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Don't Knock It 'Til You Try It—Rejecting Food Shipments

Currently there are no FDA or other regulations requiring that security seals or temperature control devices be intact on trailers when transporting goods, or requiring that goods be rejected when a seal or temperature sensor is broken. However, consignees and shippers alike are automatically refusing entire shipments, sometimes without testing the condition of the goods, out of fear (e.g., perceived contamination and violation of food safety laws and regulations promulgated by Congress and the FDA). While courts may be more lenient where food is being transported, rejecting goods without first determining their condition could compromise a claim.

Courts have universally held both under the Carmack Amendment to the Interstate Commerce Act and Carriage of Goods by Sea Act (COGSA) that a consignee must accept partially damaged goods and "mitigate" its damages by using or selling the non-damaged goods received from the shipper unless the shipment is "practically valueless." This requires the consignee or shipper to inspect and determine the extent of the damaged goods. Notwithstanding, at least one court has found that a shipment was practically worthless, and thus the shipper was reasonable in rejecting the entire load, without mitigation, where 50% of the shipment was salvageable, suggesting more lenience when food is being transported for human consumption.

In *Orient Overseas Container Line LTD v. Crystal Cove Seafood Corp.*, No. 10 Civ. 3166(PGG), 2012 WL 463927 (S.D.N.Y. Feb. 14, 2012), Crystal Cove contracted with Orient Overseas to transport tilapia from China to Smyrna, Tennessee. During transport, the temperature had to be maintained at -0.4 degrees Fahrenheit. Nonetheless, the refrigeration unit malfunctioned, causing some of the fish to spoil. After testing about 5 out of the 3,400 cartons of frozen tilapia, which exuded a horrendous stench, and finding their temperature had risen to 30 degrees, Crystal rejected the delivery. This culminated in Orient suing Crystal for wrongfully refusing to accept delivery and failing to pay demurrage fees, and Crystal counterclaiming for the market value of the shipment under the COGSA. Ultimately, through its inspections, Crystal established that Orient was negligent in handling the cargo after discovering the broken refrigeration unit that had caused damage to the cargo. The court awarded Crystal the market value of the tilapia, finding that Crystal had reasonably rejected the entire shipment, even though about half of the tilapia was salvageable when, on arrival, the shipment was "practically valueless" for human consumption.

Consignees and shippers should avoid automatically rejecting goods delivered, and instead, carefully inspect the shipment, complete and produce an inspection report together with the carrier's driver, immediately segregate any damaged goods from the rest of the shipment, and notify the owner or shipper of the nonconforming goods. The inspection should include a determination as to whether a food shipment has been "adulterated," which means some or all of the food is filthy, putrid, has decomposed, or is otherwise unfit for consumption, has been prepared, packed or held under unsanitary conditions where it could have been contaminated with filth, or carries a risk of being harmful to the health of the consumer. [21 U.S.C. § 342(a)(3) and (4)] If the consignee or shipper is required to register with the Food and Drug Administration under Section 415(a) of the Food Drug & Cosmetic Amendments Act of 2007, it should also notify the FDA of any reportable, contaminated food. A "reportable food" is that for which there is "a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals." [21 U.S.C. § 350f(a)(2)] Further, if a portion of the goods has some value and is salvageable,

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CARB and Reefers Redux, 21st Century-Style

Shippers, carriers, 3PLs and virtually everyone else involved with the use of "reefers" in the state of California are subject to new rules that went into effect on January 1, 2013.

The State of California, possibly in violation of preemption provided by the Interstate Commerce Act,[1] has imposed certain environmental regulations on brokers, freight forwarders, California-based shippers and receivers, motor carriers and their drivers, owners and operators, terminal operators, lessors and lessees, repair shops, engine rebuilders, and certain facilities with loading dock spaces.

