on Russia, the need for businesses to remain vigilant in conducting diligence on global suppliers and customers has only grown. Particularly since the invasion of Ukraine, the traditional high-risk areas of traffic have only expanded and now include individuals and regions that were previously far lower risk. The stress of new controls and prohibitions on an already overwhelmed supply chain only highlighted further the critical nature of developing sustainable practices. For example, the unavailability of ocean liner service in the region, the disruption in intercontinental rail service, and the new demand for fossil fuels from other regions of the world have been swift and challenging. The result is a perfect collision between transportation operations, natural supply restraints, and artificial supply and service restraints due to government initiatives in the interest of domestic production, national security, and global peace.

The legal issues we have handled associated with these concerns span every aspect of the supply chain. Global forwarders found themselves in an environment with low visibility into whether they could lawfully arrange for movements abroad, and in fact "rescue" stranded containers, on an hour-by-hour basis. Global enterprise shippers were immediately thrust into a world where the lawfulness of transactions already in process, prospective business, and legacy operations in-country were now in question. Those transactions elsewhere that were indeed lawful, such as imports from China, face increased scrutiny, such as the continued application of high duties and anti-dumping or countervailing duty bills with jaw-dropping figures sometimes 300x the value of goods. The path forward remains keeping pace with change and a calm view to exposure, industry practice, and the best way to position enterprise sourcing and delivery for the future. Launching new and updated compliance programs is often part of that exercise, together with risk assessments on current practice and, as needed, engagement with those federal agencies having jurisdiction.

Staying One Step Ahead of Evolving Goals and Objectives

The trendline of sustainability and other social-type initiatives suggests that these efforts are here to stay, regardless of what they are called or the motivations underlying them. Whether change is internally driven or from external influence, due to humanitarian concerns, social impact, or the ultimate speed and cost of service, new ideas and solutions abound, though all players in this game must admit the degree of challenge and the imperfection of any solution. Ultimately the speed of change and the human inspiration to innovate is a constant. The transportation and logistics industry, and its commercial users, will in our view continue to adapt on the front lines of the battle over these complex new issues. The industry remains well suited to conquer nuance and complexity through stronger and more compelling value propositions. After all, without the transportation and logistics sector at large, there is no global supply chain to sustain.

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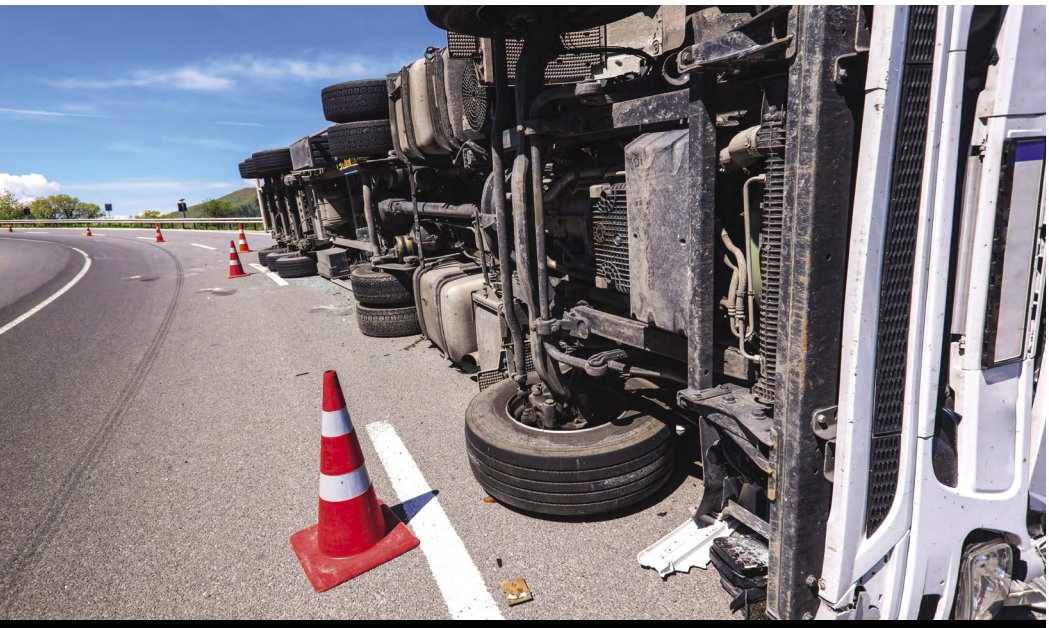
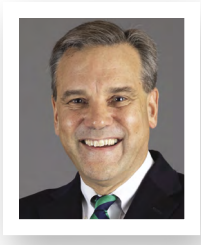


