

TRANSDIGEST

Transportation & Logistics Council, Inc.

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Plan NOW for TLC's 35th Annual Conference

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EDITORIAL

MOTOR CARRIER "EXEMPTIONS" - DO WE STILL NEED THEM?

By George C. Pezold, Esq.
and Raymond A. Selvaggio, Esq.

Every day, shipments are transported by motor carriers in interstate or foreign commerce that are exempt from the provisions of the Interstate Commerce Act and/or the regulations of the Secretary of Transportation (along with the Federal Motor Carrier Safety Administration ("FMCSA") and the Surface Transportation Board). Exemptions may be derived from the type of commodity, the origin and destination of the movement, or the type of carrier involved. Many exemptions have their roots in obscurity, the result of pressure from special interest groups to be freed from the economic regulation of the now-defunct Interstate Commerce Commission ("ICC").

When the motor carrier industry was highly regulated prior to 1996, and even more so prior to 1980, motor carriers were subject to heavy scrutiny because of stringent statutes and policies such as the filed rate doctrine. As a result, motor carriers incurred higher costs to ensure compliance, and the shipping public was thoroughly protected against motor carrier abuses. During this period of heightened regulation, exemptions carried more significance, because an exemption allowed a motor carrier to avoid regulatory oversight and the costs associated with compliance.

For example, years ago, Federal Express went to great lengths and legal expense to prove that it was an air carrier and not a motor carrier. This was done largely to avoid the controls placed on motor carriers and the expenses associated with compliance, whereas air carriers were (and still are) completely de-regulated and not subject to the same type of scrutiny.

Some examples of statutorily created motor carrier exemptions are as follows:

- 49 USC § 13506(a)(6) – *The Agricultural and Fishery Exemption*. This exemption covers shipments of items such as ordinary livestock, non-manufactured agricultural and horticultural commodities, fishery products (cooked, breaded or frozen), and animal feed, seeds and plants.
- 49 USC § 13506(a)(8) – *When incidental to air transportation, or when having a prior or subsequent movement by air*. This provision permits airlines and airfreight forwarders to substitute trucks for aircraft when necessary to move the airfreight shipments due to adverse weather, mechanical breakdowns, or circumstances beyond the control of the carrier or shipper.

- 49 USC § 13506(b)(1) – *Commercial zones*. Each municipality in the United States has a commercial zone, which is defined based on the size of the population. This exemption originally arose from a realization by the ICC that it would be impractical to impose or enforce its economic regulation over local trucking in all of the cities, towns and villages.

With the passage of the ICC Termination Act of 1995 (“ICCTA”), the motor carrier industry is now highly *de-regulated*. Most of the controls, oversight and costs that burdened motor carriers in the regulated environment, as well as the protections provided to the shipping public, were eliminated under the ICCTA of 1995. The filed rate doctrine was eliminated and thus carriers no longer have the expense associated with filing tariffs and they are free to discriminate among shippers. In fact, a motor carrier and a shipper can voluntarily agree to waive all rights and remedies set forth in the Interstate Commerce Act, except for those provisions relating to registration, insurance and safety fitness.

The few remaining statutory protections include the following:

- The 180-day rule relating to filing overcharge & undercharge claims.
- Required disclosures on billing documentation.
- Carriers, forwarders and brokers are required to register and have minimal insurance in effect.
- Shippers can recover attorneys’ fees for certain violations.
- There is a federal statute of limitations to recover freight charges and overcharges.
- Carriers and forwarders are still subject to Carmack liability for loss and damage claims.

Since the motor carrier industry has gone from being heavily regulated to heavily de-regulated, do we still need motor carrier exemptions? Probably not . . . or at least not as many.

There is virtually no oversight over motor carriers that are regulated, and the perceived lower costs associated with unregulated motor carrier transportation are no longer a reality. Thus, requiring an exempt motor carrier of agricultural products or livestock or some other exempt entity to register as a motor carrier for \$300 and abide by the nominal requirements associated with registration would not be unduly burdensome. At least if the carrier was registered, it would be required to have minimal insurance in place.

One area of particular concern is shipments handled by airfreight forwarders. A substantial portion of so-called “air freight” never sees an airport or aircraft. It is estimated that as much as 80% of “air freight” traffic is being moved on the ground, typically under programs such as “deferred airfreight”, “2nd or 3rd -day air”, “trans-saver”, and other discount-type services. These “airfreight forwarders” do not have operating authority as motor carriers, and are not in compliance with the FMCSA’s regulations governing registration, insurance, etc. Shippers rarely know or are informed that their freight is moving on the ground, unless an accident occurs or the freight is delivered in a damaged condition. Then the issue becomes whether the liability of the carrier that performed the service is under the Carmack Amendment or the carrier’s “air waybill”. These unlawful “exempt” operators invariably issue air waybills containing a limitation of liability similar to the airlines’ liability of \$.50 per lb. Thus, disputes arise over whether the conditions for the exemption actually exist.

Because of de-regulation, the differences between exempt and non-exempt transportation have become so blurred that most of the existing motor carrier exemptions no longer serve a purpose. Keeping the exemptions intact only creates opportunities for confusion, litigation and allows unscrupulous parties to avoid liability for their actions.

TLC'S 35TH ANNUAL CONFERENCE

PLAN NOW FOR THE 35TH ANNUAL TLC CONFERENCE

“Education for Transportation Professionals” is the theme of the Transportation & Logistics Council’s 35th Annual Conference, to be held in St. Louis, Missouri at the Sheraton Westport Lakeside Chalet from March 23, 2009 through March 25, 2009.

Kicking off the conference is ‘The Crystal Ball – What’s Ahead for the Transportation Industry’, in which leading representatives of the trade press and industry will give their views on what the future holds for truck, rail, air and ocean transportation and how shippers and carriers will have to deal with the issues - infrastructure, fuel costs, global security measures. The “all-star” panel for this session includes: Joe Bonney, Editor-In-Chief of the *Journal of Commerce*; Mike Regan, CEO & Chairman of TranzAct Technologies; Bob Voltmann, President & CEO of Transportation Intermediaries Association, Eric Starks, President of FTR Associates, and Toby Gooley, Editor of *DC Velocity*.