> *"If a carrier is found to be in violation of CARB's regulations, it may be cited and subject to a penalty of $1,000 per occurrence. All other parties in the transaction can be fined as well."*

The California Air Resource Board (CARB) passed regulations that apply to Transport Refrigeration Units (TRUs), more commonly known as "reefers," TRU gen[2] sets and facilities where TRUs operate. CARB's stated rationale in imposing state regulations on interstate transportation is that non-compliant TRUs expose the public in California to greater potential cancer risks and create an unfair economic advantage for those carriers who do not comply with CARB performance standards. Whether or not the regulations will withstand a challenge based on federal preemption is a question that will inevitably be addressed in the courts at a later date.

Meanwhile, brokers, freight forwarders, shippers and others specified in the regulation are subject to fines by the State of California for failure to comply with California's CARB performance standards. Technical requirements for performance standards are set forth in the Owners and Owner-Operators Section of Title 13 of the California Code of Regulations.[3] The specifications for emission standards encompass approximately 25 pages and are beyond the scope of this article.[4]

To understand the effect of the regulations on shippers, brokers and freight forwarders, one needs to first look at the requirements in the regulations for motor carriers.

Motor Carriers

As of January 1, 2013, motor carriers that dispatch TRU-equipped trucks, trailers or shipping containers equipped with a TRU or TRU gen set that travel on a highway within California must:

1. Only dispatch TRUs or TRU gen sets that comply with the standards set for owner operators in Title 13 Section 2477.5.
2. Provide the following information to a dispatched driver who will be traveling on a highway within California:
   a. Carrier's business name
   b. Carrier's street address, state, zip code
   c. Carrier contact person's name
   d. Carrier contact person's business phone number
3. Provide the dispatched driver with the business name, address, contact person and phone number of the business entity (e.g., freight broker, freight forwarder, shipper or receiver) that arranged, hired, contracted for or dispatched the transport of the perishable goods being hauled.

Carriers must register their TRUs on ARBER, which is CARB's online registration system. CARB has created a database that is available to the public, listing the carriers that are 100% compliant.

Brokers and Freight Forwarders

Freight brokers and freight forwarders that arrange, hire, contract for or dispatch the transport of perishable goods in TRU-equipped or TRU gen set-equipped trucks, tractor-trailers, shipping containers or railcars on California highways or railways must:

1. Require the carriers they hire or contract with for transport of perishable goods to only dispatch TRU-equipped trucks, trailers, shipping containers and railcars or TRU gen sets that comply with the standards set for owners and owner-operators in section 2477.5 if they travel on California highways or railways.
2. Provide the following information to the carrier for their dispatched driver who will be traveling on a California highway or railway:
   a. Freight broker's or freight forwarder's business name
   b. Freight broker's or freight forwarder's street address, state, zip code
   c. Freight broker's or freight forwarder's contact person's name
   d. Freight broker's or freight forwarder's contact person's business phone number

The requirements apply to any broker or freight forwarder that hires a carrier that will travel on a California highway or railway, regardless of where the broker or freight forwarder is based or conducting business.

Shippers/Receivers/Terminal Operators/Drivers/Lessors/Lessees

The regulations apply to California-based shippers and receivers. Similar requirements apply to all of the entities named above.

Shippers, brokers and freight forwarders are not required to inspect the TRUs for compliance, but must conduct adequate due diligence to ensure entities with whom they contract are in compliance.

Penalties

If a carrier is found to be in violation of CARB's regulations, it may be cited and subject to a penalty of $1,000 per occurrence. All other parties in the transaction can be fined as well. The shipper, receiver, broker, forwarder and driver can each be fined $1,000 for each occurrence. For a broker or freight forwarder, the potential exposure is greater than $1,000 per occurrence in light of the fact that, if a shipper or receiver is fined because of the act or default of the broker or freight forwarder, the cost of the fine will likely be passed on to the broker or freight forwarder by its customer.

Recommended Best Practices

All shippers, brokers and freight forwarders should adopt and implement well-written Carrier Selection Protocols. Those Protocols should include the requirement that each carrier enter into a written contract by which the carrier agrees to comply with CARB rules. The carrier must be required to provide proof of compliance.