Keeping the Empire Intact: Five Critical Operational Tips on Preventing Nuclear Verdicts



Eric L. Zalud

Nuclear verdicts in catastrophic motor vehicle accidents litigation (and even not so catastrophic accidents) have been proliferating for motor carriers (and brokers) for the past several years, with no immediate letup in sight (other than some specific state statutory regulations). For example, the size of trucking accident verdicts has increased by 967% over the last 10 years. (A "nuclear verdict" is defined as a verdict of over $10 million.) Even nonfatal, soft-tissue injuries have recently often rendered seven- and even eight-figure verdicts in many jurisdictions. These verdicts are spawned by a variety of factors, including, particularly, plaintiff's counsel's use of the "Reptile Theory" throughout casualty litigation. The Reptile Theory is a litigation strategy by which plaintiff's counsel seek to vilify the motor carrier overall, in the community at large, *even independently of the actual fault for the accident.* There are many ways to battle these tactics in the litigation itself. However, operationally, motor carriers can also work to *prevent* such litigation, and to thus forestall commensurate nuclear verdict potential, via various operational calibrations and considerations. Five important examples are set forth below:

1. Have positive policies and project them outward in the community in news/ social media and discovery.

As noted, plaintiff's counsel throughout Reptile Theory litigation seek to vilify the motor carrier to portray it as a peril to the motoring public at large and quite simply a bad actor in the community in which the trial has been convened. The realities are often much different, however. Many motor carriers have excellent safety records to trumpet. They have excellent training programs, fatigue management programs, and sleep disorder treatment programs for their drivers. They have safety awards for thousands, and hundreds of thousands, of safe miles driven and for excellent, qualified drivers. Similarly, most motor carriers are very active in their communities in terms of community involvement and charitable participation. Every motor carrier should have safety programs, but also, as importantly, safety awards and recognitions for safe practices, including maintenance of the vehicles along with the actual driving itself, and highlighting the many good drivers, who are also good people. If and when litigation arises, these "positives" should be pushed out throughout the litigation process: in discovery responses, in briefs, in motions, in depositions, and at trial. They are factual; they are real; and they help to counter the improper vilification of motor carriers as bad citizens in these cases, which often lead to staggering punitive damage awards. Finally, having a policy itself is good, but, of course, *it must be followed.*

2. Select an excellent corporate representative/spokesperson and negotiator.

The spokesperson—company representative and "face of the firm" to the community and to the media in high-value casualty litigation—is now one of the most important personnel selections a motor carrier can make. After an accident, but in advance of any complaint being filed, there should be a person within each organizational structure designated to supervise immediate accident response from various involved third parties on behalf of the motor carrier. However, as importantly, this should be the person who is a spokesperson to the employees of the company, and possibly to the victim and his or her family early on, before lawyers are retained. He or she should be the person who also responds to any media inquiries, and the responses should not automatically be "no comment." Most importantly, he or she should be the designated representative at a "30(b)(6)" deposition of the company in high-value casualty litigation. These depositions have now become the cauldron in which the nuclear verdict stew begins to be stirred by plaintiff's counsel. They are videotaped; they are played to judges and juries alike during the course of litigation and a trial. So, if this witness is not an astute, interpersonally skilled and very well-prepared witness, that testimony can often be devastating. Also, the witness should be prepared to tell the company's story through redirect examination at that deposition. Figuring out who this person

is within the enterprise is *critical* to succeeding and/or preventing nuclear verdict potential.

3. Have strict preservation of evidence policies in place on an ongoing basis and for accidents.

It is very important for the proverbial tail not to wag the dog in these cases. Often, lax preservation policies escalate potential nuclear verdict situations by enabling the plaintiff's counsel to have the jury draw negative inferences about the company's safety policies, practices, and procedures. *Do not let the tail wag the dog!* It is very important for motor carriers to be extremely vigilant as to their own preservation and retention of documents. It is also important to monitor the carrier's data metronomically, and to fight hard on inaccurate data, including overweight tickets, speeding tickets, maintenance issues, and owner/operator drivers no longer under the carrier's authority. These efforts should be chronicled, documented, and retained. Also, immediately after an accident, intensive, comprehensive efforts should be made to ensure that all electronic, paper, and physical evidence is preserved, chronicled, segregated, and retained. Similarly, all documentation relating to the driver, the involved tractor, trailer, shipper, consignee, and any freight intermediary should be preserved. An effective, comprehensive preservation policy can eliminate opportunities for plaintiff's counsel to springboard into Reptile Theory tactics that could lead to a nuclear verdict.

