

11/10/2017

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Hello.

I am happy to let everyone know that **Angela Atwood**, who is the FTZ Administrator for Columbus Regional Airport Authority, is the one of the top Go to People! She is hardworking, smart and reliable! Good Job Angie!

If you want to nominate someone, let me know.

I hope we can keep **GROWING, LEARNING and INSPIRING** each other!

For your reference, this will be on the website:

www.servinglogistics.com

Enjoy!

Thanks and best regards,

*Beth

A Global Glance:

NWSeaport Alliance:

<https://www.nwseaportalliance.com/#/maps/overview>

Port of NY/NJ:

<http://www.panynj.gov/port/>

Port of Nansha:

www.portofnansha.com

Port of LGB:

<http://www.polb.com>/<http://www.polb.com/>

Port of Panama Canal:

<http://www.pancanal.com>





The Benefits of Clear Drafting in Transportation Agreements

By Stephanie Penninger and John Rapp

Navigating transportation contracts can be a daunting task. “Aping language from the Cretaceous period,”¹ many cite to the now-defunct ICC or other outdated laws or regulatory schemes. Several reference “filed” tariffs that are no longer required, are hundreds of pages long or are impossible to find. They often use language so ambiguous or antiquated that it is impossible to know the drafter’s true intention. Some are completely indecipherable. The Gordian knot is figuring out which of the competing terms and conditions—many of which are hidden within the shipping document abyss of rate confirmations, credit agreements, lading documents, rules publications, amendments, rate schedules or exhibits—controls. Some recent industry cases reveal the benefit of clear and precise contract drafting and some pitfalls to avoid.

Getting Out of the Fog

Basic contract provisions often get lost in the contractual chaos that all-too-often unfolds in this industry. The importance of clearly stating who is to pay for what is highlighted in *In re Couture Hotel Corporation*², where Primary Freight, the delivery agent for several shipments of furniture to Couture, the purchaser, paid \$54,425 in demurrage and other charges to the steamship line that transported the goods. Primary Freight, in turn, invoiced those charges to Couture, which refused to pay them. Unfortunately for Primary Freight, Couture never “signed a written contract where it agreed to pay the [demurrage].”³ Primary Freight conveyed the demurrage costs to Couture in a series of e-mails. However, Couture orally told Primary Freight that it would not pay the charges and e-mailed Primary Freight that additional charges were unacceptable per the original agreement. The court could not find a clear understanding of who was responsible for demurrage, either in the form of a formal contract or e-mail correspondence (which can be the basis for a contract). Therefore, Primary Freight was left holding the bag with regard to paying the demurrage fees.



¹ *Tempel Steel Corp. v. Landstar Inway, Inc.*, 211 F.3d 1029, 1030 (7th Cir. 2000) (Easterbrook, J.).

² 554 B.R. 369, 373-74 (N.D. Tex. 2016). At some point, Couture filed bankruptcy. When Primary Freight made its claim for the unpaid demurrage, the trustee objected to it. Accordingly, this dispute was actually litigated in bankruptcy court.

³ There was a bill of lading with terms and conditions, but it was prepared by third-party Ever-Logistics who had an agency agreement with Primary Freight. Due to a trial technicality, though, it was excluded as evidence.



Likewise, clearly identifying how disputes are resolved would have made Pittsburgh Logistics' life easier in *Pittsburgh Logistics Systems, Inc. v. B. Keppel Trucking, LLC*.⁴ There, Pittsburgh Logistics complained that an arbitration award obtained by B. Keppel Trucking was invalid because the parties never executed a contract containing an arbitration provision. The court thought otherwise. While Pittsburgh Logistics' online carrier terms and conditions did not contain an arbitration provision, its Motor Carrier Service Contract ("MCSC") did. Despite that the MCSC was not executed, the parties acted as though they intended to be bound by it, not the online terms. Therefore, its arbitration provision was enforceable.

Dazed and Confused

Just because a contract term is clear to one party, does not mean it is clear to others. Deciphering what "RVNX \$2.40" meant was the hurdle in *Exel, Inc., F/U B/O Sandoz, Inc. v. Southern Refrigerated Transport, Inc.*⁵ There, the Master Transportation Service Agreement ("MTSA") between SRT, the carrier, and Exel, the broker, measured loss by the replacement value of the commodity, but did not contain a limitation of liability provision. The bill of lading, on the other hand, stated "RVNX \$2.40." After the cargo was stolen, SRT attempted to limit its liability to \$2.40 per pound, arguing that RVNX means "Released Value Not to Exceed." Exel disagreed, arguing that RVNX was a freight classification that was programmed in its computer. In the end, the court sent the case back to the lower court to decide whether SRT had provided the shipper with the opportunity to choose between two or more levels of liability, what "RVNX \$2.40" meant and if SRT could limit its liability.