It is important to follow the Protocol at all times and to ensure compliance is documented. The determination of whether or not a fine is imposed and the amount of the fine may depend on the due diligence of the entity choosing the carrier.

The question as to whether or not the CARB rules will withstand challenges from a federal preemption standpoint remains to be answered in the courts. Meanwhile, brokers, freight forwarders, shippers, receivers, motor carriers and their drivers are on notice that it is time to update their procedures. For shippers, brokers and freight forwarders, it is critical that Carrier Selection Protocols and contracts with motor carriers and other service providers be updated to ensure compliance with the new rules.

[1]49 U.S.C. § 14501.

[2]An internal combustion engine with operating characteristics significantly similar to the theoretical diesel combustion cycle coupled to a generator used as a source of electricity.

[3]Title 13, California Code of Regulations, Section 2477.5.

[4]Requirements similar to those for brokers and freight forwarders apply to California-based shippers and receivers. Special requirements also apply to lessors and lessees, terminal operators and drivers.

For more information, please contact Martha Payne at mpayne@beneschlaw.com or (541) 764-2859.

Tax Changes Bring Challenge and Opportunity

As a New Year's gift, Congress and the President have agreed to legislation that brings a permanent answer to the series of temporary tax laws that have been enacted over the past 12 years. Some of these changes could have a significant impact on business owners, executives and high-income earners.

There was a great deal of stress in late 2012 for high-net-worth individuals seeking to take advantage of a thought-to-be expiring estate and gift tax exemption of $5 million. Without a new law, that exemption was scheduled to decrease back to the 2001 level of $1 million. The new law passed New Year's Day permanently extended the $5 million exemption for both estate and gift tax purposes.

This is very significant for business owners of all types, and owners of transportation and logistics operations in particular. Business succession planning involves many issues that have nothing to do with taxes. Determining when the time is right to shift ownership of a transportation business to the next generation is complicated enough without layering on transfer tax concerns. By keeping the exemption from both estate and gift taxes at the higher level, Congress has removed a potential constraint on succession planning efforts. Owners will have more freedom to transfer stock and other equity to family members in amounts and with timing that makes sense for the situation, without as much threat of gift taxes being imposed.

On the other hand, there are aspects of the new tax law that could be detrimental to successful transportation and logistics companies. Through various mechanisms, federal income taxes will increase in 2013, such as:

- An increase in the top tax bracket from 35% to 39.6% for single persons with income over $400,000 and married persons over $450,000.
- The preferential rates on long-term capital gains and qualified dividends are increasing from 15% to 20% for those same high-bracket taxpayers.
- For taxpayers with income of greater than $250,000 ($300,000 if married), there are phaseouts of personal exemptions and itemized deductions that can be used to offset income. These phaseouts effectively increase the marginal tax rate of an affected taxpayer.
- Unrelated to the January 1 legislation, there is the 3.8% tax on net investment income to finance the federal health care legislation.

Adding all that up, high-income taxpayers face a marginal tax bracket of near 50%, and a combined rate on capital gains and dividends that is almost 10% above the rate from 2012. These changes will increase the stakes for income tax planning in the coming years. Many of our clients in the transportation and logistics industry are "flow-through" entities, such as an S corporation or limited liability company. Profits of those companies are taxed to the individual owner immediately. Any rise in the individual tax rate is in effect an increase in the after-tax cost of doing business.

For business owners, this may bring greater incentive to engage in more

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Tax Changes Bring Challenge and Opportunity

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immediate succession planning. The lowering of the tax burden on a family, whatever type of tax that may be, increases the ability to reinvest in capital and labor for the company, and ultimately the after-tax earnings of the owners. It should be a goal therefore to seek ways to spread the income of a business venture or other income-producing assets to persons who are in lower tax brackets.