4. Consider possible press releases and empathy toward the victim in advance of litigation.

In the new era of the nuclear verdict, many conventional notions of how motor carriers would handle a catastrophic accident, and its aftermath, have been somersaulted. For instance, there is an evolving school of thought that motor carriers, and their counsel, should consider directly reaching out to victims of catastrophic accidents, or their families, to attempt a rapprochement or settlement or even defray (without admitting fault) expenses such as medical expenses and funeral expenses. That school of thought posits that these undertakings can reduce and possibly eliminate some claims. These efforts also help to personalize the motor carrier, its personnel, and its driver if the case proceeds to trial. Obviously, a carefully selected appropriate spokesperson (as described above) is essential for this role.

Similarly, and as also referenced earlier in this article, the days of automatically intoning "no comment" to any question from anyone—media, social media, or otherwise—about pending litigation and the accident from which it emanates are also fading away. Plaintiffs and their counsel use the broad bands of social media to publicize their capabilities and their client's injuries, and to vilify putative defendants across the spectrum. Potential jurors have very broad bandwidth these days. Motor carriers should consider *using* that bandwidth to promote their positive aspects and to tell at least a part of their side of the story.

5. Rigorously adhere to corporate formalities throughout the enterprise.

Many of the largest transportation logistics companies in the U.S. today started small. Often, these entities started in one particular mode of transport, with limited rolling stock and capital assets. However, as these enterprises grew, they expanded their services, their assets, and their commensurate revenues. Many motor carriers now conduct brokerage activities within their enterprise. There is also diversification into warehousing, dedicated transport, and, possibly, transportation in other modes and other value-added services. Often, investment banks and private equity firms are now involved in the ownership and management of these enterprises. In many situations, as these enterprises have grown, they have not separated and segregated corporate functions into separate corporate entities. This omission creates a risk that a single catastrophic accident will bring down the whole empire via a nuclear verdict. Consequently, transportation enterprises should essentially audit their corporate structure, with the aid of counsel, to ensure that separate endeavors within the enterprise are segregated into separate corporate entities to minimize enterprise risk. The structure should be carefully assessed so that as it minimizes risks, it also preserves organizational efficiencies. The plaintiff's bar in nuclear verdict type litigation is much more attuned to these corporate structure aspects than it used to be. So, in this era, hypervigilance to the corporate structure, the requisite formalities, and the day-to-day operations of the enterprise and its intracompany relationships must be rigorously scrutinized for these dual purposes. *There are other nuances to this analysis that, in light of the evolving expertise of the plaintiff's bar, cannot be disseminated in this article, out of precaution for unintended wider dissemination.* Suffice it to say, though, that although this is #5 in this article, for many transportation and logistics enterprises, *it is paramount important point number one*.

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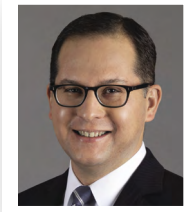
"A Successful Anti-Reptile Strategy"!

U.S. Customs "Offers in Compromise" May Limit Exposure



Jonathan R. Todd

Robert Naumoff

Abby Riffee

Enforcement actions by U.S. Customs and Border Protection (CBP) are increasingly more intensive and less lenient than in the past based on our experience. It is not uncommon in today's regulatory enforcement landscape for otherwise diligent industry operators to find themselves on the wrong side of a CBP case. Those enforcement actions often involve actual or potential amounts owed including for liquidated damages and unpaid duties. Offers in Compromise (OICs) are one tool in the toolbox when planning a successful strategy for responding to CBP enforcement actions.

A Primer on CBP Offers in Compromise

The statutory basis for OICs is found in Section 617 of the Tariff Act of 1930 (19 USC § 1617), which permits the Secretary of the Treasury or its designee to compromise on *any* claim arising under customs laws. Decisions are based on recommendations from the General Counsel for the Department of the Treasury (or its designee, the Office of Chief Counsel of Customs) and require "a report by a customs officer, United States attorney, or any special attorney, having charge of any claim arising under the customs laws, showing the facts upon which such claim is based, the probabilities of a recovery and the terms upon which the same may be compromised."