Similarly, the court in *Hisense USA Corp. v. Central Transport, LLC*⁶ had to decipher what the parties intended when they stated "NMFC 100, CTII Rules Tariff, 49 USC 14706 and 49 CFR 370." There, Hisense engaged Central Transport to carry damaged computer tablets back from its Wal-Mart distribution center destination. When a pallet went missing, the question became whether Central Transport had adequately limited its liability.

Unfortunately for Central Transport, the answer was no. Wal-Mart had prepared the bill of lading, which stated "[a]ll shipments are hereby released to the value at which the lowest freight charges apply." However, at pick-up, Central Transport's driver slapped a sticker on the bill of lading stating "[s]ubject to NMFC 100, CTII Rules Tariff, 49 USC 14706 and 49 CFR 370." Wal-Mart then signed the bill of lading, sticker and all. While Central Transport's online tariff was found by the court to be adequately incorporated into the contract, merely referencing the tariff, without describing any limitation of liability in the bill of lading, did not demonstrate Wal-Mart's awareness of or assent to limiting Central Transport's liability.

⁴ No. 1943 WDA 2015, 2017 WL 65468 (Sup. Ct. Penn. Jan. 6, 2017).

⁵ 807 F.3d 140 (6th Cir. 2015).

⁶ No. 14 C 7485, 2015 WL 4692460 (N.D. Ill. Aug. 6, 2015).



Lost in Translation

Persistent inclusion of outdated and confusing terms cost M/V PAC ALTAIR and the other carrier defendants in *Atwood Oceanics, Inc. v. M/V PAC ALTAIR, et al.*⁷ There, the carrier-prepared bill of lading contained the phrase “shipped on deck at shipper[’]s risk & expense.” The carrier’s intention in including that phrase was to inform the shipper that the cargo would be on the deck and subject to the elements as it was crossing the ocean. Thus, when a rogue wave swept away a chunk of the cargo, the shipper should not have been surprised—it took the risk. Unfortunate for the carriers was that this phrase actually eliminated the \$500 per package liability limitation afforded carriers by the Carriage of Goods by Sea Act (COGSA), thus subjecting the carriers to full liability. COGSA excludes goods shipped “on deck” from its definition of goods. “As such COGSA does not apply—by its terms—to cargo carried on the deck of a vessel when the bill of lading states that cargo will be carried on deck.” Accordingly, the ironic effect of the carriers’ inclusion of this ancient phrase was to expose them, not the shipper, to the full risk.

The Contractual Quagmire

How many times have you read “the terms and conditions contained in X are hereby fully incorporated in Y?” Determining whether X applies to a particular transaction is a recurring problem in the industry. Indeed, it was the root of the problems in *In re Couture Hotel*, *Pittsburgh Logistics*, *Exel* and *Hisense* discussed above.

It also caused problems in *Complete Distribution Services, Inc. v. All States Transport, LLC*,⁸ where the broker, CDS, argued that the carrier, AST, was subject to the 2012 version of CDS’s contract, as opposed to the 2010 version that AST had signed. CDS’s argument was that its 2012 load confirmations alerted AST to the change and that AST had received and signed nineteen such confirmations. According to CDS, the new load confirmations “looked different” from prior versions and contained new language. The court found, however, that the rate confirmations were not sufficiently specific in incorporating the 2012 contract, meaning the decision on which contract governed was one for the jury to decide. If you are looking for certainty in your dealings, leaving the applicable contract to the whim of a jury is certainly not what you had in mind.

Bring it on Home!

The transportation industry is dynamic and fast-paced. It is naïve to think that business is going to slow down so that clearer contracts can be negotiated. That being said, the following are a handful of simple takeaways that you can implement which ought to make contracts more readable, understandable and, most importantly, enforceable.

⁷ No. 15-00456, 2016 A.M.C. 1993, 2016 WL 3248440 (S.D. Ala. June 13, 2016).

⁸ No. 3:13-cv-00800-SI, 2015 WL 5764421 (D. Or. Sept. 30, 2015).



