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InterConnect

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Assigning Blame: Motor Carrier Liability to Brokers? Maybe.



Eric L. Zalud

Back in the old days (i.e., maybe five or six years ago!) the mantra when representing a freight broker in a cargo loss and damage case was: "Come on, brokers aren't liable for freight loss and damage!" There were, and still are, literally, mountains of case law on this point. [See *Nipponkoa Ins. Co., Ltd. v. C.H. Robinson World Wide, Inc.*, 2011 WL 671747, at *3, No. 09 Civ. 2365 (S.D.N.Y. Feb. 18., 2011); *Chubb Group v. H.A. Transportation Systems, Inc.*, 243 F. Supp. 2d 1064 (C.D. Cal. 2002) (granting summary judgment to broker on breach

of contract claim resulting from shipment that was stolen while in transport); *CGU International Ins., PLC v. Keystone Lines Corp.*, No. C-02-3751 SC, 2004 WL 1047982 (N.D. Cal. May 5, 2004) (finding that defendant acted as a broker and therefore was not liable for goods negligently damaged in transport); *New Prime, Inc. v. Professional Logistics Mgmt. Co.*, 28 S.W.3d 898 (Mo. Ct. App. 2000) (noting that if plaintiff were found to be a broker, it would be entitled to judgment); *Prof'l Communs., Inc. v. Contract Freighters, Inc.*, 171 F. Supp. 2d 546 (D. Md. 2001); *Nat'l Union Fire Ins. Co. of Pittsburgh v. All Am Freight, Inc.*, No. 14-CIV-62262, 2016 WL 633710, at *9 (S.D. Fla. Feb. 2, 2016).]

The Carmack Amendment (49 U.S.C. 14706), which governs the liability of motor carriers and freight forwarders for cargo loss, damage and delay for shipments in interstate commerce, provides a very clear, and federally preemptive, recourse for shippers asserting cargo claims against motor carriers. (Note, this doctrine of federal preemption is not impacted, at all, by the U.S. Supreme Court's recent decision in *Montgomery v. Caribe Transport II, LLC*, 608 U.S. ____ (2026)). By the express terms of the Carmack Amendment itself though, its remedies are available to shippers, and possibly consignees, only. Commutatively, the Carmack Amendment also provides

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motor carriers the benefits of certainty, narrowing of applicable remedies and damages, and certain entrenched statutory defenses. So, that statutory regime for freight loss and damage has worked, and still works, fairly smoothly for cargo claims brought by shippers against motor carriers.

Brokers, historically, were a different story. However, that somewhat worn scenario has rapidly evolved, driven by business initiatives and exigencies. Several years ago, many larger brokers, with others joining them later, began to, as essentially a customer service to their shipper customers, pay those shippers for freight claims against carriers and *then* seek recourse, *as a broker*, against the motor carrier. Often, this “service” provided by the brokers to their shipper customers was not even contractually required but was done by the brokers as a way to keep their shipper customers content, and in the fold. As the sector evolved, many brokers began to memorialize this practice in their contracts with their shipper customers. However, that practice, i.e., brokers chasing motor carriers for cargo claims, careened headlong into the time-

tested doctrine that brokers are not liable for freight loss and damage. Here, the brokers were essentially *assuming* that liability, either gratuitously through their business relationships with the shippers or via contract. There was also another foundational statutory impediment to this tack. Under the Carmack Amendment, *brokers have no standing to assert freight loss and damage claims against motor carriers*. The *only* entity with standing to assert such claims is the shipper itself, or possibly the consignee, depending upon who has title and ownership to the cargo at various junctures in the transport schematic.

So, this business practice, now fairly common throughout the brokerage sector, squarely contravenes two very clear and time-tested principles of statutory law and commensurate case law. Without some type of contractual mechanism or intervention then, brokers would be unable, based upon the applicable statutory regime, to chase motor carriers for cargo claims (unless provided in the broker’s contract with the carrier). Consequently, the concept of an “assignment” of that claim,

long used in other areas of law, has gained more and more prevalence in this arena. Courts have found that, with a proper “assignment of claim” from the shipper of its cargo claim, the broker then “steps into the shoes” of the shipper and thereby attains Carmack Amendment standing, and *can* bring a claim/lawsuit against the motor carrier for freight loss and damage.

The actual process of obtaining the assignment, however, requires a somewhat regimentalized, step-by-step procedure that, if not followed, can defeat such a cargo claim by the broker against the motor carrier. A recent case involving Carmack Amendment freight loss and damage issues and this entire cast of characters helped clarify how to dot the proverbial i’s and cross the proverbial t’s in these situations. In *Scotlynn USA Division, Inc. v. Titan Trans Corp.*, 555 F.Supp 1246, plaintiff Scotlynn, a freight broker, brought a cargo claim for spoiled beef, under the Carmack Amendment, against defendant Titan Trans, a refrigerated motor carrier. The shipper of the beef was Cargill, Inc., a global food corporation. Scotlynn then (as it turns out, improperly) brokered the load

to Titan to transport. The parties stipulated that Cargill submitted a claim to Scotlynn for the cargo in the amount of \$89,823.68. There was no evidence in the record showing when the claim was submitted. The evidence *did* show that Scotlynn issued a check to Cargill in that amount, at a later date.

As a threshold issue, the court addressed whether or not Scotlynn, as a broker, *could* assert a Carmack Amendment claim at all against Titan, the motor carrier. The court confirmed that as a broker in its dealings with Titan, Scotlynn could not sue Titan on its own behalf under the Carmack Amendment. [See also *Essex Ins. Co. v. Barrett Moving & Storage, Inc.*, 885 F.2d 1292, 1299 (11th Cir. 2018).] However, the court *did* recognize that Scotlynn, as the broker in the shipment schematic, could bring a Carmack Amendment claim as the assignee of “a person entitled to recover under the receipt or bill of lading,” quoting the Carmack Amendment at 49 U.S.C. Section 14706(a)(1). In this particular case, for whatever reason, the parties had stipulated that “Scotlynn is the assignee of Cargill’s rights related to the load at issue in this case, including its claims under the Carmack Amendment.” This was not enough for the court, though, because the stipulation did not specify the *date* of the assignment.

The court noted that there was a written assignment from Cargill in evidence that purported to assign the cargo claim to Scotlynn. However, that assignment was “effective as of September 26, 2016,” but was not executed until April 1, 2021, less than three weeks before trial. The court then noted the clear authority on this point that: “in order for an assignment with a retroactive effective date to be valid for standing purposes, the assignee must possess the assigned right on the day it filed the complaint,” quoting *MSP Recovery Claims v. QBE Holdings, Inc.*, 965 F.3d 1210, 1219 (11th Cir. 2020). This

requirement cannot be met retroactively. [*Abraxis Bioscience, Inc. v. Navita*, 62 F.3d 1359, 1366 (Fed. Cir. 2010).] Scotlynn had alleged in its trial brief, without any evidentiary support (as noted by the court) that Cargill has “orally assigned its Carmack Amendment claim much earlier,” and that that verbal assignment was “memorialized in the written assignment.” The court pointed out, however, that the written assignment in evidence did not acknowledge any prior oral assignment.

Thus, there was a rather pointed gap in the assignment chain. Nevertheless, the court referenced the parties’ stipulation and, although noting that the parties had not stipulated to the *date* of the assignment, Titan did not challenge Scotlynn’s ability to bring a Carmack Amendment claim pursuant to the assignment in the trial proceedings. So, the court then rather charitably “inferred from the failure” that the stipulation included—implicitly—the fact that the assignment, either written or verbal, occurred prior to the filing of the complaint. After making this rather generous leap, the court concluded that Scotlynn *could*, as Cargill’s assignee, seek relief under the Carmack Amendment against motor carrier Titan.