In practice this means that anyone owing money to CBP can choose to submit an OIC in the interest of settling at a lower amount. CBP is permitted by Section 617 to accept the offer in compromise settlement of a claim, although it has no statutory obligation to do so. CBP considers OICs under a pragmatic rationale weighing: (1) the costs and time associated with collection efforts; (2) the likelihood of recovery, including financial ability to pay the claim amount; and (3) the likely amount of recovery against the offer. This is fundamentally a cost-benefit analysis for maximizing collections and industry compliance as accomplished by CBP.

Attorneys for importers, brokers, forwarders, and other trade participants subject to enforcement may present OIC to CBP generally at any time before a claim is considered administratively final. There are two minimum requirements for OICs: (1) a written offer outlining the rationale for resolving the claim asserted by CBP for the amount offered and (2) a check representing the amount of compromise offer. CBP is not under any strict timeline for consideration and resolution of an OIC. If an OIC is rejected then CBP will typically return the funds presented and a supplemental offer may be available with an increased amount. Communication with CBP attorneys and staff is often helpful to arrive at an acceptable compromise settlement.

Offers in Compromise of Liquidated Damages Claims

The U.S. Congress permits CBP to accept compromise *"on any claim arising under customs laws…"* and this of course extends to claims for liquidated damages [19 USC § 1617 (emphasis added)]. Receipt of a Notice for Liquidated Damages is often met by seeking a Petition in Relief, or a Supplemental Petition, but sometimes those efforts do not resolve CBP's concerns about the underlying activity, the regulated party, or the risk of reoccurrence. Filing OICs can be a tool for appreciably limiting exposure for liquidated damages.

The reasons advanced for an OIC are those that will be considered persuasive to CBP as it applies the rationale for review. In a less egregious case an argument could be that harm to CBP was minimal and, due to the size and wherewithal of the party, CBP's ability to recover the full liquidated damages amount would be difficult. The more challenging aspect of OICs can be arriving at a reasonable amount to

offer. Unfortunately, there is no explicit method of valuation associated with the OIC process beyond what is provided in 19 USC 1617. The published mitigation guidelines can be used as a metric, or very pragmatic rationales on the availability of funds could be advanced.

The perspective of CBP staffers and the Fines, Penalties, and Forfeitures Office will be the key determining factor as the agency determines the best path forward in its sole discretion. Acceptance of the OIC, or a Supplemental OIC, will result in close of the Liquidated Damages case under which the Notice was issued. However, CBP may of course choose to maintain its demand in full.

Offers in Compromise of Duty (and AD/CVD) Claims

The availability of OIC "on any claim" extends on its terms to claims for *anti*-dumping and countervailing duties (AD/CVD). This is important because demands for payment of AD/CVD can arise late in the import process and, very often, amount to figures that are multiples of the value of product itself. If CBP does not receive payment upon demand then it will often initiate collection by making demand on the surety who issued the customs bond, which places the importer in an uncomfortable position. Failure to take swift action will leave the surety to pay the amount up to the value of the bond and then pursue the importer under the written guaranty supporting the bond.

As with Liquidated Damages, claims for AD/CVD and their resolution are ultimately determined by CBP staffers and the Office of Finance (Financial Risk & Analysis Section). The availability of a bond may lead CBP to call on the surety regardless of an OIC under the rationale that the bond is available to maximize CBP recovery in the first instance. However, calling on a bond does not always settle a claim in its entirety and any deficiency will continue to be owed. It is at that point when an OIC may have greatest value in resolving a claim by mitigating exposure. Since the acceptance of OICs is discretionary, it remains possible that an offer may be refused or, in the alternative, that a payment plan under a promissory note is feasible.

Remember to Consider All Available Options

In our experience, resolving CBP enforcement cases requires consideration of all available options, the likelihood of success based upon documentary evidence, and appropriate candor before the agency. The process is an art and not a science. At some point it may become clear that an exposure on a claim is likely and, where that is the case, OICs may be worthwhile rather than suffering financial turmoil.

The Benesch team is always available to assist regulated entities in customs compliance and defending against CBP enforcement.

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Cybersecurity Protocols Emerge for the Transportation Industry

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Cybersecurity has emerged as a tangible risk for transportation service providers over the course of the last year. Ransomware attacks on domestic industry and critical infrastructure, and tensions associated with the Russian invasion of Ukraine, are now ever-present reminders of technology's role in our businesses and the crippling risk of outside threats. The transportation sector as well as its regulators are taking notice.