General Sessions and Workshops during the three-day conference include: Loss & Damage - A Short Course; Forwarders, Brokers, 3PL’s and Other Intermediaries; the ever-popular “Law of the Land v. Law of the Jungle”; Protecting the Nation’s High Value Shipments in Transit; Cargo Theft Fencing and Fraud Operations; Saving Transportation \$\$\$; International Trade - Importing & Exporting; Bills of Lading & Tariffs; Purchasing Transportation Insurance and the panel of top Transportation Attorneys.

Panelists drawn from the industry, with extensive experience in transportation and logistics, share their knowledge with timely and practical information that helps attendees deal with the real problems and day to day issues, and will result in savings that benefit your company's bottom line.

Preceding the regular Conference, on Sunday, March 22nd there will be three optional full-day seminars: “Contracting for Transportation & Logistics Services”, by Raymond Selvaggio; “Freight Claims in Plain English”, by Gerard Smith, and “Transportation, Logistics and the Law”, by Brent Primus.

Evening Hospitality Suites and the President’s Reception will afford attendees ample opportunity for networking and sharing experience with other transportation professionals.

Plan your budget now so you can register early for savings!

Early registration for the Conference will be \$495 for members and \$595 for non-members up to February 15, 2009. After that date, the registration fees will increase \$100, to \$595 for members and \$695 for non-members.

Rooms at the Sheraton Westport Lakeside Chalet will be available for \$159.00 per night (1-4 occupancy) (plus tax) for the Conference period. This rate is guaranteed until February 17, 2009.

A complete copy of the Conference flyer is attached, with all the details and a registration form.



SPONSORSHIP OPPORTUNITIES

Sponsorships are a great opportunity for your company to be recognized during TLC's 35th Annual Conference. Your contributions help defray the cost of the Hospitality Suites on Sunday and Monday night in the Exhibits area.

Names of Sponsors and Contributors will be prominently posted at the Conference and recognized in the TRANSDIGEST. To guarantee that your company will appear, contributions must be received by TLC before February 15th. For more information, contact TLC at (631) 549-8984.

EXHIBITORS

Space will be available for exhibits at the Conference. All arrangements for exhibits will be handled through the Transportation Loss Prevention & Security Association ("TLP&SA"). Contact Bill Bierman at the TLP&SA, at (201) 343-5001, fax (201) 343-5181, or email at wbierman@nakblaw.com for information.

CLE CREDITS FOR ATTORNEYS ATTENDING ANNUAL CONFERENCE

The Transportation & Logistics Council has approval for up to 19.5 CLE credits. Please contact Headquarters with details regarding your needs.

DOOR PRIZE DONATIONS

The Council is seeking donations for door prizes. Please contact Diane Smid at Headquarters for instructions as to where your donations should be sent: diane@transportlaw.com or 631-549-8984.

EDUCATION

FOURTH EDITION OF *FREIGHT CLAIMS IN PLAIN ENGLISH*

The fourth edition of *Freight Claims in Plain English* is now at the printers with publication scheduled for March, 2009. This long awaited update of a venerable classic of freight claims is a must have for all persons involved in transportation. Details will follow as available.

AES SEMINAR AND AES PCLINK TRAINING

The United States Census Bureau now requires mandatory filing of export information through the Automated Export System ("AES") or through the AESDirect for all shipments where a Shipper's Export Declaration was previously required. Penalties may be imposed per violation – both civil and criminal – for the delayed filing, failure to file, false filing of export information, and/or using the AES to further any illegal activity.

The NJ District Export Council, Fairleigh Dickinson University and the Newark Export Assistance Center are sponsoring a seminar and training session February 18 & 19 where federal experts will discuss the new rules and how to ensure compliance. The seminar and training will be held at Fairleigh Dickinson University in Madison, New Jersey.

On February 18th Census Bureau and port officers from the U.S. Customs and Border Protection ("CBP") offer an engaging full day of learning. The Census Bureau experts will cover the filing

requirements of the Federal Trade Regulations (“FTR”), how to classify your commodities by providing an understanding of the Schedule B classification requirements, as well as provide a thorough overview of the AES. The CBP experts will cover port requirements and efforts against terrorism and international narcotics trafficking.

The second day workshop (February 19th) will provide certified training on AESPcLink in order to successfully file Electronic Export Information (“EEI”) via the Windows-based desktop PC component, AESPcLink.

All those involved in the export process: freight forwarders, exporting carriers, consolidators, U.S. customs brokers, U.S. principal parties in interest, including manufacturers and suppliers, should attend.

For more information and to register, go to <http://www.buyusa.gov/newark/aeseminar.html>

"Q&A IN PLAIN ENGLISH - BOOK VII" AVAILABLE

Transportation & Logistics - Q&A in Plain English - Book VII is now available. This is the seventh in this series of the Council's popular texts, and contains a compilation of over 100 new “Q&As” from the TRANSDIGEST.

These are actual questions from shippers, carriers and logistics professionals, with clear, concise and informative answers by George Carl Pezold and Raymond A. Selvaggio, two leading transportation attorneys.

Readers will find this text to be a useful deskbook and handy reference. It will also serve as an indispensable teaching aid for students and newcomers to the transportation and logistics field.

“Q&A IN PLAIN ENGLISH - BOOKS 1, 2 & 3 - A COMPILATION”

“Q&A in Plain English - Books 1, 2 & 3” is a compilation of the first three of the Council’s popular texts that were originally published in 1999, 2001 and 2003. As these were about to go out of print, the Council decided to re-publish this valuable reference material in a single CD version.

This compilation is a “gold mine” of information with some 577 questions and answers, a table of contents, topical index and table of authorities - over 300 pages if produced in a print version, and now available on a single CD.

For further information, or to purchase copies of these publications, contact Diane Smid at the Council, (631) 549-8984 or use the attached Order Form.

AIR

AIR CARGO PLUMMETS

According to International Air Transport Association (“IATA”) figures, in the month of December global international cargo traffic plummeted by 22.6% compared to December 2007. “The 22.6% free fall in global cargo is unprecedented and shocking. There is no clearer description of the slowdown in world trade. Even in September 2001, when much of the global fleet was grounded, the decline was only 13.9%,” said Giovanni Bisignani, IATA’s Director General and CEO. Air cargo accounts for 35% of the value of goods traded internationally. For the full-year 2008, international cargo traffic was down 4.0%, passenger traffic showed a modest increase of 1.6%, and the international load factor stood at 75.9%.

Airlines registered a US\$5 billion loss in 2008. For 2009 IATA is forecasting a further loss of US\$2.5 billion based on a fuel price of US\$60 per barrel, a decline of 3.0% in passenger volumes, a drop of 5.0% in cargo traffic and yield deterioration of 3.0%. Industry revenues are expected to contract by US\$35 billion (from US\$536 billion in 2008 to US\$501 billion in 2009).

The full press release is available at <http://www.iata.org/pressroom/pr/2009-01-29-01>

CLASSIFICATION

Future CCSB Dockets*

	Docket 2009-2	Docket 2009-3
Docket Closing Date	March 12, 2009	July 30, 2009
Docket Issue Date	April 2, 2009	August 20, 2009
Deadline For Interested Persons to Submit New Facts, Data or Evidence	May 26, 2009	October 12, 2009
CCSB Meeting Date	June 2, 2009	October 20, 2009

* Dates are as currently scheduled and subject to change.

MOTOR

TRANSPORTATION SECRETARY RAYMOND LAHOOD

On January 22 the Senate confirmed the nomination of former Illinois Republican Representative Raymond LaHood as Transportation Secretary. During confirmation hearings, LaHood indicated that his priorities at the Department of Transportation include solving the long-running dispute between air traffic controllers and the Federal Aviation Administration, along with finding a new funding mechanism for the Highway Trust Fund, the main source of funding for highways and bridges. Apparently, LaHood supports the use of tolling to build new lanes, bridges, and highways.

Go to <http://commerce.senate.gov/public/files/LaHoodTestimony12109FINAL.pdf> to read LaHood's full statement before the Senate Committee on Commerce, Science and Transportation from January 21, 2009.

RULES FOR NEW MOTOR CARRIERS

The "New Entrant Safety Assurance Process" rule, published in the December 16, 2008 Federal Register, becomes effective February 17, 2009. Compliance with the new rule is required beginning December 16, 2009.

This rule raises the standards for new trucking companies; the Federal Motor Carrier Safety Administration ("FMCSA") identifies 16 regulations that are essential elements of basic safety management controls necessary to operate in interstate commerce and makes a carrier's failure to comply with any one of the 16 regulations an automatic failure of the safety audit. Additionally, if certain

violations are discovered during a roadside inspection, the new entrant now will be subject to expedited actions to correct these deficiencies.

The full text of the rule is available on the FMCSA website at <http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/final/E8-29253-New-Entrant-Safety-Assurance-Process-Final-Rule-12-16-08.pdf>

NEW DRIVER RULES

The Federal Motor Carrier Safety Administration (“FMCSA”) has amended the Federal Motor Carrier Safety Regulations (“FMCSRs”) to require interstate commercial driver’s license holders subject to the physical qualification requirements of the FMCSRs to provide a current original or copy of their medical examiner’s certificates to their State Driver Licensing Agency (“SDLA”). The FMCSA also requires the SDLA to record on the Commercial Driver License Information System driver record the self-certification the driver made regarding the applicability of the Federal driver qualification rules and, for drivers subject to those requirements, the medical certification status information specified in this final rule. Other conforming requirements are also implemented.

This rule is effective January 30, 2009 and can be viewed in its entirety at <http://www.fmcsa.dot.gov/rules-regulations/administration/rulemakings/final/E8-28173-Medical-Certification-Requirements-CDL-12-1-08-Final%20Rule.pdf>.

TRANSPORTATION AND INFRASTRUCTURE IN THE STIMULUS PLAN

The economic stimulus package passed by the House includes transportation project spending of \$30 billion for highways and bridges, \$10 billion for rail and mass transit, \$4.5 billion to the U.S. Army Corps of Engineers for inland waterways and other projects and \$3 billion for airport improvement projects. The bill includes a total of about \$63 billion on infrastructure spending, less than the \$85 billion recommended by the House Transportation & Infrastructure Committee.

OPERATIONAL COSTS OF TRUCKING

The American Transportation Research Institute has released a report on the operational costs for trucking. Total marginal costs were \$1.73 per mile and \$83.68 per hour, with fuel and oil costs being the largest component, followed by driver pay.

A one-page summary of the report is available at http://www.atri-online.org/research/results/economicanalysis/Operational_Costs_OnePager.pdf.

ECONOMIC DECLINE

With the economy in a recession, the trucking industry is taking a hit along with everyone else. When consumer demand is down, finished goods don’t get shipped, components don’t get shipped, raw materials don’t get shipped, creating a serious drop in freight demand with freight tonnage at its lowest level in years.

The American Trucking Associations’ (“ATA”) advanced seasonally adjusted For-Hire Truck Tonnage Index plunged 11.1% in December 2008, marking the largest month-to-month reduction since April 1994, when the unionized less-than-truckload industry was in the midst of a strike. December’s drop was the third-largest single-month drop since ATA began collecting the data in 1973. In December, the seasonally adjusted tonnage index equaled just 98.3 (2000 = 100), its lowest level since December 2000. The non-seasonally adjusted index edged 0.6% higher in December.

Compared with December 2007, the index declined 14.1%, the biggest year-over-year decrease since February 1996. During the fourth quarter, tonnage was down 6.0% from the same quarter in 2007.

Go to <http://www.truckline.com/pages/article.aspx?id=471%2F%7B8E1C7279-ED27-4C03-B189-CEEEE26BBB12%7D> for the ATA press release on truck tonnage.

As a result of the decrease in freight, motor carriers are seeking to cut costs any way they can, including layoffs.

Yellow Roadway Corporation (“YRC”) and the Teamsters Union have entered into an agreement they hope keeps YRC afloat, keeping jobs by modifying the National Master Freight Agreement and agreeing to pay cuts. By an approximately 3-to-1 margin, drivers, dockworkers and other union members backed a plan that gives them a 15% stake in YRC in exchange for reductions that could save the company at least \$220 million a year. Time will tell whether this approach is successful.

One factor helping carriers is the significant reduction in fuel costs, to less than half what they were at their peak during the summer of 2008. (According to the Operational Costs study above, fuel-oil costs account for over 35 percent of motor carrier operational costs.)

HOURS OF SERVICE PETITION DENIED

Prior to departing as head of the Federal Motor Carrier Safety Administration (“FMCSA”), John Hill denied the petition to overturn the Hours of Service rules, leaving in place the 11-hour driving and 34-hour restart rules. In a January 16 letter, Hill stated that in the five years since the new rule went into effect, “the significant increase in truck crashes and fatalities that one would have anticipated, based on petitioners’ criticisms, has simply failed to occur.”