This body of case law and statutory law provides several helpful pointers for shippers, brokers and carriers in cargo claim situations:

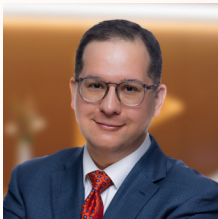
1. **Brokers Not Liable for Freight Loss and Damage:** These time-tested legal principles still apply, although they may be altered by business relationships and by contract.
2. **Brokers Have No de Facto Standing to bring a Carmack Amendment Claim for Freight Loss and Damage against Motor Carriers:** Again, this hard statutory reality can be altered by the contractual mechanisms discussed above.

3. **For Shippers:** Know that you can, via contracts with brokers/3PLs or by business leverage, obtain payment of cargo claims directly from brokers with whom you partner. Often this provides more certainty in actually getting paid on a claim with timeliness and certainty. These assignments should be in writing and with appropriate specificity so that the shipper does not, somehow, get dragged into the litigation.
4. **For Brokers:** Remember that if a broker is paying a cargo claim from its shipper customer, either gratuitously to foster the business relationship or as a contractual requisite, the broker should obtain an assignment of that claim. That assignment enables it to seek recourse, under the Carmack Amendment, against the actual transporting motor carrier.
5. **Timing:** The law seems quite clear that, although an assignment may initially be verbal and less formal in the embryonic claim phase, for it to be held valid by a court when it is scrutinized, it must be completed and executed on a date before the actual complaint is filed (although it may be retroactive to the initial, less formal assignment agreement).
6. **For Carriers:** The Assignment of Claim is an essential building block for any cargo claim against a motor carrier or freight forwarder, brought by a broker/3PL. Consequently, motor carriers and their counsel should ascertain the existence, or nonexistence, of such an assignment, either informally at the outset of the litigation, or in discovery. Its absence, or insufficiency, could eliminate a high-value cargo claim.

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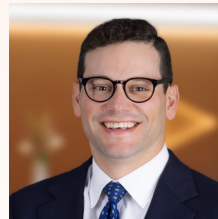
▶ Crossing Lanes and Catching Fraud: DOJ, DHS and DOT Launch “Crossroads of America” Task Force to Crack Down on Trucking Fraud



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KEY TAKEAWAYS

On August 31, 2026, the Department of Justice, Department of Transportation, Department of Homeland Security and the White House Task Force to Eliminate Fraud announced the “Joint Task Force Crossroads of America,” a historic multi-agency enforcement initiative targeting fraud, safety violations and immigration-related offenses by trucking companies across Illinois, Indiana, Michigan and Ohio.

The new task force is the latest enforcement action under the Fraud Task Force and DOJ’s National Fraud Enforcement Division, reflecting the administration’s continued expansion of its fraud enforcement infrastructure.

DHS conducted a synchronized single-day sweep targeting over 200 commercial driving schools across 23 states, while the DOT issued emergency removals of 110+ training providers and launched a nationwide audit of third-party CDL skills testers, reflecting unprecedented cross-agency coordination in the commercial transportation sector.

Companies operating in trucking and servicing the industry, including carriers, CDL training schools, third-party testing organizations and logistics providers, may prepare for heightened enforcement by immediately assessing compliance.

The White House Fraud Task Force

On March 16, 2026, President Trump signed Executive Order 14395, establishing the White House Task Force to Eliminate Fraud (the “Fraud Task Force”).¹ Vice President JD Vance chairs the Fraud Task Force, with Federal Trade Commission (FTC) Chairman Andrew Ferguson serving as vice chairman.

The Executive Order directs the Fraud Task Force to coordinate “a comprehensive national strategy to stop fraud, waste, and abuse within federal benefit programs, including programs administered jointly with state, local, tribal, and territorial partners.”² Key priorities include improving

eligibility verification processes, developing pre-payment controls to prevent improper payments, evaluating fraud indicators and high-risk vulnerabilities, promoting information sharing between federal and state governments, and disrupting fraud networks and facilitators.³ The Fraud Task Force coordinates “with the Homeland Security Council on matters related to law enforcement, public safety, national security, transnational crime, and organized criminal activity.”⁴

DOJ’s National Fraud Enforcement Division (NFED)

The newly established Joint Task Force Crossroads of America (Joint Task Force)

is the latest demonstration of a new DOJ division’s broadening reach. On January 8, 2026, the White House announced the creation of a new position: an assistant attorney general with nationwide jurisdiction over fraud.⁵ This announcement laid the groundwork for the NFED, which Acting Attorney General Todd Blanche formally established by memorandum on April 7, 2026.⁶

Colin McDonald took the oath as the first-ever assistant attorney general for the Fraud Division on April 1, 2026, and now leads the NFED.⁷ The NFED’s core mission is to investigate and prosecute individuals and entities that steal or fraudulently misuse taxpayer dollars and consolidates

fraud enforcement under a single umbrella, coordinating with federal agencies and partnering with federal, state and local law enforcement across the country.⁸

On August 13, 2026, the NFED announced five priority enforcement areas: (1) public trust and financial integrity; (2) healthcare fraud; (3) internal revenue fraud; (4) global trade and commerce; and (5) corporate misconduct.⁹ The NFED also launched the National Fraud Detection Center on August 24, 2026, which is “a prosecutor-led, multi-agency team designed to investigate the most harmful actors defrauding federal government programs, including illicit actors overseas and those operating fraud schemes across federal programs,” and supports the “whole-of-government” approach to combatting fraud.¹⁰

Crossroads of America Launches

On August 31, 2026, the Joint Task Force known as Crossroads of America was announced in a press briefing with eight U.S. Attorneys joined by DOT Secretary Sean P. Duffy, DHS Secretary Markwayne Mullin, Federal Motor Carrier Safety Administration (FMCSA) Administrator Derek Barrs, and Vice Chairman Andrew Ferguson of the Fraud Task Force.¹¹ The agencies described the initiative as a “historic interagency effort” to crack down on fraud in the trucking industry and a multistate partnership to secure highways and strengthen border security.¹²

Attorney General Todd Blanche emphasized that the initiative targets fraud schemes that have placed unqualified and improperly trained drivers on the nation’s highways, and pledged that DOJ would work with federal, state and local partners through the Joint Task Force to “dismantle the fraud schemes harming American truckers, drivers and community safety.”¹³ The Joint Task Force was created with the intent to strengthen commercial driving standards, remove noncompliant drivers, and address the fraudulent practices

that allowed unqualified drivers to obtain CDLs.¹⁴ Along with DOT, Homeland Security Investigations (HSI) intends to “bring the full weight of [its] investigative authorities, financial expertise and global law enforcement capabilities to this historic, whole-of-government effort” to pursue individuals and criminal networks that use fraudulent documents and illicit financial schemes to circumvent transportation safety laws.¹⁵

Rising DOJ Enforcement Operations

The Joint Task Force establishes a multistate enforcement partnership spanning Illinois, Indiana, Michigan and Ohio and will coordinate operations among the participating U.S. Attorney’s Offices and state and local law enforcement. This coalition of federal, state and local partners reflects DOJ’s strategy of using the NFED’s coordinating authority to run multi-agency enforcement actions. The geographic focus on the Midwest corridor, a critical hub for the nation’s freight and logistics infrastructure, suggests DOJ views this region as particularly vulnerable to the fraud and safety violations the Joint Task Force targets.¹⁶

The Joint Task Force is one recent step in an escalating set of new enforcement actions. Over the past 18 months, DOT has removed over 28,000 drivers from the roads for failing to meet English language proficiency (ELP) requirements, required states to cancel more than 30,000 improperly issued commercial driver’s licenses, and removed over 8,000 noncompliant training schools from the FMCSA registry.¹⁷ The FMCSA also recently announced three additional enforcement actions:¹⁸

1. **Emergency Removal of Training Providers.** The FMCSA reviewed roadside inspection records for commercial drivers cited for not meeting ELP requirements, then cross-referenced those drivers with

Training Provider Registry (TPR) records to identify providers that repeatedly certified drivers who did not meet federal qualification standards.¹⁹ The FMCSA will execute the emergency removal of more than 110 Entry-Level Driver Training (ELDT) providers from the TPR.²⁰ These providers must immediately cease all operations, “including administering curricula, utilizing facilities for instruction, and conducting behind-the-wheel training.”²¹