1. Specify the Basics. Who is responsible for paying what? Who are parties? This will save a lot of legal fees down the road.
2. Understand the Impact of all Clauses. The carriers in *M/V PAC ALTAIR* undoubtedly included the phrase “shipped on deck at shipper[’]s risk & expense” without even thinking about it. Do you understand what every provision in your contract means? If the answer is no, then you may inadvertently be hurting your end goals.
3. Revise Your Form Agreements. Has it been a few years since you took a look at your form agreements? If so, it may be time to update them. What are the provisions that your contractors always balk at? Are they realistic to expect? What types of claims keep coming up? Have you accounted for changes in the law and technology? Most importantly, use it as an opportunity to bring your contracts into the twenty-first century. Be clear about expectations and risk allocation. Eliminate unnecessary words.
4. Keep the Rules of Contract Interpretation in Mind. The court will do everything in its power to give meaning to every word in the contract. Do your contracts use the phrases “including” and “including, but not limited to” interchangeably? Those two phrases undoubtedly are both intended to mean the same thing—that the following is a non-exhaustive list of examples of the thing just described. But if you use both expressions, they must have different meanings, meaning the court may not construe your contract the way you hoped it would.⁹
5. Be Able to Prove the Other Party Has Notice of Terms. This is essential to increasing the likelihood that online and other terms and conditions (especially limitations of liability provisions for freight loss or damage) that are incorporated by reference in contracts, email quotations, signature lines and TMS-generated rate quotes, and any changes to those terms, will be enforceable.
6. Be Aware of What Makes Pro Stickers Stick. Pro stickers are more likely to “stick” and allow carriers to limit their liability when they: (1) reference the carrier’s governing tariff, and, if applicable, its website, indicating where the tariff can be viewed; (2) describe the limitation of liability, with specificity; and (3) after affixation of the pro sticker, the shipper, with knowledge and full disclosure, signs the bill of lading to which the pro sticker had been affixed.¹⁰

⁹ The Seventh Circuit in *Shelby County State Bank v. Van Diest Supply Co.*, 303 F.3d 832, 837 (7th Cir. 2002), took the phrase “including” one step further, wondering “if all goods of any kind are to be included, why mention only a few? A court required to give ‘reasonable and effective meaning to all terms,’ must shy away from finding that a significant phrase (like the lengthy description of chemicals and fertilizers we have here) is nothing but surplusage.” (internal citations omitted).

¹⁰ See, e.g., *Aim Controls, LLC v. USF Reddaway, Inc.*, NO. H-08-cv-1662, 2008 U.S. Dist. LEXIS 93034 (S.D. Tex. Nov. 17, 2008).

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A promotional graphic for the Columbus Logistics Conference (CLC) 2018. It features a central image of the Columbus skyline at sunset, with the text "Save the date" overlaid. Below the image, it says "Columbus Convention Center" and "400 N High Street, Columbus, Ohio 43215". Logos for Serving Logistics LLC, NCBFAA, and the Port of Nansha are also present.

Save the DATE:

-Check out pricing and sponsorship opportunities at www.servinglogistics.com



Trinity expands freighter service at Rickenbacker International Airport

Speed to market, unparalleled service propel airport's growth

COLUMBUS—Whether you look at the number of international flights, amount of exports or total cargo volume, Rickenbacker International Airport is experiencing growth that's outpacing even the impressively expanding logistics industry.

"Speed to market and unparalleled personal service have contributed to Rickenbacker's emergence as North America's air freight hub," explained David Whitaker, Chief Commercial Officer for the Columbus Regional Airport Authority, which operates the airport.

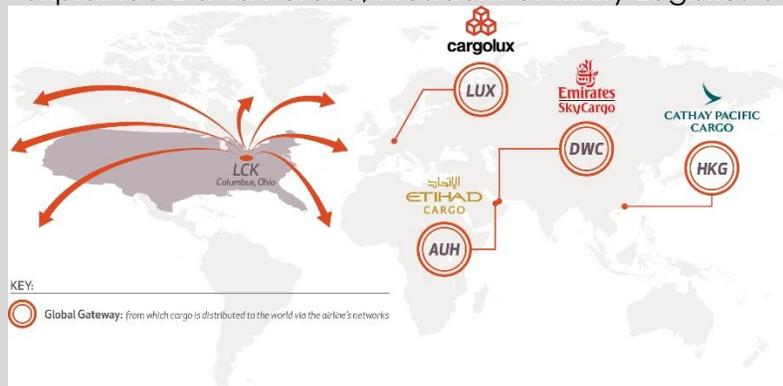
The latest example is Trinity Logistics USA Inc. and Etihad Cargo's announcement to expand at Rickenbacker by adding a third weekly flight beginning Oct. 30. The growth

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is a result of Trinity moving its east coast hub to Rickenbacker to cater to its clients in the retail, defense and healthcare verticals.

“Rickenbacker provides international clients faster transits from Asia, the Middle East and Europe to reach American consumers while also offering shippers in the Midwest the same fast service to international markets. We expect our new service to be well received by a variety of clients that expect speed and dependability from difficult markets in Asia,” explained David Pereira, President of Trinity Logistics USA Inc.