The groups whose requests for reconsideration were denied now have 60 days to file for judicial review of the HOS regulations by the United States Court of Appeals for the District of Columbia Circuit.

OCEAN

PIRACY AND RESPONSE

According to the International Maritime Bureau, there was an unprecedented rise in maritime hijacking in 2008. The 2008 figures surpass all figures for hijacked vessels and hostages taken recorded by the Piracy Reporting Center (“PRC”) since it began its worldwide reporting function in 1992.

In 2008 there was a worldwide total of 293 incidents of piracy against ships, which is up more than 11% from 2007 when there were 263 incidents reported. In 2008, 49 vessels were hijacked, 889 crew taken hostage and another 46 vessels reported being fired upon. A total of 32 crew members were injured, 11 killed and 21 missing – presumed dead. Guns were used in 139 incidents, up from 72 in 2007.

The increase is attributed to the number of attacks in the Gulf of Aden with 111 incidents reported on the east coast of Somalia and the Gulf of Aden, with a total of 42 vessels hijacked and 815 crew taken hostage. As of December 31, Somali pirates were holding 13 vessels for ransom and 242 crew hostage.

Already this year there have been 11 attacks and two hijackings in the waters off Somalia.

As a result of the increased attacks in the area, there has been an increase in naval presence, which has helped to thwart attacks.

For example, recently a Dutch merchant vessel radioed for help after being chased by pirates firing rocket-propelled grenades. The attack was aborted after a Russian warship, on patrol off the coast of Somalia, deployed a helicopter which fired at three suspected pirate speedboats trying to attack the Dutch ship.

In one bit of irony, five of the pirates responsible for hijacking the Saudi supertanker “Sirius Star” drowned with their share of a \$3 million ransom the day after the bundle of cash was apparently dropped by parachute onto the deck of the ship. The drowned pirates’ boat overturned in rough seas. The Sirius Star and its 25 crew sailed safely away at the end of a two-month standoff once the ransom was paid.

The IMB press release is available online at http://www.icc-ccs.org/index.php?option=com_content&view=article&id=332:imb-reports-unprecedented-rise-in-maritime-hijackings&catid=60:news&Itemid=51

DECREASING SHIP ORDERS

According to the Japan Ship Exporters’ Association, orders for ship construction were down 91.1% in December from the same month a year ago measured by gross tons. This was the third consecutive monthly decline in export gross tonnage for Japan, which with South Korea and China are the world’s top shipbuilders. The sharp decline was a result of ship owners’ decreased demand in the global economic downturn.

QUESTIONS & ANSWERS

By George Carl Pezold, Esq.

FREIGHT CHARGES – NEED TO PROVE SERVICE PERFORMED

Question: The company I work for has a manufacturing location in Sonora, Mexico and a distribution center (“DC”) on the border in Arizona. Our primary operations are located in the Midwest. My question is this. I have received invoices from a domestic air freight forwarder for shipments from our Arizona DC to one of our manufacturing locations in the Midwest. Upon receipt of these invoices we asked the forwarder to provide us with a copy of the shipping documentation corresponding to the invoices, including our company issued bill of lading (“B/L”) and the signed proof of delivery (“POD”).

The forwarder was unable to provide a copy of any of the B/L’s issued by our company covering the shipments and very few of the PODs. This made us question the validity of the invoices that we were receiving, as the forwarder could not produce shipping documents initiated by our company, nor any carrier shipping documentation signed by our company personnel.

We were able to reconcile, with internal data and documents, most of the invoices to actual shipments that were made, thus considering them valid. However, there are still some invoices remaining unpaid that we simply cannot validate as “real”. In other words, we believe the carrier may be submitting invoices for movements that did not occur, based on the fact that we paid other invoices without them submitting our shipper initiated B/L, etc.

The forwarder is threatening legal action against us for the unpaid invoices that we cannot validate. What legal recourse does the forwarder have if they cannot produce documentation of any kind substantiating the shipments occurred nor showing any liability for the freight charges of the supposed shipments? I do not want to pay for a service if we did not receive it. (No, we have no formal contract

with this transportation company. They were used by an employee in error prior to that being detected.) Please advise.

Answer: You ask, “What legal recourse does the forwarder have if they cannot produce documentation of any kind substantiating the shipments occurred nor showing any liability for the freight charges of the supposed shipments?”

As with any lawsuit, the plaintiff has the burden of going forward and establishing a prima facie case of liability. Liability for freight charges is based on contract, and the plaintiff must show that there was some agreement between the parties, and that the services were actually performed. It would seem from your description of the facts that the forwarder would have difficulty doing this.

Unfortunately, if you are sued, you will probably need to retain counsel and incur legal expenses.

About the only thing I can recommend at this point is to document your position clearly in writing, giving reasons why the invoices are not paid, and what documentation (bills of lading, delivery receipts, etc.) you would need in order to pay the invoices.

FREIGHT CLAIMS – BROKER LIABILITY

Question: I am a freight broker. The truck I hired picked up a fresh load of chicken in Alabama and delivered to California. When the driver arrived at the destination, his temperature recorder showed the reefer never ran below 40 degrees Fahrenheit. The receiver salvaged as much as possible and reduced the claim from \$70,000 to \$30,000. Now the carrier has gone out of business and the insurance refuses to pay the claim stating that since they can't talk to the carrier they won't pay the insurance claim. My customer is seeking to recover the claim from me. How can I get the money out of the insurance company?

Answer: As the broker, you should not be “in the middle” on this claim. Brokers are not generally liable for loss or damage unless (1) they have held themselves out as a carrier, or (2) assumed carrier liability, or (3) were negligent and their negligence caused or contributed to the loss. You should make it clear to your customer that you are not responsible, and that they should pursue the carrier on the claim.

As for the insurance issue, if you were to bring suit against the carrier and get a judgment, the insurer would probably have to pay the claim (assuming that the policy was in effect at the time of the loss).

FREIGHT CHARGES – PAYING CARRIER RATHER THAN FACTOR

Question: We are a broker and we have an issue with a factoring company that some of our carriers deal with.

As a standard procedure when we receive a letter of assignment from a factoring company stating a carrier of ours is a client of theirs and all payments are to go directly to the factoring company, we comply with their request. We change the remit address for the carrier's payments on all loads. This stays in place until we receive a release letter from the factoring company, which allows us to send payments directly to the carrier.