In May 2021, criminal hackers launched a ransomware cyberattack on the American oil company, Colonial Pipeline. The attack on this often-overlooked means of surface transportation resulted in a multimillion-dollar ransom payment in just hours. The impact was operational as well as financial and reputational in nature, with a reported six-day shutdown of the companies operating systems. For the remainder of 2021, transportation regulators publicly ramped up directives around cybersecurity in an effort to raise industry awareness and instill best practices.

The lead time gained during the events of 2021 were not wasted in early 2022. Urgency of cybersecurity matters, and particularly their impact on the global supply chain, rocketed once again to the forefront with events in Ukraine. The U.S. Cybersecurity and Infrastructure Security Agency (CISA) recently issued a public warning regarding the risk of Russian cyberattacks on impacting U.S. networks in retaliation for sanctions against Russia. The European Central Bank (ECB) likewise expressed concern about potential retaliatory attacks on European financial institutions and markets. More recently, on March 21, 2022, President Biden reiterated these warnings. In an official statement, he revealed U.S. intelligence that indicated Russia is considering engaging in cyberattacks against the U.S. in the near term. President Biden referred private-sector players to CISA's

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Cybersecurity Protocols Emerge for the Transportation Industry

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"Shields Up" effort to assist organizations across the board to prepare for and respond to cyberattacks in the wake of Russia's invasion of Ukraine. President Biden urged private-sector players to strengthen cybersecurity immediately.

Domestically, the Transportation Services Administration (TSA) has stood at the forefront of the cybersecurity issue for the transportation sector. The TSA issued a Security Directive under its emergency authority [49 USC § 114(l)(2)(A)] following the Colonial Pipeline attack. The Directive required pipeline owners and operators to: (1) report actual and potential cybersecurity incidents to CISA; (2) designate a Cybersecurity Coordinator to serve as a point person between a service provider and the TSA who is available 24 hours a day, seven days a week; (3) review current practices applicable to cybersecurity; and (4) identify vulnerability in cybersecurity and develop a plan to address cybersecurity risks and report the results to TSA and CISA. The TSA later updated its guidance to require additional measures: (1) implementation of mitigation measures to protect against ransomware and IT attacks; (2) implementation of a cybersecurity contingency and recovery plan; and (3) conducting a cybersecurity architecture design review.

Transportation industry segments outside the pipeline space were not immune from risk or the TSA's attention. A few months later, the TSA issued similar directives for other segments, including the railroad industry, and for public transportation. The published Security Directives were designed to target higher-risk freight railroads, passenger rail, and public bus transportation. The operational framework largely mirrors the pipeline industry: (1) reporting cybersecurity incidents to CISA; (2) designation of a round-the-clock cybersecurity coordinator; (3) developing a cybersecurity incident response plan; and (4) developing a cybersecurity vulnerability assessment to identify gaps in security.

The White House is itself taking notice of the cybersecurity threat in our industry. The Biden-Harris Administration recently announced the introduction of its Freight Logistics Optimization Works initiative (FLOW). The initiative is designed to promote the sharing of critical freight information between different supply chain participants. The digital infrastructure of FLOW is intended to strengthen supply chains by facilitating more frequent and more accurate information for participants. The objective is to reduce COVID-type disruptions and also to guard against interference through cybersecurity vulnerabilities and other threats. The initial participants in FLOW are reported to include the Ports of Long Beach and Los Angeles as well as the Georgia Ports Authority, terminal operators, private businesses, and logistics and warehousing providers.

More recently, President Biden signed the Cyber Incident Reporting for Critical Infrastructure Act into law on March 15, 2021. The Act will apply broadly to covered entities identified as critical to infrastructure across sectors. The Act will require that covered entities report certain cybersecurity incidents to CISA within 72 hours, and report ransomware payments to CISA within just 24 hours. The full application of the law will be further detailed in CISA regulations.

Initiatives such as the TSA Security Directives, FLOW, and the Cyber Incident Reporting for Critical Infrastructure Act are early examples of how we will be thinking about these cybersecurity issues for the foreseeable future. In the interim, it is clear that the operational effect of these efforts requires, by best practice or mandate, increased vigilance within the transportation industry. Beyond worrying about on-time delivery, it is time to also give attention to building tech-savvy teams who can conduct nuanced vulnerability reviews as well as reporting and acting upon incidents promptly. This is of course a tall task because the transportation and logistics business itself is a challenge. Cyber is nonetheless emerging as mission critical for all aspects of our business—from customer service and operational performance to regulatory compliance and national security.