Located in the center of the North American population, Rickenbacker International Airport provides companies with superior access to consumers, corporate headquarters, distribution centers and manufacturers. Investments in a highly connected roadway system give companies that use Rickenbacker a distinct advantage in the efficient movement of goods.

Year-to-date airport stats demonstrate the growth Rickenbacker is experiencing:
International cargo up nearly 70 percent.
Nearly 200 percent increase in exports.
28 percent increase in total cargo volume.

“With forwarders like Trinity Logistics investing in and consolidating air operations at Rickenbacker, our region reaps significant economic benefit, including millions of dollars in economic impact and thousands of jobs, ranging from warehousing to transportation,” said Whitaker. “We are extremely appreciative of the outstanding collaboration.”

About Rickenbacker International Airport

[Rickenbacker International Airport](#) is one of the world's few cargo-dedicated airports and a critical logistics component of Rickenbacker Inland Port. Located in Columbus, Ohio, Rickenbacker is within a one-day's drive to nearly half of the U.S. population and one-third of the Canadian population.

With regularly scheduled import and export service via Cargolux, Cathay Pacific, Emirates SkyCargo and Etihad Cargo, Rickenbacker specializes in expedited services

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that moves cargo between planes and trucks faster and more consistently than other gateway airports. FedEx and UPS are also onsite to provide domestic cargo service, critical to growing e-commerce activity.

Angie Tabor
Columbus Regional Airport Authority
ATabor@ColumbusAirports.com



THE PORT AUTHORITY OF NEW YORK & NEW JERSEY:

Today the Port of New York and New Jersey marked the arrival of the CMA CGM *Theodore Roosevelt*, which passed under the newly raised Bayonne Bridge at approximately 9:30 a.m. to make berth at APM Terminals in Elizabeth, New Jersey.

With a total cargo capacity of 14,414 TEUs, the *Theodore Roosevelt* is the largest container vessel ever to call the port's berths.

The Roosevelt's visit is part of her maiden voyage after departing Asia's shipyards on July 26 of this year to begin her rotation on CMA CGM's South Atlantic Express Rotation (SAX) from Hong Kong to Shanghai. Her call on the Port of New York and New Jersey, the largest port on the East Coast of North America, highlights the success of the Bayonne Bridge Navigational Clearance Program, which increased the air draft of this iconic span in conjunction with other projects, such as the Harbor Deepening Program, aimed at facilitating commerce with larger, next-generation container vessels.

Thanks to these various improvements, the Port of New York and New Jersey can now welcome vessels as large as 18,000 TEUs to port terminals in Newark and Elizabeth, New Jersey, as well in Staten Island, New York. Vessels exceeding 14,000 TEUs will begin to make their first ports of call at the Port of New York and New Jersey in approximately one month.

After assessing their service needs and the state of the port's improvements, CMA CGM announced that the Port of New York and New Jersey will now be the first port of call on their service string.

To date, France-based CMA CGM Group has named six ships after U.S. presidents.

On the decision to name the *Theodore Roosevelt* after America's 26th president, CMA CGM Group Chairman and Chief Executive Officer Jacques R. Saadé said: "He [Roosevelt] was an extraordinary individual and leader, and a historic symbol of both New York City and the nation."

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Friendly Chatter HIGHLIGHT:



Anyone know where this is?

I was recently there and got recruited into a great cause:
Fight for Air CLIMB.
40 flights of stairs, but for a good cause. If you want to join me or donate, let me know....



Click below to get connected to join me or donate to the cause ☺!

http://action.lung.org/site/TR/Climb/ALAMS_MidlandStates?px=7309262&pg=personal&fr_id=16291

Top 10 Vacation spots in the World

By US News

<https://travel.usnews.com/rankings/worlds-best-vacations/>

1. Rome, Italy
2. Sydney, Australia
3. Porto, Portugal
4. London, UK
5. Paris, France
6. New York, USA
7. Florence, Italy
8. Prague, Czech Republic
9. Barcelona, Spain
10. Dubai, UAE
11. Amalfi Coast, Italy
12. Santorini, Greece
13. Honolulu, USA
14. Grand Canyon, USA
15. Bali, Indonesia
16. Serengeti, Tanzania
17. Vancouver, Canada
18. Breckenridge, Canada
19. Phuket, Thailand
20. San Sebastian, Spain

CALENDAR

Nov 7: VOTE

Nov 11: Veteran's Day-USA

Nov: 23: Thanksgiving- USA

Dec 6: CIBA Christmas Party

lpeterman@freight-expeditors.com

Dec 13-20: Hanukkah

Dec 25: Christmas- USA

****2018****

May 16, 17- CLC 2018 –
Columbus Logistics Conference
www.servinglogistics.com

SAVE THE DATE/ SIGN UP: