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of Developments in
Transportation Law

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Association**

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A Joint Publication of the Transportation Lawyers Association
and the Canadian Transport Lawyers Association

CTLA 
Canadian Transport Lawyers Association
ctla.ca

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*PLEASE submit material by email in time to meet these deadlines to
TLA Incoming Editor, Roger Watts, rwatts@lindsayllp.ca
You can also call or email either editor with questions.*

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TLA Mission Statement

The Transportation Lawyers Association ("TLA") is an independent bar association, comprised of in-house, government and private practice attorneys. Its members assist providers and commercial users of domestic and international logistics and transportation services, in all modes. TLA is dedicated to keeping its members ahead of the constant changes in the specialized legal environment governing all aspects of the supply chain and passenger travel. With commitment to excellence in continuing legal education, and a long tradition of collegiality and exchange of ideas, TLA is a collaborative resource for lawyers seeking to maximize the quality of the legal services they provide and enhance their professional lives.

President's Message

Welcome to 2026! I wish all of you and your loved ones a very Happy New Year.

I am pleased to report that the 58th Transportation Law Institute was a great success, with timely and informative presentations that were carefully selected to highlight issues of key importance to the automotive industry, its supply chain, and logistics service providers. The keynote presentation on the new Gordie Howe International Bridge was a treat, and we were very fortunate to have Canada's Consul General for Detroit, **Colin Bird**, join us for a Q&A session with leading trade and transportation lawyer, **Dan Ujcz**. I would like to take a moment to express my sincere thanks to program chairs **Christina Nugent** and **Tim Groustra**, and their faculty advisor, **Beata Shapiro**. My heartfelt thanks to locals **Fritz Damm** and **Dirk Beckwith**, and the marketing team at **Foster Swift**, who went out of their way to show us the very best that Detroit has to offer.

As you read this, the 2026 Chicago Regional Seminar and Boot Camp will be underway at the Fairmont Chicago Millennium Park. Co-chairs **Jameson Rice** and **Christopher J. Merrick**, with strong support from faculty advisor **Matt Barrette** and team members **Matthew Koch** and **Madison Romine**, have curated an excellent program that is guaranteed to serve as a valuable refresher for some, and a "how-to" guide for others. This year's dynamic Boot Camp has been skilfully crafted by veteran legal educators **John Wilcox** and **Stevan Baxter**, featuring a review of the legal framework and commercial challenges confronting the freight broker community. This two-day event is a highlight in the TLA calendar.

The name's Law... Transportation Law.

This spring, we invite you to infiltrate the **Omni Amelia Island Resort** in Fernandina Beach, Florida, your headquarters for the 2026 TLA Annual Conference and CTLA Mid-Year Meeting, taking place April 29 to May 2, 2026. Expect thrilling legal education sessions and covert networking operations; all set against the backdrop of sun, sand, and sophistication. Whether you're a seasoned operative or a rookie agent in the world of transportation law, this is your chance to sharpen your skills, decode the latest industry developments, and mingle with the best in the business.

But beware: whispers of notorious villains like *Goldfinger*, *Blofeld*, and *Le Chiffre* have surfaced in the legal underworld. They may be plotting to disrupt your CLE credits or hijack your room reservation. Stay alert, pack your tuxedo (or your best villain disguise),

and don't forget your legal briefcase—equipped, of course, with a laser pen, exploding cufflinks, and a contract that self-destructs in 10 seconds. Join us for a conference experience that's shaken, not stirred, with just the right amount of intrigue, elegance, and espionage.

Spare a thought for the CLE Syndicate, who have been toiling away on this program in an undisclosed location for several months: **Emileigh Hubbard**, a.k.a. "The Red Pen of Justice"; **Alex Karcher**, a.k.a. "Agent K: The Clause Commander"; and **Jeff Simmons**, a.k.a. "Q.C.", the Quartermaster of CLE (cunningly disguised as a faculty advisor).