2. **Targeted Investigations and Proposed Removals.** In July, 175 FMCSA investigators conducted nearly 400 investigations into ELDT providers in 40 states.²² The investigations uncovered serious instances of noncompliance, including inadequate training space, unlicensed instructors, missing assessment documentation and fraudulent classroom facilities.²³ These efforts led to “more than 160 notices of proposed removals from FMCSA’s TPR.”²⁴ These providers certified drivers linked to 239 commercial motor vehicle-related fatalities.²⁵
3. **Nationwide Audit of Third-Party CDL Skills Testers.** Federal law requires CDL skills tests to occur in English, yet DOT has placed more than 28,000 drivers out of service for ELP violations since June 2025, indicating compliance failures among third-party testers and insufficient state oversight.²⁶ The FMCSA will conduct a nationwide audit and can hold states accountable for authorizing testers who fail federal requirements, including through corrective action plans, withholding of federal highway funds (starting at up to 4% in the first year and increasing to 8% for each subsequent year of noncompliance), and potential decertification of noncompliant state CDL programs.²⁷

These actions mark a significant escalation of regulatory enforcement in the commercial transportation sector and signal DOT’s intent

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to continue removing noncompliant drivers and deficient training providers.

Increasing DHS Collaboration

The Department of Homeland Security’s participation in the Joint Task Force includes both investigative and immigration enforcement components:

1. **HSI Operations.** Along with U.S. Attorney’s Offices and the FMCSA, HSI leads a national criminal investigation initiative into disreputable trucking companies “focus[ing] on CDL fraud, unauthorized employment, identity-document fraud, financial crime, money laundering, labor exploitation, and potential links to human smuggling, drug trafficking, and cartel activity.”²⁸

Key HSI activities include:

- Inspecting more than 200 driving schools across 23 Special Agent in Charge offices and 23 states.²⁹
- Disseminating over 1,000 CDL-related business leads related to “known or suspect businesses engaged in unsafe practices.”³⁰
- Issuing more than 80 Notices of Inspection, with multiple investigations opened identifying indicators of fraudulent CDL issuance, unauthorized employment, identity fraud and shell companies.³¹

Ongoing HSI investigations involve unauthorized employment by trucking companies using visa holders for domestic cargo transport; state motor vehicle employees suspected of accepting payments to help individuals bypass CDL requirements; medical practitioners suspected of improperly certifying CDL medical exams; and companies engaged in visa fraud, labor exploitation and financial crimes associated with CDL businesses.³²

2. **ICE Enforcement and Removal Operations (ERO).** ERO announced several targeted initiatives and field

operations under the Joint Task Force umbrella:

- **Operation ICE Wall:** A multistage enforcement operation that targets trucking companies and drivers with final orders of removal or prior removal histories.³³
- **Operation Guardrail:** An initiative focused on individuals holding commercial driver’s licenses who lack authorization to be in the United States.³⁴
- **Operation Freightliner:** An ERO-led operation leveraging “287(g) program partners to locate, interdict, and identify individuals operating commercial vehicles in violation of the law.”³⁵
- **National Surge Operation:** A targeted surge conducted on August 31, 2026, “focusing on Maine, Michigan, and Wisconsin... coordinating joint enforcement and inspection responses with DOT.”³⁶
- **Field Office Operations:** The Miami Field Office coordinated a joint operation with Florida DOT, FMCSA, and the Office of Commercial Vehicle Enforcement, and the Chicago Field Office coordinated a joint operation with Indiana State Police focused on weigh station inspections.³⁷

The scope of DHS’s enforcement actions across these activities underscores the interagency nature of this effort and the perceived link between trucking fraud and broader public safety concerns.

Key Takeaways for Service Provider Clients

The Joint Task Force has significant implications for trucking companies and commercial services that support the sector:

- **Heightened Enforcement Risk.** The Joint Task Force’s multi-agency structure means that companies may face simultaneous scrutiny from DOJ, DOT

and DHS. Carriers, CDL training schools, third-party testing organizations and logistics providers should all anticipate increased enforcement activity.

- **Immigration Compliance Is Now a Top Trucking Issue.** The merging of trucking fraud enforcement and immigration enforcement means that companies must ensure their workforce compliance programs address immigration-related risks, including I-9 verification and CDL eligibility.
- **CDL Training and Testing Risk Effects.** CDL training and testing ecosystem will face sustained regulatory pressure with the DOT’s emergency removal of training providers, nationwide audit of skills testers, and 40-state investigation. Companies that rely on third-party training or testing providers must now conduct due diligence to confirm that their providers remain in good standing and must keep detailed records evidencing these efforts.
- **Geographic Focus May Expand.** Companies operating outside the Midwest should not assume they are outside the enforcement perimeter. Although the Joint Task Force currently focuses on Illinois, Indiana, Michigan and Ohio, even today these DHS operations span 23 states, and the DOT actions are nationwide.
- **Proactive Compliance Review Is Critical.** Now is the time for companies to review compliance with FMCSA regulations, including ELP requirements, driver qualification files requirements, and training provider credentials. The pace and scale of these enforcement actions is unlikely to end soon. Improving compliance and fixing gaps before enforcement will be well rewarded in better weathering risk today as well as in future casualty events.

Benesch's teams of attorneys in its White Collar, Government Investigations & Regulatory Compliance Practice Group and Transportation & Logistics Practice Group are on the leading edge of these developments and advising clients with proactive compliance reviews, risk assessments, audit response strategies, enforcement preparedness preparations, risk management tools and litigation defense. The team is here to help if you have questions regarding impacts from the Joint Task Force or the administration's broader fraud enforcement initiatives, or would like assistance in assessing specific risk areas.

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¹ Exec. Order No. 14395: Establishing the Task Force to Eliminate Fraud, 91 Fed. Reg. 12503 (Mar. 16, 2026); Marisa T. Darden, et al., *White House Taps Vice President To Lead New "Task Force To Eliminate Fraud,"* Benesch (Apr. 7, 2026), <https://www.beneschlaw.com/insight/white-house-taps-vice-president-to-lead-new-task-force-to-eliminate-fraud/>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ White House, Fact Sheet: *President Donald J. Trump Establishes New Department of Justice Division for National Fraud Enforcement* (Jan. 8, 2026), available at: <https://www.whitehouse.gov/fact-sheets/2026/01/fact-sheet-president-donald-j-trump-establishes-new-department-of-justice-division-for-national-fraud-enforcement/>.

⁶ Memorandum from Acting Attorney General Todd Blanche, *Creation of the National Fraud Enforcement Division* (Apr. 7, 2026), available at: <https://www.justice.gov/ag/media/1435311/dl?inline>; see also Marisa T. Darden, et al., *The Devil Is In The Details: DOJ Provides New Insights Regarding National Fraud Enforcement Division's Priorities*, Benesch (Apr. 23, 2026), <https://www.beneschlaw.com/insight/the-devil-is-in-the-details-doj-provides-new-insights-regarding-national-fraud-enforcement-divisions-priorities/>.

⁷ U.S. Dep't of Justice, *About the National Fraud Enforcement Division*, available at: <https://www.justice.gov/fraud/about-national-fraud-enforcement-division>.

⁸ *Id.*

⁹ Memorandum from Assistant Attorney General Colin M. McDonald, *National Fraud Enforcement Division Enforcement Priorities* (Aug. 13, 2026).

¹⁰ U.S. Dep't of Justice, *Department of Justice Announces Launch of National Fraud Detection Center to Combat Fraud Against Taxpayer-Funded Programs* (Aug. 24, 2026), available at: <https://www.justice.gov/opa/pr/departments-justice-announces-launch-national-fraud-detection-center-combat-fraud-against>.

¹¹ U.S. Dep't of Justice, Office of Public Affairs, *U.S. Attorneys and Department of Justice Join Departments of Transportation and Homeland Security and White House Fraud Task Force to Launch Historic Interagency Effort to Crack Down on Fraud in Trucking Industry* (Aug. 31, 2026), available at: <https://www.justice.gov/opa/pr/usattorneys-and-department-justice-join-departments-transportation-and-homeland-security>.