Recently I was made aware of an issue with a factoring company that we have on file for three of our carriers.

On November 6, we received a letter from one of the carriers advising us that they would no longer be using the factoring company and wanted us to send all payments directly to them. They also sent documentation showing they were currently involved in a lawsuit with the factoring company; the charges are mail & wire fraud. The front page of the court document shows the owner of the factoring company,

and I was able to confirm via public records the owner was arrested and currently in custody on these charges.

We have also received a letter from one of the other carriers stating they would no longer be using that factoring company. They stated the lawsuit as the reason for wanting to end their business relationship with the factoring company but did not provide any documentation showing they were part of the lawsuit or that they were victimized directly or indirectly in any way by the actions of the factoring company or the owner of the factoring company.

Neither carrier has been able to give us a release letter from the factoring company.

In our efforts to assist these carriers in resolving the assignment, on our end we have asked both carriers to supply us with a letter from their individual lawyers stating we can send payments directly to them due to the on-going lawsuit and that our company would not be liable for any payments made to them instead of directly to the factoring company.

We have also tried contacting the factoring company. The numbers we have on file have all been disconnected. I “Googled” them and could not find any contact information that was still valid. The factoring company still has a website that is up and running, no new contact info available on it. I also tried checking the California court records to find any update on the case. I could not locate any information. I’ve run out of all the options I can think of to resolve this issue and still protect our company.

Can we legally refuse to pay the factoring company and pay the carriers directly and could the factoring company come back and hold our company accountable for additional payment to them?

Answer: Unfortunately, the situation you describe is all too common.

Obviously, you do not want to be in the position of having to pay the invoices twice. If the factor has actually gone out of business (and hasn’t filed for Bankruptcy), you probably can’t get a release from the factor that would authorize you to pay the carriers directly.

From your description of the facts, if you want to pay the carriers, I would strongly recommend that you obtain a release and indemnity agreement from the carriers providing that they will defend, hold harmless and indemnify your company in the event there are any other claims for the freight charges. You should consult a qualified transportation attorney to ensure that your interests are adequately protected.

FREIGHT CLAIMS – BMC-32

Question: We timely filed a valid claim against the carrier on 3/27/08 for a shipment that moved 3/3/08. Subsequently, the carrier’s contact information (phone, fax) was disconnected. We then filed the claim against their insurance company and we are requesting that the claim be resolved.

The insurer’s claims adjustor will not resolve the claim because the carrier did not submit it for consideration. We requested that the valid claim be processed under the BMC-32 filing. The insurer responded that there is no BMC-32 filing with respect to this carrier.

It is now 8 months since we filed this \$1,595.02 claim. I was under the impression that the department of transportation required all cargo insurance companies to provide the BMC-32 as a means to recover valid claims when the carrier does not respond. Please let me know if my understanding of the above is correct.

Answer: Unfortunately, the Federal Motor Carrier Safety Administration (“FMCSA”) continues to require a BMC-32 endorsement only for “common carriers”, even though the distinction between

“common” and “contract” carriers was eliminated by the ICC Termination Act of 1995, some 13 years ago.

My guess is that this carrier only had “contract” authority from the FMCSA, so there may be no BMC-32 on file. You can check by going to the FMCSA website and accessing the “Licensing & Insurance System”, which will tell you whether there was a BMC-32 on file. It is also possible that if there was a BMC-32 policy, it was written by a different insurance carrier than the cargo policy.

FREIGHT CLAIMS – SALVAGE RETENTION RULES

Question: Is there a time frame within which a carrier is expected to pick up a damaged product? We shipped a granite vanity top on 8/22/08. It was received but not refused on 9/2/08, but the delivery receipt was clearly marked “product came in damaged”. We filed the claim on 9/10/08 and the carrier acknowledged the claim on 9/12/08. On 9/30 the carrier asked about salvage or repair, and we responded to this in the negative on 10/16/08. On 11/20/08, the carrier sent us a letter stating that the claim has been approved for payment pending salvage pickup. The consignee does not have space to warehouse damaged merchandise and no longer has it after 3 months. Is it reasonable or legal for the carrier to expect to pickup the product at this point?

Answer: Assuming that you are dealing with a carrier that is a participant in the National Motor Freight Classification (“NMFC”), the answer to your question may be found in NMFC Item 300150:

Item 300150

SALVAGE RETENTION-REGULATIONS GOVERNING THE INSPECTION OF FREIGHT BEFORE OR AFTER DELIVERY TO CONSIGNEE AND ADJUSTMENT OF CLAIMS FOR LOSS OR DAMAGE

SALVAGE RETENTION

When visible or open damage to a shipment has been established by notation having been given at time of delivery or concealed damage established by inspection report, it is the duty of the consignee to retain damaged merchandise and shipping container until the carrier desires to take possession of merchandise as salvage. If record conclusively reflects carrier liability, carrier will take possession of the damaged merchandise as soon as possible and in any event, within thirty (30) days from date shipment was noted damaged on carrier delivery receipt or from date of inspection report, if damage was concealed. If carrier does not take possession of the damaged merchandise within the time prescribed above, consignee must contact delivering carrier and request removal of goods from his premises within fifteen (15) days from the date of such communication. The above applies only when the carrier and consignee agree that the carrier will handle disposition of the salvage, and does not in any manner affect the legal duty that the consignee, when there is substantial value in the salvage, must accept and handle it in such a manner as to mitigate the carrier's loss as much as possible. If there is doubt of carrier liability, the carrier will so advise consignee; in which even the consignee may hold the merchandise until liability of carrier is determined, or may dispose of it so as to mitigate the damage, and may file claim for such damage. Carrier will remove the damaged goods within the fifteen (15) day period or advise consignee that carrier liability is in doubt and that damaged merchandise is to be retained by the consignee until carrier has completed investigation of claim.

Some practical suggestions:

Always notify the carrier and request an inspection IN WRITING. State that you are retaining the goods for inspection, how long you will retain the goods, and that if the carrier does not inspect the goods by that date, it will be deemed to have waived its right to inspect the goods and that you will salvage or dispose of them. If the carrier does not inspect the goods, make sure that you thoroughly document the damage (OS&D Report, Inspection Report, Photos, etc.) before disposing of the goods.

FREIGHT CLAIMS – OFFSETTING CLAIM AGAINST FREIGHT CHARGES

Question: If a carrier is slow paying a claim or denies paying a claim, can we deduct the amount of the claim from invoices, for loads other than the claimed load, to get our money reimbursed to us?

Answer: It is not illegal to offset a claim against freight charges owed to a carrier, and many shippers do this. The only problem is that the carrier may sue you for its unpaid freight charges (and ask for interest, attorney fees, etc.). If so, you can then assert a counterclaim for the cargo loss or damage.

In any event, you should ALWAYS file a proper claim in writing with the carrier for any loss or damage to protect your interests in the event the carrier tries to collect its freight charges.

CARRIERS – COMMON OR CONTRACT

Question: What is the difference between contract and common carrier authority and as a 3rd party logistics provider (“3PL”) does it matter to us?

Answer: The statutory distinction between “common carriers” and “contract carriers” was eliminated by the ICC Termination Act of 1995. The current statutory language in the Interstate Commerce Act is found at 49 U.S.C. Sections 13102 and 14101. Essentially, any motor carrier can enter into a contract “to provide specified services under specified rates and conditions”. The relevant language is as follows:

Sec. 13102. Definitions

In this part, the following definitions shall apply:

(4) CONTRACT CARRIAGE- The term “contract carriage” means--

(B) for transportation provided on or after such date [January 1, 1996, the effective date of the ICC Termination Act of 1995], service provided under an agreement entered into under section 14101(b).

Sec. 14101. Providing transportation and service

(b) CONTRACTS WITH SHIPPERS-

(1) IN GENERAL- A carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into a contract with a shipper, other than for the movement of household goods described in section 13102(10)(A), to provide specified services under specified rates and conditions. If the shipper and carrier, in writing, expressly waive any or all rights and remedies under this part for the transportation covered by the contract, the transportation provided under the contract shall not be subject to the waived rights and remedies and may not be subsequently challenged on the ground that it violates the waived rights and remedies. The parties may not waive the provisions governing registration, insurance, or safety fitness.

(2) REMEDY FOR BREACH OF CONTRACT- The exclusive remedy for any alleged breach of a contract entered into under this subsection shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

I should note that the Federal Motor Carrier Safety Administration (“FMCSA”) still allows carriers to register as a “common carrier” or a “contract carrier” -- some 14 years after the distinction was eliminated!

As to your specific question, there are still occasional cases that distinguish between “common” and “contract” carriers and apply different standards of liability. Also, the FMCSA does not require “contract” carriers to have a BMC-32 minimum cargo liability endorsement.

It is always a better practice to have a formal Transportation Agreement with all your carriers that contains both the rates and the rules applicable to the carrier’s services.

The FMCSA requirement for public liability (BI/PD) insurance does not depend on “contract” v. “common” authority. The requirements for insurance are set forth in 49 CFR Part 387.

FREIGHT CHARGES – SECTION 7 NON-RECOURSE PROVISION

Question: I understand that if a shipper executes Section 7 of the Uniform Straight Bill of Lading, a motor carrier can collect freight charges from the consignee only. What about a situation in which the motor carrier prepares the bill of lading without including the Section 7 non-recourse language? Does the motor carrier waive its right to collect freight charges from the shipper where its bill of lading did not include the non-recourse option that would have permitted the shipper to require the motor carrier to collect freight charges from the consignee? I appreciate your assistance.

Answer: The non-recourse box on the face of the current Uniform Straight Bill of Lading as published in the National Motor Freight Classification (“NMFC”) no longer contains the previous language “Subject to Section 7 of conditions . . .”, which formerly referred to Section 7 on the reverse side of the long form bill of lading.

However, Section 7(a) of the Terms and Conditions on the reverse side of current long form bill of lading in the NMFC does say that “collect shipments may move without recourse to the consignor when the consignor so stipulates by signature or endorsement in the space provided on the face of the bill of lading . . .”

Clearly, this requires some affirmative act by the consignor - a signature or endorsement. In theory, your shipper could have inserted some non-recourse language on the face of the bill of lading, which might be binding on the carrier, but apparently this was not done.

Since the shipper is primarily liable for payment of freight charges in the absence of some contractual agreement to the contrary, I can’t see how a carrier would be considered to have “waived” anything by issuing a bill of lading without the non-recourse provision. If anything, it could be construed as the carrier’s intention not to accept shipments on a non-recourse basis.

FREIGHT CLAIMS – LIABILITY LIMITATION BY CLASS

Question: We are a small freight brokerage firm. A customer asked us for a quote to move 7 pallets of “Aluminum Trays”, class 55, that weighed 6,560 lbs. We quoted them \$985.00 and shipped it via a common less-than-load (“LTL”) carrier (Old Dominion Freight Line (“ODFL”)). We did not discuss the value of the shipment.

The receiver (our customer was the shipper) signed 6 boxes crushed. They never told our customer (the shipper) of the problem. The shipper sent them an invoice for the merchandise for \$31,328.20 and they just short paid \$830.70.

Our customer never paid us because of the short payment. We filled a claim with the LTL carrier, which was declined. This is what they wrote:

Your shipment falls under the Old Dominion Freight Line maximum liability tariff 100 Item 594. This item covers shipments of extraordinary value based upon the class of the items shipped. The maximum value allowed will be that which is shown in Column B opposite the Class indicated in Column as follows:

Class 55 Column B Max. Value per lb. \$2.00.

Your claim is declined as filed. Upon receipt of an amended claim the file will be reopened and brought to a conclusion. Please reference the ODFL Claim number on all correspondence. The amended claim amount would be 335 pieces by 6,560 lbs. = \$19.59 lbs. each, then 19.59×6 (damaged) = \$117.54, and $117.54 \times \$2.00$ = \$235.08, as this shipped at a Class 55.

So my question is this: Is our customer right not to pay us?

Old Dominion Freight Lines does offer us a "Choice of Rates" based on the freight class. In other words, the rates they quote us are based on the freight class. The higher the class the higher the rate.

So I believe our customer is wrong here. They should not expect to get such a high coverage for class 55. What do you think?

Answer: There are two issues here.

First, ODFL (and a few other carriers) has established liability limitations in the rules tariff that are tied to the NMFC class of the item as shown on the bill of lading. Item 594-A, sub.(a) contains a table of classes and maximum values per pound: class 55 has a maximum value per pound of \$2.00. To determine whether the limitation is applicable, I would need to look at the actual bill of lading that was used.