This team is just like SPECTRE, but with better ethics and PowerPoint slides.

See you on Amelia Island. The world is not enough—but this conference might be!



Louis Amato-Gauci

In my October column, I reported that our long-standing relationship with Kellen, our association management company of more than three decades, would come to an end on December 31, 2025. Today, I'm proud to announce that TLA has engaged **DPS Association Management** as our new management partner. The Executive Committee selected DPS for its proven track record, strategic insight, and shared commitment to excellence. We are thrilled to welcome **Fawn O'Brien** as our new Executive Director, and the talented team at DPS, who have been working diligently for the past three months to ensure a seamless transition. We are confident that DPS will help us reimagine how we serve our members and position TLA for long-term success.

Transitions of this magnitude are never without their challenges. From coordinating the handoff of systems and data to reestablishing workflows and communications, the past few months have required patience, flexibility, and a shared commitment to continuity. I want to thank all of our members and committee chairs for your patience and understanding throughout this process.

As we begin this new year, I'm filled with optimism about what lies ahead. TLA is a resilient, forward-thinking organization, and our strength lies in the dedication of our members. Your involvement, whether through committee work, speaking engagements, mentoring, or attending events, makes all a difference. Together, we are shaping the future of transportation law, and I'm honored to serve alongside you. Let's make 2026 a year of growth, innovation, and connection.

President's Message

I hope everyone in our transportation family had a chance to slow down a little over the holidays – to catch up with loved ones, share a few laughs, and maybe even enjoy a stretch of quiet before the new year picked up speed. Driving in the snow, it brings a sense of gratitude for both our industry and the people on the frontlines who keep everything moving safely, even in the coldest weather.

Now as we turn the calendar to 2026, many of us are easing back into the swing of things. The trucks are back on the roads, the rail lines are humming, planes are taking off, and the ports and warehouses are buzzing with activity. It never ceases to amaze me how quickly we go from family dinners and board games to dispatch schedules and project deadlines. It's a rhythm that defines our sector: steady, reliable, and always on the move.

Over the past year, I've been inspired by how much innovation and collaboration we've seen across

our industry. We're embracing cleaner technologies, improving safety practices, and finding smarter ways to move people and products. The challenges we face – from changing regulations to workforce shortages, are real, but so is the determination I see across the industry to adapt. Your advice, support, and advocacy are what helps to make the transportation network across North America resilient in the face of challenges – from weather disruptions to global market shifts – we'll keep creating spaces for conversation, where ideas and knowledge are shared and solutions take shape.



Pui Hong

As we put away the last of the holiday decorations and get back into our routines, I hope we all carry a bit of that seasonal warmth and optimism into the months ahead. On behalf of the CTLA, I wish you good health, continued success and many safe travels in 2026, with the hopes that you will join us at the **2026 CTLA Annual Conference October 15-17, 2026, in Niagara-on-the-Lake.**

TLA Website: www.joinTLA.org

Members Only area:

User Name: Email address where you receive TLA emails.

Password: **translaw1**

If you wish, you can personalize your user name and password using the ID & Password link in the members services area of the TLA website.

Are you receiving emails from TLA?

If not, your spam blocker may be preventing you from receiving important updates about TLA events and developments in transportation law.

Editor's Column

Aaaaaand suddenly, it's 2026. Like you, dear reader, I'm sure, I am finding that the time is not only passing at an alarming rate, but at one that seems to be continually accelerating. It's a little difficult to believe exactly how quickly 2025 has flown by, but I suppose that simply means we now have all of the new year to look forward to. Hopefully, it lasts longer than about 20 minutes this time around.

Not that 2025 didn't have its highlights. Among them was the highly entertaining Transportation Law Institute in Detroit this last fall, which was well-attended and a lot of fun.