¹² *Id.*

¹³ *Id.*

¹⁴ See *id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* "The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added Section 287(g) to the Immigration and Nationality Act (INA), authorizing [ICE] to delegate state and local law enforcement officers the authority to perform specified immigration officer functions under ICE's direction and oversight." *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. Immigration and Customs Enforcement, available at: <https://www.ice.gov/identify-and-arrest/287g>; 8 U.S.C. §§ 1357(g).

³⁶ U.S. Dep't of Justice, Office of Public Affairs, *supra* note 13.

³⁷ *Id.*

► Preemption, Conversion and Limitation (of Liability)—Oh My! Eighth Circuit Affirms \$100 Liability Limit for FedEx's Loss of \$250,000 **Watch: Key Takeaways for Shippers and Carriers**

Pennsylvania Insurance Co. v. Federal Express Corp., Nos. 25-1777 & 25-1891 (8th Cir. Sept. 3, 2026)



Nicholas P. Lacey

In a decision filed on September 3, 2026, the United States Court of Appeals for the Eighth Circuit addressed several issues of recurring importance to participants in the

transportation and logistics industry—including the preemptive scope of the Airline Deregulation Act (ADA), the conversion exception to the released value doctrine, and the enforceability of a carrier's contractual limitation of liability. While the court acknowledged that the issues presented were well established in the law, the opinion serves as a useful refresher on principles that shippers, carriers and intermediaries routinely encounter in practice.

Background

The case arose from the loss of a luxury watch valued at \$250,000 during transit by Federal Express. Sonia Breslow purchased the watch from Jacob & Company, which was manufactured in Switzerland and delivered to Jacob & Company's New York office. The watch was shipped via courier to the Iron Horse Golf Club in Montana, and the Club was then tasked with forwarding the shipment to Breslow in Arizona via FedEx Priority Overnight service.

The Club maintained a FedEx account and created a shipping label online, but did not declare a value for the package. During transit, the package traveled by air from Montana to Memphis, then to Phoenix,

and finally by truck to a FedEx facility in Scottsdale. Video evidence showed that at the Scottsdale facility, a FedEx employee removed one box from the yellow shipping bag and placed it on a conveyor belt. The box and bag then moved to an area not covered by video surveillance. When Breslow ultimately received the package, the watch was missing.

Pennsylvania Insurance Company, as subrogee of the Breslows after paying a \$250,000 insurance claim, sued FedEx alleging negligence, conversion, unjust enrichment, breach of contract and civil theft. The district court dismissed several claims as preempted or failing as a matter of law, and after a bench trial on the breach of contract claim, entered judgment in favor of the insurer in the amount of just \$100. Both parties appealed, and the Eighth Circuit affirmed.

Preemption of State Law Claims Under the Airline Deregulation Act

The ADA's express preemption clause provides that a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier." [49 U.S.C. § 41713(b)(1).] The key phrase "related to" has been interpreted broadly to encompass state laws "having a connection with or reference to airline 'rates, routes, or services.'" [*Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992)]. The clause preempts not only laws specifically addressed to the airline industry but also laws of general applicability that indirectly affect an air carrier's rates, routes or services.

The Eighth Circuit adopted a broad construction of the term "service," joining the First, Second, Fifth and Sixth Circuits in defining it as the "bargained-for or anticipated provision of labor from one party to another" and the "contractual arrangement between the airline and the user of the service." This resolved a question the court had previously left open in *Watson v. Air Methods Corp.*, 870 F.3d 812 (8th Cir. 2017) (en banc), where the court had merely assumed that broader definition for the sake of analysis.

Applying this standard, the court held that Pennsylvania Insurance's claims of negligence, unjust enrichment and civil theft were preempted. The court reasoned that the insurer's claims centered on FedEx's handling and transportation of packages—core services of the company—and that requiring FedEx to modify its package handling procedures based on varying state-law duties of care would have a "significant impact" on the company's services. As the court observed, such a result "would create the very patchwork of state-based regulations that ADA preemption is meant to preclude."

TAKEAWAY: Shippers and their insurers should be aware that state common law tort claims against air carriers arising from lost or damaged shipments are likely preempted by the ADA. Breach of contract remains the primary viable cause of action, but as discussed below, recovery may be severely limited by the carrier's contractual terms.

The Conversion Exception to the Released Value Doctrine

Under the federal common law “released value” doctrine, an air carrier may limit its liability for lost shipments. However, the “conversion exception” provides that if a carrier has “converted” the property—that is, “appropriated the property for its own use or gain”—public policy bars the carrier from limiting its liability.

Pennsylvania Insurance argued that FedEx converted the watch when a FedEx employee allegedly stole it at the Scottsdale facility. The Eighth Circuit rejected this argument, holding that even assuming a FedEx employee stole the watch, there was no evidence that “FedEx appropriated the property itself, or profited from its conversion.” The court relied on *Kemper Insurance Cos. v. Federal Express Corp.*, 252 F.3d 509 (1st Cir. 2001), which held that “willful blindness to the activity of third parties (even employees) does not qualify” for the conversion exception. As the Ninth Circuit has stated, a carrier “may properly limit its liability where the conversion is by third parties or even by its own employees.”

TAKEAWAY: The conversion exception to the released value doctrine is exceedingly narrow. Theft by individual employees, even if proven, will not trigger the exception unless the shipper can demonstrate that the carrier itself appropriated the property for its own use or gain. This is a high evidentiary burden.

Enforceability of Carrier Limitation of Liability

A carrier’s limitation of liability is enforceable if the carrier (1) gave the shipper reasonable notice of the limitation and (2) presented the shipper with a fair opportunity to purchase greater liability coverage.

The court found that FedEx satisfied both requirements. The Club had entered into a “Pricing Agreement” with FedEx, which incorporated the terms of



the FedEx Service Guide. The Service Guide stated that “unless a higher value is declared and paid for, our liability . . . is limited to US\$100.” When the Club created the shipping label, the online interface included a checkbox offering the option to “[p]urchase a higher limit of liability from FedEx.” At the final step of the label creation process, the Club clicked “Finalize,” next to which appeared a notice accepting the FedEx Service Guide terms. The Club had negotiated the pricing agreement, maintained an account, and used FedEx’s services on multiple occasions.

The court concluded that FedEx provided the Club with “ample notice,” and that the \$100 limitation of liability was enforceable. In so holding, the court emphasized that the shipper bore responsibility for declaring the value of the shipment to obtain higher coverage.

TAKEAWAY: This holding underscores the critical importance for shippers of declaring the full value of high-value shipments and purchasing additional liability coverage when available. Carriers should ensure their service guides, online shipping portals and account agreements clearly present the limitation of liability and the option to purchase greater coverage, as these mechanisms were central to the court’s analysis.

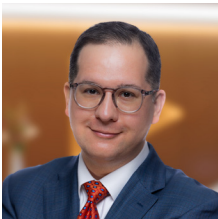
Conclusion

While the Eighth Circuit characterized the issues in *Pennsylvania Insurance Co. v. Federal Express Corp.* as well established, the opinion offers a valuable and comprehensive refresher on several principles that are critical to the day-to-day operations of shippers, carriers and logistics intermediaries. In particular, the decision reinforces that (1) state common law claims against air carriers for lost shipments are broadly preempted by the ADA; (2) the conversion exception to the released value doctrine is narrow and difficult to invoke; and (3) carriers can enforce contractual liability limitations so long as they provide fair notice and an opportunity to purchase greater coverage.

Companies involved in the transportation and logistics industry should review their shipping agreements, declared-value procedures and liability coverage in light of this decision to ensure adequate protections are in place.

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▶ Canada Trade: New Tariff Announcement and USMCA Non-Renewable Stakes for North American Supply Chains



Jonathan R. Todd



Ashley C. Rice



Vanessa I. Gomez

On July 20, 2026, the Trump Administration announced a new set of sweeping tariffs on Canada-origin goods. This comes less than one month after the United States decided against renewing the free trade agreement between the United States of America, Mexico and Canada (the USMCA) during the required six-year joint review. As a result, the USMCA remains in place, although its long-term viability is now an open question while, in parallel, new tariff programs target imports from our northern trading partner. The U.S. government has indicated that it will continue engaging

with Mexico and Canada to address perceived shortcomings in the USMCA and U.S. trade deficits with both countries. Domestic U.S. businesses that have invested in, or rely upon, North American supply chains now face an ever-challenging regulatory compliance and strategic planning scenario.

Newly Proposed Section 338 Canada Tariffs Escalate Trade Tensions

The President signed three Proclamations on July 20, 2026, imposing additional 50% tariffs on certain Canada-origin goods under Section 338 of the Tariff Act of 1930. The tariffs take effect on August 19, 2026, and are intended to offset what the Administration described as Canada's discriminatory or unequal treatment of U.S.

commerce. Section 338 authorizes the President, when the statutory findings are made and the public interest is served, to impose new or additional duties to offset burdens or disadvantages placed on U.S. commerce by a foreign country.

The purported trade disadvantages identified as supporting these tariffs involve goods in the motor vehicle, alcohol and dairy sectors. Each Proclamation contains Annexes that identify precise HTS codes and special rules for goods subject to this tariff. The Section 338 tariffs do not apply to energy, potash, goods already subject to Section 232 tariffs, or certain other products, including fish and critical minerals. Most significantly, goods that would otherwise qualify for duty-free entry under the USMCA will nonetheless be subject to these Section 338 tariffs.

Our team forecasted that on September 10, 2025, the use of Section 338 could be attempted by the Administration

as a replacement for the International Emergency Economic Powers Act (IEEPA) tariffs if those were struck down by the U.S. Supreme Court. Our assessment of alternative tariff measures, including Sections 122 and 301, is available [HERE](#). IEEPA tariffs were, of course, invalidated on February 20, 2026. Section 338 was passed by the U.S. Congress nearly 100 years ago, although it has never been exercised before now.

Non-Renewal of USMCA Challenges Future North American Trade

The United States Trade Representative (USTR) announced on July 1, 2026, that the United States did not agree to renew the USMCA in its current form. This position is based on purported “shortcomings” in the USMCA trade deal, as well as trade deficits with both Canada and Mexico. Conversations are ongoing regarding the future of our North American trading block, particularly between the United States and Mexico. The timing of this announcement was based on a 6-year joint review requirement found in the USMCA, as entered into on July 1, 2020.

The USTR solicited input from the domestic industry prior to arriving at this conclusion. The USMCA, as ratified by the U.S., required substantial preparation going into the joint review. At least 270 days before the review, the USTR was required to publish a Federal Register notice and provide an opportunity for interested parties to submit views on the operation of the USMCA, including through a public hearing. This process gave businesses, labor groups, environmental organizations and the public an opportunity to inform the U.S. position before the review. Then, at least 180 days before the review, the USTR was required to report to congressional committees on: the USTR’s assessment of the agreement’s operation; the precise recommendation for action to be proposed at the review;

“Supply chain leadership may need to dust off those contingency plans as we look to the future...”

the U.S. position on whether to extend the USMCA; prior efforts to resolve any concerns underlying that position; and the views of the established advisory committees. Our team alerted clients on the opportunity to participate in this deliberative process [HERE](#).

The USMCA does not immediately terminate based upon this unilateral decision. The USMCA was originally established under a 16-year term, as found in Article 34.7. Now, the USMCA remains in force, although the member countries must continue to hold annual joint review meetings in consideration of whether extension can be agreed upon. The next USMCA joint review will take place by July 1, 2027. Absent a successful extension, the USMCA is scheduled to expire in 2036.

Preparing Supply Chains for Worst-Case Scenarios

If the USMCA entirely ceases to be in force for the U.S., then the Implementation Act and its amendments cease to have effect, except for the termination provision. In practical terms, expiration would eliminate USMCA-derived tariff preferences, rules of origin, dispute settlement mechanisms and other trade benefits between the U.S. and its neighbors. The tactical challenges that this creates for customs compliance, procurement and sales teams are clear. Teams must maintain awareness and continuous improvement in processes supporting those operations. The weightier strategic challenge is how to proceed with cross-border investment and sourcing if

the ground rules are changing. We had a front-row seat to this type of challenge in the first quarter of 2025 when clients struggled with very similar questions about investment and sourcing during the early days of IEEPA tariffs. Supply chain leadership may need to dust off those contingency plans as we look to the future of cross-border growth and opportunity.

Benesch’s team advises and represents clients in ongoing tariff compliance, customs matters, and supplier and customer demands. We are available to assist in developing comments, determining tariff impacts on supply chains and foreign relationships, implementing or strengthening forced labor compliance programs, and defending against enforcement actions (including detentions or seizures at port) as and when those arise. Benesch client alerts and legal publications are available for you to receive by signing up [HERE](#).

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Benesch Attorneys Martha Payne and Ashley Rice Honored with 2026 Women in Supply Chain Awards



Martha J. Payne



Ashley C. Rice

Benesch is pleased to announce that Of Counsel Martha J. Payne and Associate Ashley C. Rice have been recognized with 2026 Women in Supply Chain Awards presented by *Food Logistics and Supply & Demand Chain Executive*. Martha was named a Trailblazer, while Ashley was honored as a Rising Star. The awards recognize women whose accomplishments, leadership and mentorship contribute to the advancement of the supply chain industry.

Both Martha and Ashley are members of Benesch's Transportation & Logistics and International Trade practice groups, where they advise clients on complex legal, regulatory and business matters affecting the transportation, logistics and supply chain sectors.

Martha represents North American transportation and logistics providers and users on a wide range of transportation-related matters. Her practice focuses on risk analysis, contract drafting and negotiation, cargo liability, and risk management. Drawing on experience in claims management, in-house counsel and private practice, she provides strategic guidance to shippers, carriers and logistics companies navigating complex domestic and international transactions. Martha is also a recognized industry leader who regularly speaks at conferences and shares insights on emerging transportation and logistics issues.

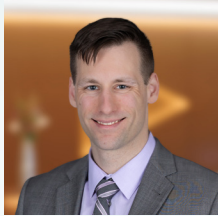
Ashley advises clients on transactional and regulatory matters involving transportation, logistics, supply chain and international trade. Her experience includes contract negotiation, regulatory compliance, mergers and acquisitions, and guidance on import and export regulations, sanctions, embargoes and tariff classifications. She helps clients manage risk, address regulatory requirements, and support their business objectives in domestic and international markets.

The Women in Supply Chain Awards celebrate professionals at various stages of their careers, recognizing established leaders and emerging talent who make meaningful contributions to the industry.

For more information about the awards and this year's recipients, visit [Food Logistics and Supply & Demand Chain Executive](#).

LEGAL CORNER

▶ FMCSA Motus Implementation: Common Motor Carrier Concerns

**Jonathan R. Todd****Robert Pleines, Jr**

The Federal Motor Carrier Safety Administration (FMCSA) retired its legacy registration platforms and replaced them with “Motus” in May. This modernization effort is a significant overhaul for motor carriers, freight brokers and surface freight forwarders. It changes the way operating authority applications and license maintenance are handled, including insurance filings and biennial MCS-150 updates. A number of carrier clients have also reported serious challenges with the changeover that have continued into June.

The FMCSA developed Motus to serve as a single-window platform for all registration activities. The legacy “Safer” and “Licensing & Insurance” pages will no longer present current registration information to the public. Motus became the hub through which federal, state and industry users access safety and registration data starting on May 16, 2026.

Fraud prevention is a growing concern for the agency and a primary motivation for Motus functionality. The system aims to help prevent fraud events, such as the troubling rise in identity theft, account hijacking and fraudulent insurance filings in recent years. Motus requires new identity and business verification exercises upon registration. This includes uploading a government-issued ID and a facial scan through a smartphone or digital tablet.

The FMCSA has publicly acknowledged that there are user experience challenges with the launch, but some of those are significant. We have seen clients experience complications linking their existing accounts to the new Motus system and ensuring that all information transitioned smoothly from the legacy FMCSA systems to Motus. In the extreme, these concerns have created market uncertainty around operating authority status for some otherwise “active” carriers, which raises uncomfortable questions from customers who rely on verification of active authority. There have also been challenges in uploading required evidence of financial responsibility.

Given these challenges, we recommend these three steps for transportation service providers navigating the new Motus environment:

Stay Alert

First, stay alert and react promptly to legitimate FMCSA correspondence. The FMCSA may issue notices regarding account verification, data discrepancies or operating authority status. Timely responses to correspondence are critical to avoiding lapses in operating authority status or in meeting compliance requirements.

Use FMCSA Resources

Second, maintain open lines of communication with the FMCSA. If you encounter problems with data migration, account linking or verification processes, document the issues and follow up with the agency. The FMCSA has provided guidance and support resources for the transition. Consistent and timely

communication can help resolve problems before they become compliance concerns.

Manage Customers

Third, maintain proactive communication with your customers. If you experience any issues with Motus that affect your operating authority status or its display in federal databases, inform your customers and business partners promptly. Transparency helps preserve commercial relationships and avoids disruption to your operations while technical issues are resolved.

These three steps are straightforward but essential during this time. They require staying calm and preparing good communications with both the FMCSA and customers. The cost of ignoring these steps could be significant. Carriers that fail to take timely action may find themselves with inactive accounts, outdated information or verification delays when they need to make registration changes or confirm their authority in the new system.

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▶ Section 301 Duties for Forced Labor: Step 3 in IEEPA Replacement and its Impact



Jonathan R. Todd



Megan K. MacCallum



Vanessa I. Gomez

The White House initiated its third step in replacing IEEPA tariffs on Friday, July 24. Specifically, the U.S. Trade Representative (USTR) published final Section 301 findings and duty rates for imports from 30 countries following its investigation of harms on the domestic industry due to forced labor in those countries' supply chains. Our team alerted clients to these coming developments in the following set of announcements:

[Trump Administration Alternatives or Imposing Tariffs](#)

[New 301 Tariffs Coming](#)

[Forced Labor Tariff Public Comments](#)

IEEPA Replacement Steps 1-3

It has long been forecast by the Trump Administration that the new tariff regime would generally align with the IEEPA-based tariff rates that normalized throughout 2025 and into 2026 before they were determined unlawful. Now, the new effective rates of duty do indeed directionally align with past IEEPA levels and, more particularly, the proposed Section 301 rates announced by the USTR earlier this month. These rates apply effective July 24, 2026, on the

very same day that the Section 122 balance-of-payments-based surcharge expired due to absence of extension by the U.S. Congress. Those

Section 122 surcharges were of course the immediate replacement (Step 2) of the IEEPA tariffs (Step 1) in the interest of establishing the White House's global tariff program. We now stand at Step 3 with a program targeting the import of goods produced wholly or in part by forced labor. Importing goods with forced labor was and remains a violation of law despite these new developments.

Effective Duty Rates and Rationale

The new Section 301 duties apply to nearly all products imported into the United States, although the precise duty rate varies across sets of listed countries. The lowest level is a 10% rate that applies to imports from certain countries, including Canada and the U.K. Imports from some countries are subject to a 10% rate net of the Most Favored Nations (MFN) duty rate. Imports from other countries will see a higher 12.5% rate, with others subject to a 12.5% rate net of the MFN rate. The rationale behind these differences in rate is the degree to which those subject countries attempt to ban forced labor in their supply chains. Imports from countries with partial bans are subject to the lower 10% rate and those from countries with no forced labor bans are subject to the higher 12.5% rate.

Countries of Origin Under Focus

The list of 59 countries, along with the EU, now subject to the new tariff rates are: Algeria; Angola; Argentina; Australia; the Bahamas; Bahrain; Bangladesh; Brazil; Cambodia; Canada; Chile; China, People's Republic of; Colombia; Costa Rica; Dominican Republic; Ecuador; Egypt; El Salvador; the EU; Guatemala; Guyana; Honduras; Hong Kong; India; Indonesia; Iraq; Israel; Japan; Jordan; Kazakhstan; Kuwait; Libya; Malaysia; Mexico; Morocco; New Zealand; Nicaragua; Nigeria; Norway; Oman; Pakistan; Peru; the Philippines; Qatar; Russia; Saudi Arabia; Singapore; South Africa; South Korea; Sri Lanka; Switzerland; Taiwan; Thailand; Trinidad and Tobago; Türkiye; United Arab Emirates; United Kingdom; Uruguay; Venezuela; and Vietnam.

The most notable exceptions are goods subject to the sectoral Section 232 tariff programs and qualifying goods under the USMCA. Other exceptions from duties apply on a product- and country-basis in order to help mitigate the effects of these new actions on the domestic U.S. industry. High-impact examples include exceptions for certain food products from all countries (bovine products, seeds and beans), certain medical devices from the U.K., and certain cork and lumber products from the EU and Cambodia. There will also be tariff rate quotas (when feasible) for Bangladesh, Cambodia, Indonesia and Malaysia, to encourage the import of cotton and textile goods.



Managing Forced Labor Risk Beyond Duty Impact

Forced labor in supply chains, and its corresponding compliance obligations, has grown in global focus across many economies over recent years as we observed [HERE](#). The interesting effect of these new Section 301 actions is that prior to the USTR's announcement, any goods produced by forced labor were unlawful for import into the United States and subject to detention, seizure and forfeiture. We have witnessed a steep rise in U.S. Customs and Border Protection (CBP) enforcement against imports on those grounds, as well as a rise in corporate compliance programs pioneering best practices for combatting forced labor in supply chains. Some will read these new rates as tacit acceptance of forced labor in the output from certain countries, provided that duties are paid. It remains to be seen whether, and to what extent, CBP will respond with its ongoing forced labor

enforcement efforts in light of these USTR determinations. In our experience, there is always more to be done for improving global supply chain activities so that Chief Legal Officers and Chief Compliance Officers, and their procurement teams who rely on the best advice, can sleep well at night.

Benesch's team advises and represents clients in ongoing tariff compliance, customs counsel, and supplier and customer demands. We are available to assist in developing comments, determining tariff impacts on supply chains and foreign relationships, implementing or strengthening forced labor compliance programs, and defending against enforcement actions (including detentions or seizures at port) as and when those arise. Benesch client alerts and legal publications are available for you to receive by signing up [HERE](#).

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Restrictions on Foreign Interests in the Transportation and Logistics Sector: A Look Ahead



Jonathan R. Todd



J. Philip Nester



Ashley C. Rice

The transportation and logistics industry is not immune from rising concerns about foreign investment. Since the start of this Administration, the U.S. Department of Transportation has steadily turned focus to perceived threats against both public safety and purely domestic operators by non-U.S. interests in the sector. Early signals of this trendline include the restrictions against states issuing non-domicile CDLs, cracking down on so-called CDL mills, and increased enforcement of the English Language Proficiency requirement under the Federal Motor Carrier Safety Regulations. The new Motus system, recently launched by the Federal Motor Carrier Safety Administration (FMCSA), includes two-factor authentication and identity verification for screening would-be applicants against inappropriate filers.

Dalilah's Law as a Glimpse Into the Future

A glimpse into the potential future state of restriction on foreign investment can be found in pending federal legislation before the 119th Congress. Dalilah's Law (H.R. 5688), formally known as the Non-Domiciled CDL Integrity Act, was approved by the U.S. House Transportation and Infrastructure Committee on March 18, 2026. While this very well may not

become law before adjournment of the Congressional session in December, 2026, this legislation sets out a road map for potential future restrictions

on foreign investment and ownership in freight brokers, motor carriers and related transportation entities. In practical terms, the text calls out potential features of U.S. transportation companies that may suffer greater scrutiny and therefore may help guide current organizational development or growth strategies.

Background and Legislative Context

Dalilah's Law reflects the escalating scrutiny of foreign participation in the U.S. transportation and logistics sector. The bill addresses CDL integrity, driver training and English-proficiency requirements for operators of commercial motor vehicles, and if it were to pass, would bar foreign registrants from obtaining FMCSA Broker Permits. The future of the bill is unknown, as is the precise language of any future law or FMCSA rulemaking, but industry stakeholders can nonetheless use this example as the most tangible guide to date on possible future changes to the industry landscape.

Current FMCSA Broker Licensing Framework

Today, any person who arranges for compensation for the transportation of property by a motor carrier in interstate commerce must obtain a Broker Permit from the FMCSA. The Secretary of

Transportation must find the applicant has sufficient experience, is fit, willing and able to comply with applicable law, and satisfies financial security requirements. These standards are codified at 49 U.S.C. §§ 13904 and 13906(b). The FMCSA's implementing regulations are found at 49 C.F.R. Parts 365, 371, and 387m, which govern the application process, operational obligations, and surety bond or trust fund requirements. These existing requirements do not presently address a freight broker's location or place of domicile. If passed, then Dalilah's Law would result in significant changes.

Foreign Ownership and Principal Place of Business

Most impactfully, Section 7 of Dalilah's Law prohibits the Secretary from registering any person as a broker with its principal place of business that is: (1) not located in a "State" (as defined in 49 U.S.C. § 30301); or (2) located in Canada or Mexico and not properly licensed by the appropriate authority in that country. The term "State" means each state of the U.S., the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the U.S. Notably, Dalilah's Law does not define "principal place of business," which raises other interpretive questions for multinational operators. How "principal place of business" is ultimately defined and applied will be central to how Section 7 is interpreted and implemented.

Dalilah's Law is also significant for what it does not seek to accomplish. The draft does not include a blanket



restriction on broker registration due to foreign ownership or control, but rather, tests where the broker's principal place of business is located. The omission of any ownership inquiry is deliberate. When Congress intends to impose foreign ownership restrictions, it does so explicitly—as in the airline industry, where 49 U.S.C. § 40102(a)(15) restricts foreign ownership of U.S. air carriers, and in maritime cabotage, where 46 U.S.C. § 50501 imposes similar restrictions on vessels engaged in U.S. coastwise trade.

Looking Ahead

One key takeaway from the existence of Dalilah's Law is that interest in restricting foreign involvement across the transportation and logistics industry has now expanded from mere regulatory oversight to congressional attention. Additional legislation or FMCSA rulemaking targeting foreign ownership, control or influence may very well follow.

Transportation entities with foreign ownership or multinational structures will benefit from actively monitoring these developments and evaluating their positioning under evolving requirements. Basic elements of U.S. market entry, corporate formation, and the way in which back-office administrative functions are staffed now have strategic significance for the defensibility and longevity of investments. This also means that any would-be investor in the domestic U.S. market may need to more fully commit on safety, compliance and its U.S. presence, which is of course the desired effect.

Benesch advises clients on organizational development, safety compliance and risk management, in the interest of growing enterprise value. Our teams are always available to help manage these and other compliance or risk objectives within the transportation and logistics industry.

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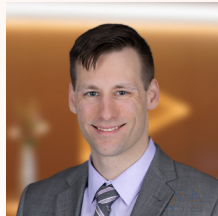
Cross-Border Transport Risks: Cabotage Regulatory Enforcement Intensifies



Jonathan R. Todd



Kristopher J. Chandler



Robert Pleines, Jr

This general rule operates to prohibit point-to-point movements that would otherwise be performed by domestic motor carriers.

labor market: “Purely domestic service or solicitation, in competition with the United States operators, is not permitted.” [8 CFR § 214.2(b)(4)(i)(E).] Therefore, care is due to ensure that the driver of a movement is in compliance with all applicable immigration regulations, which oftentimes includes the need to apply for and secure a B-1 Visa as a business visitor.

Cabotage enforcement at the U.S.-Mexico border has sharply intensified in recent months, as federal agencies deploy new data-sharing practices to identify and bar drivers with cabotage violations from crossing into the United States. Recent enforcement shows that this framework is no longer a background compliance concern. Rather, it is now the subject of active, coordinated federal enforcement with real operational consequences for motor carriers and drivers.

Historic U.S. Customs Framework

The general rule is that foreign-based operators may engage in international traffic, even if carriage occurs in the United States, but those operators may not engage in purely local traffic: “Trucks, busses, and taxicabs, however owned, which have their principal *base of operations in a foreign country and which are engaged in international traffic*, arriving with merchandise or passengers destined to points in the United States, or arriving empty or loaded for the purpose of taking out merchandise or passengers, *may be admitted without formal entry or the payment of duty*. Such vehicles *shall not engage in local traffic* except as provided in paragraph (c) of this section.” [19 CFR § 123.14 (emphasis added).]

Historic Immigration Framework

Immigration-related restrictions are often the greatest obstacle to modeling a cross-border supply chain at the lane level. The immigration statutes governing the entry of drivers are more restrictive than those governing customs activities and do not allow as much flexibility in the regulatory and policy process. For example, the USMCA and precedent decisions interpreting the “visitor for business” statute expressly forbid point-to-point hauling within the United States by alien drivers—without the availability of cover from any “incidental to international traffic” exception that was historically permitted.

United States immigration regulations are based on the concept that foreign drivers are considered business visitors, alien non-immigrants. [8 USC § 1101.] Because of this status, foreign drivers must generally meet the entry requirements as a visitor for business and must only transport cargo traveling in the stream of international commerce within the meaning of immigration laws and immigration regulations. The transportation operator provisions are intended to allow the free movement of goods across the border, an activity that is international in scope, but not to facilitate access to the domestic

The New Enforcement Environment

Recent enforcement at and near the U.S.-Mexico border results from increased capabilities and appetite by regulatory authorities. The U.S. Department of Transportation has begun sharing the Federal Motor Carrier Safety Administration’s (FMCSA) inspection and violation records with CBP. This sharing of information gives CBP agents real-time visibility into a driver’s cabotage history at the moment of a border crossing. Agents are currently revoking visas and denying entry to Mexican drivers with a documented cabotage violation on their record. In effect, this converts an administrative infraction into an immediate operational shutdown for the motor carrier relying on the driver completing the cross-border shipment.

The impact by these recent enforcement measures is becoming significant. The FMCSA’s data show a 4.3% decrease in Mexican-domiciled carriers operating in the U.S.-Mexico commercial zone. Additional industry reports indicate that several hundred or a few thousand drivers have recently been denied entry due to cabotage violations. CBP has confirmed an increase in encounters involving



cabotage violations along the U.S.-Mexico border, though it has not released comprehensive enforcement statistics.

The enforcement push has also been accompanied by reinstatement of the English-language proficiency requirement for commercial drivers. Under this requirement, drivers must be able to converse with the public, understand highway traffic signs and signals, respond to official inquiries, and produce records when stopped, and inspectors are directed to place a driver out of service if the driver cannot satisfy these criteria during a roadside inspection. This follows sustained pressure from industry associations urging Congress to close regulatory loopholes and impose meaningful penalties, including fines, disqualification and loss of operating authority, on carriers that repeatedly violate cabotage restrictions.

Implications and Steps Forward

For carriers and shippers utilizing cross-border lanes, the practical takeaway is that past tolerance for questionable

domestic-leg movements can no longer be assumed. Carriers may look to audit driver dispatch practices against the CBP “incidental to international traffic” guidance, and confirm that any domestic movement clearly follows or precedes an international leg. Carriers may also ensure that their drivers hold appropriate B-1 business visitor status where required, and maintain documentation demonstrating the international character of each movement. Since the FMCSA’s inspection records are now a direct input into CBP’s border screening, even minor documented violations can result in significant operational impediments. Shippers and brokers can incorporate cabotage compliance representations and audit rights into carrier agreements and confirm that brokers vet carrier compliance history before tendering cross-border freight.

Benesch will continue to monitor developments in cabotage enforcement and related cross-border trucking regulation. Carriers and shippers with questions about structuring compliant

cross-border lanes, responding to a cabotage-related visa or entry denial, or assessing exposure under current enforcement practices should feel free to contact our team.

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Benesch Celebrates Inaugural Year of **ACC Transportation & Warehousing Network**



We are proud to celebrate the inaugural year of the Association of Corporate Counsel (ACC)'s **Transportation & Warehousing Network**, an exciting new community that Benesch was proud to help launch.

The Network brings together in-house counsel from across the transportation and warehousing industries, creating opportunities for members to connect with peers, collaborate, and exchange ideas and resources around the issues that matter most to their businesses.

The launch of the Network reflects Benesch's long-standing commitment to the transportation and warehousing industry and to creating meaningful opportunities for connection and collaboration within the in-house legal community. We are thrilled to see the Network complete its first year, and encourage in-house counsel in the industry to get involved as the Network continues to grow.

The Association of Corporate Counsel (ACC) is a global bar association that promotes the common professional and business interests of in-house counsel through information, education, networking opportunities and advocacy initiatives.

What's **Trending**



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For further information and registration, please contact **MEGAN THOMAS**, director of client services, at mthomas@beneschlaw.com or 216.363.4639.

Pass this copy of InterConnect on to a colleague, or email **MEGAN THOMAS** at mthomas@beneschlaw.com to add someone to the mailing list.

Recent Events

Marsh Risk Webinar

Marc S. Blubaugh presented “Legal & Regulatory Implications of *Montgomery v. Caribe Transport II, LLC*.”

June 8, 2026 | Virtual

Association of Transportation Law Professionals (ATLP) 97th Annual Meeting

Eric L. Zalud presented “Union Pacific - Norfolk Southern Merger - Intermodal Perspective.”

June 21–23, 2026 | Baltimore, MD

Benesch Investing in Plastics and Performance Materials Conference

Jonathan R. Todd presented “Commercial Hot Topics: How They Impact Margin and the Supply Chain.”

June 23, 2026 | Chicago, IL

Association of Corporate Counsel Webinar

Eric L. Zalud presented “Nuclear Verdict Risk, Defense Strategies, and Corporate Structure Protections.”

July 23, 2026 | Virtual

AMI's Flexible Packaging Innovation and Recycling Conference

Megan K. MacCallum presented “2026 Update on Tariffs and Trade.”

June 24–26, 2026 | Milwaukee, WI

Association of Corporate Counsel Webinar

Marc S. Blubaugh presented on *Montgomery v. Caribe*.

June 25, 2026 | Virtual

Conference of Freight Counsel (CFC) Summer Meeting

Eric L. Zalud attended.

June 27–29, 2026 | Santa Fe, NM

National Home Delivery Association's (NDHA's) Annual Forum

Marc S. Blubaugh presented “Artificial Intelligence Breakout.” **Jonathan R. Todd** participated in the Advocacy & Regulatory Roundtable.

July 19–21, 2026 | St. Louis, MO

Truckload Carriers Association (TCA) Refrigerated Meeting

Eric L. Zalud attended.

July 22–24, 2026 | Nashville, TN

American Logistics Aid Network – Webinar

Marc S. Blubaugh and **Robert Pleines, Jr.** presented “Fundamentals of Transportation Law: What Not-for-Profit Organizations Need to Know About Transportation.”

July 23, 2026 | Virtual

American Trucking Associations' (ATAs') Legal Trucking Forum

H. Alan Rothenbuecher, **Margarita S. Krncevic** and **Alyson Waite** presented “Navigating ICE Encounters: Legal Preparedness for Trucking Employers and Dispatch Teams.” **Marc S. Blubaugh** and **Eric L. Zalud** attended.

August 2–4, 2026 | Washington, DC

Jarrett Supply Chain Summit

Marc S. Blubaugh presented “Navigating Risks: Strategies for Today's Supply Chain Landscape.”

August 6, 2026 | Cleveland, OH

Association of Corporate Counsel Webinar

Christopher C. Razeck presented “Supply Chain Security: A Warehousing Perspective.”

August 27, 2026 | Virtual

McLeod Software UC26

Eric L. Zalud presented “Broker Liability in the New Era.”

September 13–15, 2026 | Nashville, TN

Intermodal Association of North America's Intermodal EXPO

Marc S. Blubaugh presented “Legal & Regulatory Issues: Intermodal Needs to Know.”

September 14, 2026 | Long Beach, CA

Logisyn M&A Club Conference

Marc S. Blubaugh and **Eric L. Zalud** attended.

September 17, 2026 | Chicago, IL

Association of Corporate Counsel Webinar

Jonathan R. Todd and **Megan K. MacCallum** presented “Trade Compliance Impacts to Supply Chain Risk.”

September 24, 2026 | Virtual

The Association of Corporate Counsel's (ACC's) Annual Meeting

Jonathan R. Todd presented “Supply Chain Security Workshop.” **Marc S. Blubaugh**, **Eric L. Zalud**, and **H. Alan Rothenbuecher** presented “What Lies Ahead – Immigration Enforcement & Supply Chain Risk.” **Christopher C. Razeck** and **Ashley C. Rice** attended.

October 5–6, 2026 | Boston, MA

Armstrong & Associates 3PL Value Creation Summit

Eric L. Zalud attended.

October 13–14, 2026 | Chicago, IL

TIDA 34th Annual Seminar

Eric L. Zalud attended.

October 14–16, 2026 | San Diego, CA

Canadian Transportation Lawyers' Association – 2026 Annual Conference

Marc S. Blubaugh presented “Living in a ‘Montgomery World’: Broker and Shipper Liability.”

October 16, 2026 | Ontario, Canada

On the **Horizon**

US Bank Fall Freight Payment Advisory Conference

Eric L. Zalud is presenting “Broker Liability in the New Era and Reptile Theory Defense.”

October 19–21, 2026 | Atlanta, GA

Canadian International Freight Forwarders Association – 2026 Annual Conference

Marc S. Blubaugh is participating on the CIFFA Legal Panel.

October 20–21, 2026 | Ontario, Canada

The Harris Williams 3PL Conference

Marc S. Blubaugh and **Eric L. Zalud** are attending.

October 21–22, 2026 | Nashville, TN

Association of Corporate Counsel Webinar

Christopher C. Razek is presenting “Healthcare Supply Chain – Today’s Essentials for Licensing, Contracts, and Logistics.”

October 22, 2026 | Virtual

Supply Chain Board – Webinar

Marc S. Blubaugh is presenting “Ask the Expert: Transportation Liability, Nuclear Verdicts, and the Risks Shaping 2027.”

October 28, 2026 | Virtual

The Transportation Law Institute

Marc S. Blubaugh and **Eric L. Zalud** are attending.

October 29–30, 2026 | Denver, CO

International Warehouse Logistics Association’s (IWLA) Legal Symposium

Marc S. Blubaugh is presenting “Life After *Montgomery*: What it Means for Warehouses.” **Eric L. Zalud** is presenting on Freight Fraud and Theft Issues.

November 12–13, 2026 | Columbus, OH

Sixth Annual Benesch Investing in the Transportation & Logistics Industry Conference

Presented by **Benesch’s Transportation & Logistics Practice Group**.

December 3, 2026 | New York, NY

Conference of Freight Counsel

Eric L. Zalud is attending.

January 9–11, 2027 | Frisco, TX

Freight Agent Expo

Marc S. Blubaugh is presenting.

January 15–16, 2026 | Las Vegas, NV

BGSA Supply Chain Conference

Eric L. Zalud and **Marc S. Blubaugh** are attending.

January 20–22, 2027 | West Palm Beach, FL

Columbus Roundtable of the Council of Supply Chain Management Professionals

Marc S. Blubaugh is moderating the Annual Transportation Panel.

January 29, 2027 | Columbus, OH

For more information about the Transportation & Logistics Group, please contact any of the following:

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