Very often this spreading is accomplished through a variety of gifting techniques. Fortunately, whether Congress intended this result or not, the trend back to higher income tax brackets arrives at the same time a heightened gift tax exemption, which is also indexed for inflation, and has been made permanent. As a result, a business owner has greater flexibility on an estate and gift tax-free basis to shift assets among family members in search of lower marginal income tax brackets.

"[T]here are aspects of the new tax law that could be detrimental to successful transportation and logistics companies."

For example, assume a situation where the founder and owner of a successful privately held trucking company is realizing cash flow from the business net earnings and other investments of $500,000 per year. The company is held in a limited liability company, and therefore the income is taxed at the individual level regardless if the earnings are reinvested in the company. The high end of the owner's income will be subject to a tax rate of over 45%, as described above. The owner might have adult children who are in a marginal tax bracket of 25% (which extends for single persons up to approximately $85,000 of taxable income). If the owner can shift assets to the children and cause the income to be taxed to the other family members, the tax rate on that income has been cut almost in half.

Certainly, business owners will need to be careful before simply making a gift of stock or LLC interests to family members without restriction. There will be non-tax details to analyze, such as buy-sell agreements, stock or LLC transfer restrictions, some family members being active in the business while others are not, the use of trusts to prevent access to cash flow, the creation of nonvoting stock or LLC interests to use for gifting while maintaining management control, and so on. Certain segments or locations of the transportation business might generate more cash flow, so the overall business might be segmented into separate entities, and selection of what equity interests to use in the succession planning is important. The fact remains, with some thoughtful planning, and maximizing the use of high lifetime gift tax exemptions, there will be ample opportunities for clients to maintain control of a business, maintain access to sufficient cash flow and reduce the overall income tax burden on the family.

We can help analyze each individual situation and design the best plan and structure for achieving these goals.

For more information, please contact Scott Swartz at sswartz@beneschlaw.com or (216) 363-4154.

Takeaways and Highlights of the United States Government's Resource Guide to the U.S. Foreign Corrupt Practices Act

By now, transportation and logistics professionals have heard of, and hopefully are familiar with, the Foreign Corrupt Practices Act (FCPA).[1] The FCPA comprises anti-bribery and accounting provisions and prohibits corrupt activity within the global marketplace.[2] On November 14, 2012, the United States Department of Justice (DOJ) and the United States Securities and Exchange Commission (SEC) (collectively, the Government) jointly issued *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (the Guide).[3]

The Guide is a 120-page document that consists of 10 chapters covering a broad range of FCPA topics.[4] The Guide highlights key statutory provisions, case law, Government enforcement actions, and hypotheticals and commentary to provide a perspective into the Government's approaches, priorities, and interpretations regarding the application of its enforcement power. Although the Guide does not provide the comprehensive clarity that has long been sought, and it is not binding on the Government, "the legal community can be confident that the authorities will act consistently with the guidance."[5, 6] While the Guide addresses a broad section of topics and issues, all of which impact global business participants, the discussion below highlights two key areas that should be of importance to transportation and logistics professionals.

Anti-Bribery Provisions

1. Who Is a Foreign Official? – Instrumentality

The FCPA's anti-bribery provisions apply to corrupt payments made to "foreign officials." By definition, a "foreign official" includes "any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of [the same]."[7] This definition includes persons ranging from low-level employees to high-ranking officials. In defining a "foreign official," the Guide gives attention to how an "instrumentality" is defined.

The Guide states that the term "instrumentality" is broadly defined and includes state-owned and state-controlled entities. A determination as to whether an entity is an "instrumentality" requires a fact-based analysis focused on ownership, control, status and function; the Guide highlights 11 non-exclusive factors for making that determination.[8] These factors should be analyzed by companies before entering into business relationships with entities that *may* have ties to foreign governments or nongovernmental agencies (i.e., World Bank, United Nations, etc.). In performing the analysis as to whether an entity is an "instrumentality," the concept of "control" is given specific deference within the Guide.