Whether the limitation is enforceable is another question. As a general rule, established by numerous court decisions, a carrier must offer a "choice of rates" in order to have an enforceable liability limitation. ODFL's tariff Item 594-A, sub.(i) states:

Carrier does not provide or furnish excess declared value insurance or excess liability coverage and declaring request for same on bill of lading shall have no effect to carrier.

In my opinion, a court would find that the liability limitations in this Item are unenforceable.

Second, if the shipper used a Uniform Straight Bill of Lading that incorporated the Classification and the carrier's tariffs by reference, the shipper was on notice that there could be a liability limitation, and that it should have checked the carrier's tariff. In other words, the fact that the carrier limited its liability for the loss does not justify failure to pay the freight charges.

The classification of an article is determined by the description of the article in the National Motor Freight Classification. I believe that "Aluminum Trays" should be under Article 13120, which has density ratings from class 70 to class 400. I don't know where you came up with class 55. If the shipper put class 55 on the bill of lading, it misdescribed the commodity (probably in order to get a lower freight charge). The carrier should have rated the bill of lading at the proper class in Article 13120 and charged the appropriate (higher) rate. If it had done so, then a higher liability limitation would have been applicable.

FREIGHT CHARGES – BROKERS AND FACTORS

Question: I previously worked for a freight brokerage company that has now gone out of business. The owner has NOT filed bankruptcy for the company at this time. He closed the business in November 2008. The freight bills were billed by a factoring company to the customer, but the freight brokerage paid the charges to the carriers.

My customers are receiving phone calls from carriers demanding payment for the loads the carriers received from the broker. My customers have paid some of the freight invoices to the factoring company, but some of the freight invoices had not been paid when the brokerage closed.

I have two questions:

1. Are my customers liable to pay twice for the same load if they paid the factoring company?
2. Who do my customers pay if they have not paid yet?

Answer: From your description of the facts, I assume that the factor paid the broker and then invoiced the customers, but the broker failed to pay the carriers. Some of the customers have apparently paid the factor for all of their freight bills, and some of the customers have not yet paid the factor for all of their freight bills.

Your first question is: Are my customers liable to pay twice for the same load if they paid the factoring company?

The answer is not entirely clear because there are conflicting court decisions in this area, and the results often turn on the specific facts - such as how the parties are identified on the bill of lading, and whether there was a prior course of dealing.

The cases holding that the shipper should not have to pay twice generally say that since the broker was an independent contractor, there was no contractual relationship (privity) between the shipper and the carrier, and that the carrier essentially agreed to look only to the broker for payment. Cases to the contrary usually rely on a contractual relationship created by the bill of lading.

I would suggest that if your customer has paid the factor, it should tell the carrier that it is not liable and provide proof of payment to the carrier. In most cases the carrier will not pursue collection against the shipper or consignee.

Your second question is: Who do my customers pay if they have not paid yet?

Since the factor has purchased the receivable (the invoice) from the broker, it legally has the right to collect the freight charges from the shipper. It does not have any obligation to pay the carrier, since its contract was with the broker.

If the shipper pays the carrier directly, it may still be liable to the factor, i.e., double payment liability, unless the shipper can get a release (in writing) from the factor authorizing payment to the carrier.

If the shipper wants to pay the carrier and can't get a release from the factor, it should, at the very least, get a release and indemnity agreement from the carrier. In other words, the carrier would have to hold harmless and indemnify the shipper in the event the factor demands payment.

FREIGHT CHARGES – BROKER/CARRIER AGREEMENTS

Question: In a Broker/Carrier Agreement if the carrier agrees to the following language, "CARRIER hereby designates BROKER as agent for the purpose of collecting the agreed to freight

charges from the shippers and/or consignees served pursuant to this Agreement,” does this in some way or in anyway void the carrier’s right to collect freight charges from the broker in the event the broker’s customer fails to pay the broker? Keeping in mind also that the agreement stipulates carrier must invoice only the broker and has a non-solicitation clause pertaining to broker’s customers.

Answer: Without reading the contract in its entirety, I would think that the intent of the quoted language is to make it clear that the broker is an agent of the carrier, and not an agent of the shipper. Sometimes, when a carrier is not paid by the broker, the carrier’s attorney will argue that a broker is the shipper’s agent and therefore the carrier can collect its charges from the broker’s principal (the shipper).

The language quoted does not say that the broker’s obligation to pay the carrier is contingent on its collecting the freight charges from the shipper. In other words, I don’t think the language would prevent the carrier from collecting the agreed freight charges from the broker that it has negotiated in its contract with the broker.

RAIL

RAIL FINES HIKED

The Federal Railroad Administration (“FRA”) has issued a final rule increasing the civil penalties for violations of a railroad safety statute or regulation. The increase incorporates the new maximum civil penalty amounts authorized by the Rail Safety Improvement Act of 2008 and new minimum amounts required under the Federal Civil Penalty Inflation Adjustment Act of 1990. Specifically, FRA is increasing the minimum civil penalty per violation from \$550 to \$650, while the ordinary maximum civil penalty per violation will be increased from \$16,000 to \$25,000 and the aggravated maximum civil penalty per violation, where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury, will be increased from \$27,000 to \$100,000. The new penalty schedule takes effect March 2, 2009.

The rule is available online at the FRA website at http://www.fra.dot.gov/Downloads/Counsel/Minimum_and_Maximum_Civil_Monetary_Penalties_adjustments.pdf.

RAIL SECURITY DEADLINE EXTENDED

The Transportation Security Administration (“TSA”) extended the effective date for the rail transportation security rule by four months, until April 1, 2009. The rule, published by the TSA November 26, was to go into effect December 26. This rule sets new security standards for rail shippers and carriers of certain chemicals, explosives and radioactive materials and includes new requirements for inspection and tracking of such hazardous shipments.

LAND PIRATES

In a move reminiscent of the recent spate of high seas piracy attacks, train robbers attacked a freight train operated by Kansas City Southern (“KCS”) in Mexico. According to reports, a gang of about 20 men armed with assault rifles used a pickup truck to block the tracks, forcing the KCS train to stop. The men threatened the crew, and forced open three containers, and stole clothing and sports gear. Some of which was recovered as a result of coordinated action by the company and state and federal authorities.

Other reports indicate that the containers may have held drums of pseudoephedrine, a chemical used in the manufacture of some cold remedies but also in the illegal manufacture of methamphetamines.