The program was excellent, against the backdrop of a city that has made a remarkable comeback. Plus, the social events included a group visit to Little Caesars Arena to watch the Red Wings play St. Louis, as witnessed by these select and intrepid souls:



For my own part, one of the true revelations of the trip came in discovering the marvel that is Detroit-style pizza. On past TLA junkets to places like Chicago (where we'll soon return, of course), I have always been careful to include a visit to one (or more) of that city's purveyors of deep-dish pizza (much to the bemusement of my cardiologist, I'm sure). Until this fall, however, I'd not had the Detroit version, which emphasizes a thicker, softer dough and sauce above the other toppings, not below. A couple of visits to Buddy's Pizza remedied that, however, and I wouldn't hesitate to go back. It's delicious. I wonder if they mail-order to Canada...

In the meantime, however, we have another issue of the *TTL*, similarly packed with goodness. This issue's offerings include:

- **Grant Guillot's** intriguing article on what new regulations mean for the increased use of drones in our everyday skies;
 - **Bill Pentecost** and **Henry Sienkiewicz's** treatise on applying a Unified Linkage Model to transportation liability;
 - **Jonathan Todd** and **Phil Nester's** take on the reform of federal water carrier statutes and regulations;
 - **Eric Zalud's** update on battling the Reptile Theory and nuclear verdicts in Georgia; and
 - **Marc Blubaugh's** update on SCOTUS' recent decision to consider the contentious issue of freight broker liability.
- And, circling back to more highlights from the Detroit TLI conference (in case you missed it), we also include the following papers that accompanied live presentations at the conference:
- **Heather Devine, Warren Hodges, and Eyesenia Reyes'** excellent paper on the age of AI, and its effective use in the practice of law (as moderated by Sophia Bernard); and
 - **Manuel Moctezuma, David Adams, and AJ Webb's** pithy presentation on the effects of trade tariffs on cross-border commerce (as moderated by **Robin Squires**), shown in action below:



Roger Watts



My sincere wishes for a happy and prosperous 2026, and I hope very much to see you at the Chicago Regional Seminar! (Be sure to track me down for good pizza recommendations, among other things.) Cheers!

CTLA

Editor's Column

I am pleased to kickstart the new year with three highly informative articles north of the border, which serve to capture the diversity of transportation regulation across Canadian jurisdictions.

In *"Reform of the Special Road Train Operating Permit: Towards Increased Safety,"* **Brian Lipson** and **Marion Couture-Truel** of McCarthy Tétrault LLP examine Québec's proposed overhaul of its Special Road Train Operating Permits Regulation. If adopted, the reforms would introduce updated technical standards and make a "satisfactory" safety rating a prerequisite for obtaining or renewing a permit to operate large road trains in the province.

Next, in her incisive article, *"Director and Officers' liability and the Load Brokers' Trust Obligation under the Ontario Highway Traffic Act,"* **Kim E. Stoll** of Gardiner Roberts LLP takes us to Ontario, where load brokers are subject to a unique statutory trust obligation under the *Highway Traffic Act*. Ms. Stoll notes how this regime requires brokers

to hold freight charges in trust for carriers, and recent case law shows how breaches of this obligation can expose directors and officers to personal liability, particularly where they knowingly assist in the misuse of trust funds or benefit from them.

Last but not least, in *"Too Quick To Settle? Barriers to Enforceable Settlement Agreements in Canada Remain a Concern,"* **Michael D. Grodinsky** and **Kabrina Péron** of Bordner Ladner Gervais LLP spot a growing trend in federal labour jurisprudence, driven by a Federal Court of Appeal decision and followed by several recent adjudicative decisions that limits the effectiveness of settlement agreements in barring unjust dismissal complaints under the Canada Labour Code. Even after signing a full and final release, the authors note that employees may still file a complaint within the 90-day statutory deadline, as adjudicators increasingly find that statutory rights override private agreements. The article outlines the implication of this shift and offers practical strategies of interest to federally regulated transportation sector employers to manage the risk of post-settlement complaints.