"While no one factor is dispositive …, an entity is unlikely to qualify as an instrumentality if a government does not own or control a majority of its shares." The Guide provides that a "majority" is reflective of 50% or more; however, less than a majority of ownership can qualify an entity as an instrumentality. Further, the Guide highlights that factors such as veto power, board appointments and/or special shareholder designations are some examples of how a foreign government may demonstrate control over an entity by which the entity is viewed as an instrumentality. The Guide makes it clear that the Government will continue to pursue cases where the definition of foreign official includes an instrumentality.

2. Gifts, Travel, Entertainment and Hospitality

Always a critical issue for FCPA practitioners and businesses, the provision of gift giving, use of entertainment and hospitality in conducting business, and travel have created confusion and uncertainty as to what is permissible, proper or potentially dangerous. As a result, the Guide's discussion on these issues was highly anticipated. What the Guide provides is a reaffirmation of prior Government positions. Therefore, no new light has been shined on this issue. Nonetheless, the Guide is very helpful in clarifying that gifts, entertainment and hospitality—in moderation—are permissible, and consistent and thorough record-keeping is critical. The key factor is that any gift or form of hospitality cannot be given or provided with a corrupt intent.

The Guide reaffirms that companies can "engage in ordinary and legitimate promotion of their businesses . . . ."[9] Moreover, gifts of esteem or gratitude are not in and of themselves impermissible; proper accounting and recordation are critical, as well as ensuring the gift is not extravagant. Therefore, a wedding present such as a moderately priced crystal vase, a gift to acknowledge the birth of a child or some similar token is not per se a violation of the FCPA. Further, business-class airline tickets, to which the company's employees would be entitled, hotel accommodations and dinner are not violations. Therefore, "a moderately priced dinner, a baseball game, and a play" are not prohibited forms of entertainment and/or hospitality.[10]

Additionally, although nominal or small gifts can be given, the Guide is clear to point out that Government enforcement actions "have focused on small payments and gifts only when they comprise part of a systemic or long-standing course of conduct that evidences a scheme to corruptly pay foreign officials to obtain or retain business."[11] It is clear from the Guide that the focus is on the larger more "extravagant" gifts and expenditures; but, companies should not discount patterns of activity that may create red flags or evidence a systematic pattern of prohibitive conduct. The Guide provides what it characterizes as "hallmarks of appropriate gift giving," which can be used as a general guidepost: (1) the gift is given openly and transparently, (2) the gift is properly recorded in the giver's books and records, (3) the gift is provided only to reflect esteem of gratitude, and (4) the gift is permitted under local law.[12]

3. Third-Party Liability

Another critical area of FCPA enforcement is the application of third-party liability (i.e., conduct of agents, intermediaries and downstream channel suppliers). The majority of FCPA enforcement actions/investigations/prosecutions, particularly over the last three years, have involved corrupt payments by third parties. The Guide reinforces the statutory language and legislative history behind the applicable provisions. Additionally, the Guide does not change, modify or alter the scope of liability for third-party conduct. Thus, third-party conduct can result in liability for parent companies, employers and others who may be upstream within the supply chain.

The Guide reiterates that companies will be held liable for the conduct of their third parties, such as agents, consultants and distributors. It emphasizes that companies that are aware of a "high probability of misconduct or the high probability of the existence of such circumstances" may be held liable even if they do not possess *actual* knowledge of the misconduct. However, the Guide highlights that *mere negligence* is not enough to impose liability. The Guide makes a point of highlighting that third-party liability can be applied to those persons who *purposefully avoid actual knowledge* of wrongdoing or corrupt conduct. In short, hiding one's head in the sand will not be a defense, or serve as mitigation, to an FCPA investigation or prosecution. So how can a company avoid or mitigate Government enforcement for third-party conduct? Due diligence, due diligence and more substantive and adequate due diligence.

Whether it is an intermediary, customs broker, downstream supplier

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or other third-party agent, adequate and substantive due diligence must be conducted. Due diligence on third parties is a must, both as part of any transaction and as part of a robust compliance program. The Guide lists areas that third-party due diligence should cover: (1) qualifications and associations of the third parties, including their business reputation and relationships with foreign officials, (2) business rationale for employing the third party, which includes examining the necessity for employing the third party, reviewing the payment terms and ensuring that the third party's work is adequately documented, and (3) ongoing monitoring of the relationship, which may include the exercise of audit rights, anti-bribery compliance certifications and training. This list is not exhaustive; the breadth of due diligence that may be required will be driven by various factors.[13]

Guiding Principles of Enforcement

The Guide reaffirms the factors the Government uses when determining whether to conduct investigations of or bring charges against corporations and individuals.[14] Thus, the Guide highlights the factors that are found in the DOJ's *U.S. Attorney's Manual* and the SEC's *Enforcement Manual*. While the factors used by the Government have similarities, there are differences in the approaches each agency may employ. The Guide is helpful in discussing both agencies' respective approaches. More importantly, the Guide is beneficial in that it emphasizes the one overarching factor that the Government places significant importance on in determining whether and how it will exercise its enforcement powers, which is whether an effective compliance program was in place at the time of the alleged improper FCPA conduct.

As the Guide points out, "an *effective* compliance program is a critical component of a company's internal controls … promot[ing] an organizational culture that encourages ethical conduct and a commitment to compliance with the law." (Emphasis added.) Further, the Guide emphasizes that a "highly effective compliance program" must be supported by senior management (i.e., top-down philosophy); emphasize an *active, engaged* and *sustained* commitment to preventing unethical conduct and anti-corrupt behavior, including implementing clear, concise and *accessible* codes of conduct and written policies; employ a risk-based approach for allocating resources to and determining the scope of the compliance program; and demonstrate a sustained effort toward training, due diligence and continuous growth and improvement. The success of a "highly effective compliance program" is a key factor in the Government's perception of your company, the analysis it undertakes to determine whether to bring charges or the level of fine it may recommend.[15] Therefore, your compliance program must be a living and dynamic part of your company and tailored to your company's present and future needs.

Conclusion

For all practical purposes, we are in the same place as before the issuance of the Guide. Yet, the Guide is the most substantive document we have received to date regarding the Government's enforcement of the FCPA. In reaffirming positions and interpretations on the one hand, and shedding additional insight into how the Government approaches issues on the other, the Guide is a benefit to participants in the global business arena.

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[1]Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (amended 1988 and 1998).

[2]*Id.*

[3]The Guide can be downloaded for free at: www.justice.gov/criminal/fraud/fcpa/guidance; or, www.sec.gov/spotlight/fcpa.shtml

[4]Chapters 1 and 10 are the Introduction and Conclusion respectively. Chapters 2 through 9 represent the substantive chapters of the Guide and address the following topics: (1) Anti-bribery and Accounting Provisions (Chapters 2 and 3), (2) Related U.S. Laws (i.e., other U.S. criminal and/or anti-corruption statutes) (Chapter 4), (3) the Guiding Principles of Enforcement (Chapter 5), (4) Penalties, Sanctions, and Remedies (Chapter 6), (5) Resolutions (Chapter 7), (6) Whistleblower Provisions and Protections (Chapter 8), and (7) DOJ Opinion Procedure (Chapter 9).

[5]Commentary by Principal Deputy Chief Jeffrey H. Knox of the DOJ's Criminal Division's Fraud Section during panel discussion at the American Conference Institute's 28th National Conference on the Foreign Corrupt Practices Act, Washington, D.C., Nov. 16, 2012.

[6]See guidance at pgs. 17-18 for Hypotheticals (Gifts, Travel, and Entertainment); pg. 26 (Facilitation Payments); pgs. 31-33 (Successor Liability); and pgs. 63-66 (Third-Party Vetting/Distributors and Local Partners).

[7]See 15 U.S.C. §§ 78dd-1, 78dd-2 and 78dd-3.

[8]See guidance at pg. 21.

[9]See guidance at pg. 15.

[10]See guidance at pg. 18.

[11]See guidance at pg. 15.

[12]*Id.*

[13]See guidance at pgs. 22-23 listing common red flags associated with third parties (i.e., excessive commissions, close relation or association with foreign official, third-party requests payment to offshore accounts).

[14]See guidance at pgs. 52-56.

[15]See guidance at pgs. 22-23 (Red Flags When Assessing Third-Party Agreements); pg. 24 (Reasonable and Bona Fide Expenditures); pg. 61 (Compliance Program Case Study); and pgs. 74-77 (Factors for Non-Prosecution and Deferred Prosecution Agreements).

For more information, please contact James L. Ervin, Jr. at jervin@beneschlaw.com or (614) 223-9325.

Recent Events

Marc Blubaugh, Eric Zalud, Rich Plewacki and **Stephanie Penninger** all attended **Transportation Law Association's 45th Annual Transportation Law Institute** in Nashville, TN, November 8–9, 2012. **Eric Zalud** presented on *Casualty Litigation and CSA Regulations*.

Marc Blubaugh, as First Vice President, and **Eric Zalud**, as Voting Past President, attended the **Transportation Lawyers Association's Executive Committee Meeting** in Nashville, TN, on November 10, 2012.

Marc Blubaugh presented *Extending Liability to Brokers: The Scope and Nuances of Recent Court Decisions and Their Impact on the Course of Trucking Litigation* at the **American Conference Institute's 3rd National Forum on Defending and Managing Trucking Litigation** in Atlanta, GA, on November 29, 2012.

Marc Blubaugh moderated the "Where the Rubber Meets the Road: Transportation & Logistics in 2013!" panel at the **Columbus Roundtable of the Council of Supply Chain Management Professionals** in Columbus, OH, on January 18, 2013.

Martha Payne and **Rich Plewacki** attended and **Eric Zalud** presented at the **Conference of Freight Counsel Winter Meeting** in Dallas, TX, January 13 and 14, 2013.

Allen Jones attended the **BGSA Supply Chain Conference** in West Palm Beach, FL, January 23–25, 2013.

Marc Blubaugh, Wendy Brewer, Rich Plewacki, Stephanie Penninger, Sarah Stafford and **Eric Zalud** attended the **Transportation Lawyers Association's Regional Seminar** in Chicago, IL, January 24 and 25, 2013.

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the consignee or shipper should try to sell those goods or risk not being able to recover the full value of the shipment. Automatically rejecting shipment, without further inquiry, could not only limit the amount of damages recoverable, but also make it increasingly difficult to establish that the goods were damaged upon delivery.

For more information, please contact Stephanie Penninger at spenninger@beneschlaw.com or (317) 685-6188.

Welcome
Richard Grams

We are pleased to announce the arrival of the new Partner-In-Charge of our Shanghai Office, Richard Grams. In addition to serving as Partner-In-Charge of the Shanghai Office, Richard is licensed to practice law in Hong Kong and England and is fluent in Mandarin Chinese and English. He joined Benesch from the Shanghai Office of Troutman Sanders and has worked for several years leading international law firms in Hong Kong, Beijing and Guangzhou. He routinely advises local and international clients on cross-border investments, mergers and acquisitions and reorganizations in China and Hong Kong across a range of industries including logistics, aerospace and distribution. Over the years, Richard has been instrumental in establishing more than 200 corporate operations in China.

On the Horizon

Rich Plewacki will be attending **National Tank Truck Carriers' Winter Membership and Board of Directors Meeting** in Nassau, Bahamas, February 6–8, 2013.

Eric Zalud will be attending the **TIDA Advanced Casualty Litigation Seminar** in San Diego, CA, February 7, 2013.

Marc Blubaugh and **Eric Zalud** will be attending the **28th Annual BB&T Capital Markets Transportation Services Conference** in Coral Gables, FL, February 13–14, 2013.