RECENT COURT CASE

CARRIER LIABILITY LIMITATION UPHELD

In an appeal from a summary judgment in a subrogation action the 11th Circuit Court of Appeals affirmed the ruling imposing the carrier's liability limitation negotiated by an intermediary.

In this case, a shipment of Motorola manufactured Nextel cell phones valued at \$1.25 million was stolen from one of Werner Enterprises, Inc.'s trucks and Werner sought to limit its liability to \$200,000. There was no bill of lading and the shipment moved on a Motorola manifest that was signed by the Werner driver. The insurance company paid the claim and sought reimbursement from the motor carrier in a subrogation action. The district court granted Werner summary judgment on the liability limitation and the appeal was brought.

Nextel had used "Westwind" to arrange for the transportation of numerous shipments of cell phones over several years. The "invoice" between Nextel and Westwind (the only contract between these parties) included language to the effect that third party carriers might limit their liability for loss and Nextel had received such a document some 250 times prior to the loss. Nextel had never requested full value coverage.

Westwind entered into "Broker Transportation Agreement" ("BTA") with Transpro Logistics, which included language limiting Transpro's liability to no more than \$200,000 per truckload shipment unless a higher value and limit was agreed upon in writing. The BTA also incorporated Werner's tariff, which included a similar liability limitation of \$200,000 per truckload and provisions for arranging for full value carriage at a higher rate.

The insurance company tried to argue that Nextel had never entered into an agreement to limit liability with the carrier. In affirming the lower court decision, the Eleventh Circuit followed the Supreme Court's decision in *Norfolk Southern Railway Co. v. Kirby*, wherein the Supreme Court set an efficient default rule for liability limitations in carriage contracts: "When an intermediary contracts with a carrier to transport goods, the cargo owner's recovery against the carrier is limited by the liability limitation to which the intermediary and carrier agreed."

The insurance company also tried to argue that the liability could not be limited because the shipper was never given a reasonable opportunity to choose between limited and full value rates as required. The Eleventh Circuit dismissed this argument on the grounds that the BTA and more specifically Werner's tariff incorporated therein provided the shipper (or shipper's agent) the power to elect full coverage.

Responding to the argument that the shipping document itself must include the choice of rates in order for the shipper to have a reasonable opportunity to choose between them, the Court noted there is no requirement that the shipping document itself must include that language so long as there is a written agreement between the parties (or their agents) establishing a reasonable value for the purpose of limiting the liability of the carrier. In previous cases, where the shipper drafted the bill of lading, the court was reluctant to "protect a sophisticated shipper from itself when it [or its agent] drafts a shipping document." It would not allow the drafter of a bill of lading to blame another party for the results that flow from defects in that document

In reaching its conclusion, the Court found facts of this case analogous. Nextel requested the use of the Motorola manifest as the shipping document rather than a bill of lading. The Court would not allow Nextel to benefit from its failure to include the language allowing for a choice of rates in the shipping documents while there was a valid contract (the BTA) that specifically provided for such a choice.

Werner Enterprises, Inc. v. Westwind Maritime International, Inc., 07-15488 (11th Cir. Jan.12, 2009)

SECURITY

10+2 GOES INTO EFFECT

The importer security-filing rule, 10+2 interim final rule took effect on January 26 as originally planned. There was some question whether it would be affected by the White House order holding up the implementation of proposed Bush administration regulations until an Obama administration legal and policy review. According to the Customs and Border Protection (“CBP”) press release:

The decision was based in large part on the fact that the rulemaking process was procedurally adequate; that a 75-day public comment period was already provided to respond to the Notice of Proposed Rulemaking; and, that this Interim Final Rule is now subject to an additional six-month public comment period. The January 26 effective date will also allow CBP to work with industry on testing and improving the systems of this important security initiative during the structured review and delayed enforcement period which ends a year later on January 26, 2010.

This additional information will be critical to enhancing the department’s ability to identify and stop dangerous goods from entering our nation, and CBP will continue to welcome input from the regulated industry.

The rule, which has been in the works for years, requires importers and carriers to provide 12 data elements to Customs that do not appear on a ship’s manifest 24 hours before a container is loaded aboard a ship at a foreign port.

Go to http://www.cbp.gov/xp/cgov/newsroom/news_releases/01262009.xml to review CBP press release.

COMPLIANCE ISSUES

The new Automated Export System (“AES”) security rules from U.S. Customs & Border Protection (“CBP”) create a more significant burden for some industries than others. Export documents must be filed 24 hours before a vessel departure. Companies exporting agricultural products face unique compliance issues due to the nature of the commodities involved.

According to the Agricultural Transportation Coalition (“AgTC”) exporting mushrooms is not the same as exporting machine screws. Exporters of durable goods generally know well ahead of sailing how much they’re shipping, and how much it’s worth. As a result it is not difficult to complete the AES documents.

Exporters of agricultural products have less time to fill orders and stuff containers, making it difficult to know the weight, count and value ahead of time. One tactic taken is to make a dummy AES filing,

using best estimates, and then amending the documents with the actual numbers when known. With the implementation of the new rules, CBP could impose significant penalties on exporters for filing inaccurate data in the first place.

Carriers are subject to the similar penalties for late or improper filing. As a result, they often require documents to be presented even earlier than the CBP in order not to load cargo that doesn't have AES filings. They may require the documentation anywhere from 24 to 96 hours before the deadline, making it even more difficult for agricultural exporters.

The AgTC is seeking to have the export regulations amended to address this problem. It is not clear, however, whether or what relief may be provided.

In the meantime, according to CBP guidelines, an exporter that files inaccurate or incomplete data faces a penalty of \$500 to \$2,500 for the first violation, up to \$10,000 per violation for multiple offenses. Carriers face the same penalty range for infractions such as late filing or filing incomplete data. For late filing, carriers may be penalized \$1,100 per day up to \$10,000 per violation.

With possible significant penalties for violations, carriers and exporters need to understand that there are real ramifications for failure to comply. It is suggested that anyone unsure of the new requirements locate and attend one of the many AES workshops being offered around the country. (Such as the one in New Jersey discussed in the "Education" section above.)

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PERSONAL

FOUND IN THE "ATTIC"

A lot of folks who have attended our conferences like to collect the lapel pins that were given out. While housekeeping, we discovered a number of extra pins for the years 1996 and 1998-2008. They are available free to TLC members on a first come, first served basis. Please contact Diane in Membership for further info: 631-549-8984 or e-mail: diane@transportlaw.com.