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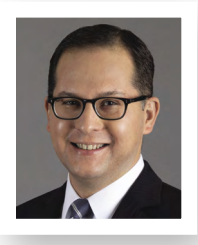
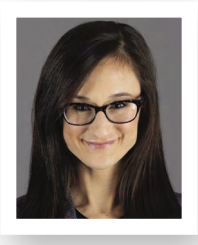
Opportunity for Public Comment on Section 301 Duties for China Imports



Jonathan R. Todd



Laura E. Kogan

The public will soon have an opportunity to offer comment on the Section 301 duties that were imposed on imports from China under the prior Administration. Recently the Office of the U.S. Trade Representative (USTR) issued a Request for Comments regarding its ongoing four-year statutory review of the Section 301 investigation of "China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation."

The impacts of Section 301 duties are wide-ranging and, particularly early in their launch, were felt as hard-hitting to the supply chain. Your lived experience as domestic importers and domestic industry alike will be valuable to the federal government as it looks to determine the future of this program. The USTR's stated objective for seeking public comments is to determine the effectiveness of the tariff actions in achieving the investigation objectives, other actions, and the effects of such actions on the economy.

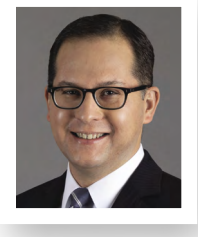
Specifically, the USTR is interested in comments addressing:

- The effectiveness of the actions in obtaining the elimination of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
- The effectiveness of the actions in counteracting China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
- Other actions or modifications that would be more effective in obtaining the elimination of or in counteracting China's acts, policies, and practices related to technology transfer, intellectual property, and innovation.
- The effects of the actions on the U.S. economy, including U.S. consumers.
- The effects of the actions on domestic manufacturing, including in terms of capital investments, domestic capacity and production levels, industry concentrations, and profits.
- The effects of the actions on U.S. technology, including in terms of U.S. technological leadership and U.S. technological development.
- The effects of the actions on U.S. workers, including with respect to employment and wages.
- The effects of the actions on U.S. small businesses.
- The effects of the actions on U.S. supply chain resilience.
- The effects of the actions on the goals of U.S. critical supply chains.
- Whether the actions have resulted in higher additional duties on inputs used for additional manufacturing in the United States than the additional duties on particular downstream product(s) or finished good(s) incorporating those inputs.

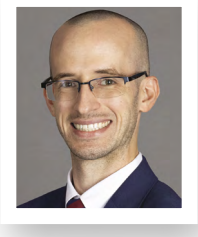
The window to provide comment will begin on November 15, 2022, when the USTR will open a public docket. All comments must be submitted at https://comments.USTR.gov on Docket No. USTR-2022-0014. The deadline for submitting comments is January 17, 2023.

Benesch's team is available to offer practical counsel around import duties and compliance as well as representation during U.S. Customs enforcement or related litigation. **JONATHAN TODD** is a partner in Benesch's Transportation & Logistics Practice Group and may be reached at (216) 363-4658 and jtodd@beneschlaw.com. **LAURA KOGAN** is an associate in Benesch's Transportation & Logistics Practice Group and may be reached at (216) 363-4518 and lkogan@beneschlaw.com.

FMCSA Eliminates HHG "Order For Service" Requirement



Jonathan R. Todd



Robert Naumoff

In a regulatory victory, interstate household goods movers recently saw the universe of required paperwork reduce by one key document. In 2017, the Federal Motor Carrier Safety Administration (FMCSA) convened a Federal Advisory Committee as required by Congress under the FAST Act. The objective for the Committee was to examine paperwork regulations while remaining vigilant against abuses of the moving public. Jonathan Todd, a partner in Benesch's Transportation & Logistics Practice, represented industry as a voting member on the Committee.

Recommended changes to 49 CFR Part 375 were delivered to Congress and published on February 27, 2019. The recommendations included eliminating the long-standing requirement of a written Order for Service document in favor of relying on the Bill of Lading (BOL). Those efforts yielded the FMCSA's issuance of a Final Rule on July 27, 2022, which implemented 10 of 11 recommendations under review.