Bennet Misskey

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TTL Call for Articles

We are looking for more featured articles and case notes for upcoming issues. Submitting an article to the *TTL* provides a unique opportunity to gain nationwide recognition, showcase your expertise, and contribute to a well-respected industry publication.

The submission deadline for the next publication is February 9, 2026.

Please direct any questions and submissions to *TTL* Editor, **Roger Watts**, rwatts@northpointlegal.ca

Secretary/Treasurer's Report

As we move forward into another important chapter in our association's history, I am pleased to share an update that goes far beyond a single project. This year marks a significant moment of transition for the Transportation Lawyers Association—one that touches not only our administrative operations, but our long-term strategic direction and the way we serve our members.

After many years under the management of Kellen, the Board and Executive Committee have undertaken the careful, time-intensive process of transitioning to a new management organization—DPS. This is not a small step. It is the culmination of extensive evaluation, long hours of planning, and a shared commitment to ensuring that the TLA is equipped for the future.

I want to take a moment to acknowledge the exceptional leadership of our President Louis Amato-Gauci and President-Elect Patrick E. Foppe, both of whom have invested extraordinary time and energy into guiding this transition. Their dedication has been instrumental in ensuring that our members experience a seamless handover, and the entire Executive Committee has demonstrated remarkable teamwork throughout this process.

While the management transition is the centerpiece of this moment, it is also accompanied by improvements that support the modernization and growth of the association. One of these is the launch of our redesigned website, www.JoinTLA.org. This new website represents one of several tangible steps being taken to strengthen our infrastructure and we encourage all of you to check it out and use it frequently.

Below is a financial snapshot for September 2025 as provided by Kellen.

Category	Amount
Checking	\$218,255
Money Market	\$106,662
Piedmont CD	\$54,176
Total Assets	\$414,642
Net Surplus	\$97,218



Carlos M. Sesma Jr.

As of September, TLA recognized \$205,013 in total revenue and \$107,794 in total expenses, resulting in a \$97,218 net surplus. These numbers reflect both our fiscal discipline and our ability to invest in important initiatives that will support the TLA for years to come.

As we move from Kellen to DPS, we do so with great optimism. Change of this magnitude inevitably brings challenges, but it also brings tremendous opportunity—opportunity to modernize our systems, rethink how we support our members, and position the TLA for sustained growth across North America and internationally.

Thank you for your continued trust and support. We look forward to sharing more updates as these changes unfold—and to building the next chapter of the TLA together.



Alex Karcher
Emileigh Hubbard

Your Mission—Begins Here... The Theme is Bond, James Bond

The countdown has begun for the 2026 TLA Annual Conference and CTLA Midyear Meeting, taking place April 29 – May 2, 2026, at the stunning Omni Amelia Island Resort in Fernandina Beach, Florida.

As your conference co-chairs, we have assembled a top-tier team of operatives—your planning committee—who are working behind the scenes to craft a world-class educational and networking experience.

Whether you're learning the latest legal trends or forging transportation alliances over martinis (shaken, not stirred), this mission promises to be unforgettable.

The Resort: Our Mission Base

Perched at the edge of a barrier island in northeastern Florida, the Four Diamond-Rated Omni Amelia Island Resort & Spa is your luxurious headquarters for this year's high-stakes operation. With sweeping views of the white sands of Fernandina Beach and the Atlantic Ocean, this serene hideaway offers the perfect blend of elegance, adventure, and relaxation—ideal for agents of the law. Between your bond-inspired intelligence briefings and networking, unwind on Northeast Florida's largest pool deck, featuring an adults-only pool, a family pool, and a splash pad for those traveling with junior agents. Recalibrate with a personalized spa treatment or maintain peak performance at the Health and Fitness Center. Need to sharpen your game? Tee off on 36 holes of championship golf or serve up a challenge on the clay tennis courts. Dining options range from family-friendly fare to signature buffets and prime steak and seafood worthy of a Bond-style celebration. When you're not

in session, explore pristine beaches, scenic trails, or embark on a paddle-boarding excursion through preserved marshlands.