Martha Payne will be presenting *Are You a Broker or a Freight Forwarder? Managing your Risks* at the **Pacific Air Cargo Association Meeting** in Portland, OR, February 15, 2013.

Rich Plewacki and **Teresa Purtiman** will be attending the **58th Annual Food Shippers of America 2013 Conference** in Phoenix, AZ, February 24–26, 2013.

Allen Jones will be attending the **Specialized Carriers & Rigging Association's Specialized Transportation Symposium** in Orlando, FL, February 27–March 1, 2013.

Rich Plewacki, Peter Kirsanow, Allen Jones and **Teresa Purtiman** will be attending the **75th Annual Convention of the Truckload Carriers' Association** in Las Vegas, NV, March 3–6, 2013. **Rich** and **Peter** will be speaking at the **Independent Contractor Practices Policies Committee (ICPPC) Meeting** held in conjunction with the Convention on the topic of *Conflicting Signals to the Industry—EEOC & FMCSA*.

Marc Blubaugh will be attending the **International Warehouse Logistics Association's Annual Convention & Expo** in Orlando, FL, March 10–12, 2013.

Eric Zalud and **Martha Payne** will be attending the **American Freight Forwarders and Air Cargo Conference** in Las Vegas, NV, March 10–12, 2013.

Stephanie Penninger will be attending the **24th Tulane Admiralty Law Institute** in New Orleans, LA, March 13–15, 2013.

Eric Zalud will be speaking on *An Overview of Liability for Freight Forwarders, Brokers and Riggers* and *Issues Arising from Cross Border Shipments* at the **Trucking Industry Defense Association (TIDA) Cargo Seminar** in Atlanta, GA, on March 20, 2013.

Allen Jones will be attending the **Specialized Carriers & Rigging Association's Annual Conference** in Scottsdale, AZ, April 2–6, 2013.

Martha Payne and **Eric Zalud** will be presenting at the **Transportation Intermediaries Association Annual Convention** in Las Vegas, NV, April 10–13, 2013. Martha will be presenting *Making Your Company Structure Profitable* while Eric will be presenting *Cargo Loss and Damage and Freight Claims Issues*.

Eric Zalud will be attending the **Council of Litigation Management Conference** in San Antonio, TX, April 10–12, 2013, and will be speaking on *Attorney-Client Privilege Issues Relating to Cross-Border Litigation*.

Marc Blubaugh, Eric Zalud and **Martha Payne** will be attending the **Annual Joint Conference of the Transportation & Logistics Council and the Transportation Loss Prevention & Security Association** in San Diego, CA, April 22–24, 2013. **Marc Blubaugh** will be speaking on the "Transportation Attorneys Panel," **Martha Payne** will be moderating the "Risk Management and Insurance Panel" and **Eric Zalud** will be speaking on *Freight Intermediaries—Protecting Your Interests*.

Marc Blubaugh, Eric Zalud, Martha Payne and **Nicole Schaefer** will be attending the **Transportation Lawyers Association Annual Conference** in Napa, CA, May 1–5, 2013. **Marc Blubaugh** will be moderating the "Transportation Contracting: Vocabulary Vinification" while **Eric Zalud** will be presenting on *Contractual and Liability Issues Relating to Third-Party Transportation Intermediaries*. **Marc Blubaugh**, as First Vice President, and **Eric Zalud**, as Voting Past President, will also be attending the **Transportation Lawyers Association's Executive Committee Meeting** in Napa, CA, on May 1, 2013.

Stephanie Penninger will be attending the **Maritime Law Association of the United States Nicholas J. Healy Lecture and General Meeting of the Association**, in New York, NY, May 2–3, 2013.

For further information and registration, please contact Megan Pajakowski, Client Services Manager, at mpajakowski@beneschlaw.com or (216) 363-4639.

Help us do our part in protecting the environment.

If you would like to receive future issues of this newsletter electronically, please email Sam Daher at sdaher@beneschlaw.com.

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