The Final Rule removes the Order for Service requirement for household goods movers. In its place, the FMCSA now utilizes the Bill of Lading

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Recent Events

Global Supply Chain/State of the Market
Marc S. Blubaugh presented with the group Bernstein.
June 15, 2022 | Webinar

American Trucking Association (ATA)—2022 Trucking Legal Forum
Marc S. Blubaugh presented *You Can Walk and Chew Gum: Managing Risk When Delivering Multiple Services*. **Eric L. Zalud** presented *Smiting the Reptile—Extrajudicially: Using Preemptive Best Practices, Pre-discovery, Discovery, and Legislative Means to Defuse Reptilian Tactics in Casualty Litigation*. **Jonathan R. Todd** and **Kelly E. Mulrane** presented *Final Milestone: Lawfully Finishing the Intrastate Race*. **Martha J. Payne** attended.
July 10–13, 2022 | Austin, TX

Ohio Trucking Association (OTA)—EmergeOTA Program
Nicholas P. Lacey and **Deana S. Stein** presented *How to Have a Winning Deposition Strategy*.
July 12, 2022 | Columbus, OH

Harbor Trucking Association Webinar
Marc S. Blubaugh presented *UIIA 101*.
July 14, 2022 | Virtual

Transportation Lawyers Association Executive Committee Summer Retreat
Marc S. Blubaugh attended as a Voting Past President.
July 15–16, 2022 | Charlotte, NC

Atlus Capital Partners, Inc. Sales and Purchasing Conference
Joseph G. Tegreene presented *Supply Agreement Issues and Pitfalls*.
July 25, 2022 | Buffalo, NY

Oregon Trucking Association Annual Conference
Martha J. Payne attended.
August 15–17, 2022 | Bend, OR

Truckload Carriers Association Fall Business Meeting
Jonathan R. Todd attended.
September 12–13, 2022 | Washington D.C.

Intermodal Association of North America (IANA) EXPO 2022
Marc S. Blubaugh presented *What's Next for the Independent Contractor Model in California? An AB5 Update*. **Martha J. Payne** attended.
September 12–14, 2022 | Long Beach, CA

Ohio Trucking Association Annual Conference 2022
Robert Naumoff attended.
September 18–19, 2022 | Columbus, OH

Council of Supply Chain Management Professionals (CSCMP) Edge 2022
J. Philip Nester and **Jonathan R. Todd** presented *Insurance Considerations for Supply Chains Amid Pandemic and War*.
September 18–21, 2022 | Nashville, TN

Transportation Intermediaries Association (TIA) 3PL Policy Forum
Marc S. Blubaugh attended.
September 19–21, 2022 | Washington, D.C.

The Trucking Defense Advocacy Council (TDAC)
Eric L. Zalud attended.
September 21–22, 2022 | Fayetteville, AR

Toledo Trucking Association October Luncheon
Eric L. Zalud presented *Preventing Nuclear Verdicts in the Trucking Industry*.
October 6, 2022 | Toledo, OH

Litigation and Transportation Association of North America (LTNA)
Eric L. Zalud attended.
October 9–11, 2022 | San Diego, CA

Trucking Industry Defense Association (TIDA)
Eric L. Zalud attended.
October 12–14, 2022 | Orlando, FL

The Canadian Transport Lawyers Association (CTLA) Meeting
Jonathan R. Todd presented *Revenge of the Herds! Revenge Travel Meets the Age of Resignation*. **Eric L. Zalud** presented *The Impact of COVID 19 (and Ukraine and Inflation) on Logistics M&A Deal Trends in North America*. **Martha J. Payne** attended.
October 13–15, 2022 | Toronto, Ontario

American Trucking Associations (ATA), Management Conference and Exhibition
Jonathan R. Todd, Natalie M. Cuadros, and **Robert Pleines** attended.
October 22–26, 2022 | San Diego, CA

Transportation Intermediaries Association (TIA) 3PL Technovations Conference
Martha J. Payne and **Eric L. Zalud** attended.
October 26–28, 2022 | Phoenix, AZ

Tidewater Motor Truck Association
Marc S. Blubaugh presented *The UIIA and the Current Regulatory Environment*.
October 27, 2022 | Virtual

American Logistics Aid Network (ALAN) Webinar
Marc S. Blubaugh presented *California AB5: What You Need to Know*.
November 9, 2022 | Virtual

Transportation Intermediaries Association (TIA) Industry Leaders Meeting
Marc S. Blubaugh presented *AB5 – What are the Implications to the 3PL Industry?*
November 10, 2022 | Brosan Forest, SC

On the Horizon

Women in Trucking Association (WIT) Accelerate! Conference & Expo
Megan K. MacCallum and **Vanessa Gomez** are attending.
November 13–16, 2022 | Dallas, TX

2022 IWLA Webinar
Marc S. Blubaugh is presenting *Supreme Rejection: Broker Liability After Miller*.
November 15, 2022 | Virtual

McGriff Symposium
Marc S. Blubaugh is presenting *Legal & Regulatory Issues in Transportation & Logistics*.
November 15, 2022 | Miami, FL

Transportation Law Institute (TLA/TLI)
Kristopher J. Chandler is participating in the panel *Gone, Baby, Gone: How to Avoid and Mitigate Losses from a Cybersecurity Breach*.
Marc S. Blubaugh, Christopher C. Razek, Eric L. Zalud, Megan K. MacCallum, Vanessa I. Gomez, Kristopher J. Chandler, and **Jonathan R. Todd** are attending.
November 18, 2022 | Boston, MA

Conference of Freight Counsel
Martha J. Payne and **Eric L. Zalud** are attending.
January 8–9, 2023 | St. Petersburg, FL

2023 IWLA Essentials of Warehousing Course
Marc S. Blubaugh is presenting *Transportation Law Fundamentals*.
January 17, 2023 | Orlando, FL

BG Strategic Advisors Supply Chain Conference
Marc S. Blubaugh, Peter K. Shelton, and **Eric L. Zalud** are attending.
January 18–20, 2023 | Palm Beach, FL

Transportation Lawyers Association (TLA) Chicago Regional Seminar
Jonathan R. Todd, Christopher C. Razek, Robert Pleines, Jr., and **J. Philip Nester** are attending.
January 19–20, 2023 | Chicago, IL

Stifel Conference
Marc S. Blubaugh, Peter K. Shelton, and **Eric L. Zalud** are attending.
February 7–8, 2023 | TBD

National Tank Truck Carriers (NTTC) Executive Forum
Eric L. Zalud and **Richard A. Plewacki** are attending.
February 8–10, 2023 | Palm Springs, CA

Air Cargo Conference
Martha J. Payne is attending.
February 12–14, 2023 | Nashville, TN

The 2023 IWLA Convention & Expo
Marc S. Blubaugh is attending.
March 19–21, 2023 | Indian Wells, CA

TIA Capital Ideas Conference & Exhibition
Eric L. Zalud, Marc S. Blubaugh, and **Martha J. Payne** are attending.
April 19–22, 2023 | Orlando, FL

Transportation Lawyers Association (TLA) Annual Conference
Marc S. Blubaugh is attending.
April 26–29, 2023 | San Diego, CA

Intermodal Association of North America (IANA) Operations, Safety & Maintenance Business Meeting
Marc S. Blubaugh is attending.
May 10, 2023 | Oak Brook, IL

For further information and registration, please contact **MEGAN THOMAS**, Client Services Manager, at mthomas@beneschlaw.com or (216) 363-4639.

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See where the right guide can take you.

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2023

Benesch's Transportation & Logistics Practice Group guides clients in every facet of the supply chain to maximize growth, enhance profitability, ensure customer satisfaction, and minimize risk. Carriers of all modes of transportation (motor carrier, rail, air, and maritime), third-party intermediaries (transportation brokers, air and ocean freight forwarders, intermodal marketing companies, etc.), warehouse operators, technology providers, and commercial shippers (manufacturers, distributors, and retailers) rely upon Benesch's leadership and experience—from each global origin to destination and every turn in between.

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FMCSA Eliminates HHG "Order For Service" Requirement

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to capture the intent of the Order for Service. The regulatory requirements of the Bill of Lading have been updated to account for information previously captured in the Order for Service. Those new elements that must be present on household goods Bills of Lading include the following: (1) each attachment to the BOL, including, if not provided elsewhere, the binding or non-binding estimate and the inventory; (2) any identification or registration number assigned to the shipment; and (3) a statement that the BOL incorporates by reference all of the services included on the estimate [see 49 CFR 375.505(b)].

This development allows household goods movers the opportunity to reduce the overall administrative burden of shipping paperwork by removing one of the three key documents (the Estimate and Bill of Lading remain). While near-term updates are required to accomplish this change, the net effect is positive for the industry and removes risk of error in the issuance and handling of required documents.

Benesch has tremendous intrastate, interstate, and international household goods experience within our Transportation & Logistics Practice Group.

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