Rooms and Rates

TLA has negotiated an exclusive rate of \$354 per night (plus taxes and fees, double occupancy). The registration link will be posted shortly to the TLA event webpage.

To guarantee your preferred rate, complete your reservation before Monday, March 30, 2026.

Networking & Social Events: License to Mingle

Wednesday, April 29 – Mission (Welcome) Briefing

Your assignment begins with a warm welcome to the Sunshine State. Join fellow agents for casual cocktail and conversation before heading out to our Thursday night networking rendezvous. New recruits and first-time operatives (New Members and First-Time Attendees) are invited to a special Member Orientation, followed by a joint reception with corporate counsel.

Thursday Evening, April 30 – Operation: Resort Royale

After a full day of high-level CLE intelligence briefings, it's time to switch gears. Join us for an unforgettable evening at Walker's Landing—a seven-acre hideaway overlooking the salt marsh, the Amelia River, and the Intracoastal Waterway. Step into a setting worthy of a secret rendezvous: food stations and cocktails await inside a magnificent wooden lodge, discreetly tucked behind a screen of ancient trees and Spanish moss. The wrap-around porch and lookout points offer the perfect vantage for birdwatching—or simply savoring the sunset like a scene from a classic spy film. Surrounded by nature and shimmering waterways, indulge in dinner and drinks

Association Business

while listening to some of your favorite tunes. Slip into your elegant resort attire (and comfortable shoes) and mingle with fellow agents, speakers, and distinguished guests. Whether you're reconnecting with old allies, evading elite Bond villains, or forging new coalitions, this evening promises glamour, intrigue, and unforgettable connections. This will be an optional, ticketed event.

Friday Evening Banquet, May 1 – The Gala

Don your finest tuxedos and gowns (or best secret agent or villain attire) for the Annual Banquet, a time-honored tradition where the elite of the Transportation Lawyers Association gather for an evening of celebration and ceremony. Enjoy a sophisticated dinner, witness the presentation of distinguished honors and award, and observe the passing of the gavel from TLA's outgoing President to the incoming leader. Black-tie preferred—because every agent deserves a night worthy of Bond.

Saturday, May 2 – Final Debrief and a Community Event

We'll debrief your mission on Saturday morning with a breakfast buffet and the CTLA-Midyear Meeting. Following the close of formal programming, the New and Young Lawyer Committee looks forward to hosting a community event for further networking – details to follow on the official event webpage! We invite those staying through the weekend to enjoy all that the Omni and Amelia Island have to offer, and to continue networking through self-directed activities Saturday evening. No worries, the Hospitality Suite will remain open for business Saturday!

Educational Program: An Intelligence Briefing for Legal Eagles

While the allure of Amelia Island's sun-drenched beaches and ocean breezes may tempt even the most seasoned TLA attendee, we invite you to resist the call of paradise—just long enough to engage in our Bond-inspired programming.

It is a program that would earn a nod of approval from M herself!

Your Briefing Schedule Includes:

Wednesday, April 29, 2026

7:30 a.m. – 8:30 a.m.	Executive Committee Breakfast
8:30 a.m. – 12:00 p.m.	Executive Committee Meeting
12:00 p.m. – 4:00 p.m.	Registration
12:30 p.m. – 2:30 p.m.	Tennis
12:30 p.m. – 5:30 p.m.	Golf Tournament
5:00 p.m. – 5:30 p.m.	New Member Orientation
5:30 p.m. – 6:00 p.m.	New Member + Corporate Counsel Reception
6:00 p.m. – 9:00 p.m.	Welcome Reception
10:00 p.m. – 1:00 a.m.	TLA Networking After-Hours (Hospitality Suite)

Thursday, April 30, 2026

7:30 a.m. – 4:00 p.m. Registration

7:30 a.m. – 8:30 a.m. Breakfast

8:15 a.m. – 8:30 a.m. **Welcoming Remarks**

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Pui Hong, Senior Legal Counsel, Trimac Transportation, Calgary, AB, Canada; *President, Canadian Transportation Lawyers Association*

Alex Karcher, Partner, Bricker Graydon, Columbus, OH; *Co-Chair, TLA Education Program Committee; Chair, New and Young Lawyers Committee*

Emileigh Hubbard, Shareholder, Henry Oddo Austin & Fletcher, P.C., Dallas, TX and Denver, CO; *Co-Chair, TLA Education Program Committee; Co-Chair, Freight Claims Committee*

8:30 a.m. – 9:30 a.m.

For Your Eyes Only: My Brand is Not Your Business – Trademark Issues for the Transportation Lawyer

A simple search of the Global Brands Database quickly demonstrates that the trademarks and branding used by transportation and logistics companies is crucial to obtaining and maintaining competitive advantages around the world. Misusing a logistics company or other market participant's trademark, through either direct infringement or the use of a confusingly similar mark, may constitute a violation not only the trademark laws but also many federal and state competition laws.

Using transportation and logistics industry examples, this program will discuss the basics of trademark laws; how to obtain and lose trademark rights; what constitutes trademark infringement and the related risks and liabilities; and how to protect brands both through registration and contractual licensing provisions with service providers, employees, agents and subcontractors, and even the occasional competitor.

In a marketplace where perception is power, safeguarding your brand is not just smart—it's strategic. Because in the words of Le Chiffre, "You must admit, I provide a certain... return on investment."

Speakers:

Andrew M. Danas, Partner, Grove, Jaskiewicz and Cobert LLP, Washington, D.C.

Victoria Harmeyer, Associate, Baker Hostetler, Houston, Texas

Jol A. Silversmith, Partner, KMA Zuckert LLP, Washington, D.C.

9:30 a.m. – 10:15 a.m. **License to Hire: Navigating Driver Vetting and Compliance Across Borders**

This panel will explore driver vetting and hiring practices from an employment and regulatory perspective across Canada and the United States, with a focus on evolving compliance standards and cross-border considerations, including which questions are acceptable to ask candidates in today's landscape. Panelists will also examine recent changes to United States's language proficiency

requirements and their implications for carrier obligations, employment practices, and human rights compliance within the trucking industry. As James Bond once said, *"You can never know too much about your enemies."* In today's regulatory environment, the same could be said for your hiring practices—know the rules, know the risks, and know your responsibilities.

Moderator: Carole McAfee Wallace, Partner, Gardiner Roberts, Toronto, ON, Canada

Speakers:

Tim Lawson, Partner, McCarthy Tetrault, Toronto, ON, Canada

William Pentecost, Partner, Cipriani & Werner, Pittsburgh, PA

Steven Stanaszak, Partner, Scopelitis, Garvin, Light, Hanson & Feary

10:15 a.m. – 10:30 a.m. Break

10:30 a.m. – 11:15 a.m. **The World Is Not Enough:
A Conversation with Anne Reinke**

Join us for a fireside chat with Anne Reinke, President and CEO of the Intermodal Association of North America. Anne's decades-long experience in the transportation industry across numerous sectors, including a prior tenure as President and CEO of the Transportation Intermediaries Association, sets her apart for her inter-modal (pun intended!) expertise with the real-world challenges – legal and business alike – that touch our clients each day. *The world is not enough* for James Bond, and in today's fast-evolving logistics landscape, that sentiment rings true. We cannot wait to welcome Anne to the Transportation Lawyers Association for an engaging discussion.

Moderator: Marc Blubaugh, Partner, Benesch Friedlander Coplan & Aronoff LLP, Columbus, OH

Speaker:

Anne Reinke, President and CEO, Intermodal Association of North America

11:15 a.m. – 12:15 p.m. **Cargo Royale: Winning the High-Stakes Game of Freight Claims**

When cargo goes missing or damage strikes, the legal battlefield becomes a high-stakes mission. This panel will take you deep into the world of liability and cargo claims—where the rules are written in the fine print and the consequences are explosive.

As Goldfinger once warned, *"They say once is happenstance, twice is coincidence, the third time it's enemy action."* Our operatives will decode the complexities of freight claims and critical legal doctrines shaping freight claims today with insights for beginners all the way to seasoned professionals. From catastrophic losses to multimodal disputes, we'll examine real-world scenarios and tactical strategies for handling claims with precision.

Moderator: Beata Shapiro, Partner, Wilson Elser Moskowitz Edelman & Dicker, LLP, Boston, MA

Speakers:

Jacob Fisher, VP and General Counsel of Rockit Cargo

Davinder Jassal, Associate at Henry Oddo Austin & Fletcher, P.C., Dallas, TX

12:15 p.m. – 1:30 p.m.

TLA Business Meeting Luncheon

1:30 p.m. – 2:30 p.m.

From Russia (or China or Anywhere) with Love: Sanctions, Tariffs, and Trade Shocks—Managing Legal Risk in Maritime and Cross-Border Freight

In the high-stakes world of global trade, policy shifts can feel like covert operations—swift, strategic, and often destabilizing. This session dives into how evolving U.S. trade policy has reshaped the landscape of contractual performance, compliance exposure, and cargo movement across borders. Panelists will decode the impact of sanctions enforcement, retaliatory tariffs, and trade disruptions on maritime and multimodal freight.

Like any good spy, lawyers must anticipate threats before they strike. Through real-world case studies, this session will reveal how legal operatives help clients renegotiate commercial terms, navigate customs investigations, and stay one step ahead of compliance fallout.

Speakers:

Peter A. Quinter, Shareholder, U.S. Customs and International Trade

Heather Devine, Chief Legal Officer, Traffix

Dr. Marco Remiorz, Partner, Arnecke Sibeth Dabelstein

2:30 p.m. – 3:30 p.m.

Seven Deadly Sins (Against Broker)! And How to Manage and Prevent Them

In the shadowy world of freight intermediaries—brokers, forwarders, and operatives in between—the stakes are high and the risks are real. This panel goes deep into the seven most perilous legal threats facing the industry today: broker transparency, fraud, double brokering deception, freight loss and damage, preemption puzzles, and catastrophic liability. Each issue is a ticking time bomb—and our panelists are here to defuse them.

Armed with up-to-the-minute case law and tactical insights, this elite team of legal minds will decode the operational and regulatory landscape, offering practical strategies to stay ahead of the fallout. As Bond might say, *"You know the rules. You just have to learn how to play by them."* In this session, you'll learn how to play smart, stay sharp, and survive the legal labyrinth of modern freight.

Moderator: Eric Zalud, Partner, Benesch Friedlander Coplan & Aronoff LLP, Columbus, OH

Speakers:

Top Secret: Classified

3:30 p.m. – 3:45 p.m.

Break

3:45 p.m. – 4:30 p.m.

Die Another Day: Avoid Being Trapped between Negligent Selection and Vicarious Liability

Personal injury lawyers conjure new liability theories as quickly as Bond villains recruit double-agents to infiltrate MI6. The

Association Business

presenters will explore a broker or shipper's potential liability to a third-party motorist injured by a motor carrier during the transportation. The panel will focus on ways to navigate the fine line between negligent selection and vicarious liability. Can too little oversight lead to liability claims for negligent selection? Can too much control give rise to liability as employer/master of a truck driver? This panel will allow you to better understand the issues and risks and how to deal with them from the perspectives of a broker, shipper, and insurer.

Moderator: **Top Secret: Classified**

Speakers: **Top Secret: Classified**

6:00 p.m. – 10:00 p.m. Evening Social Event

10:00 p.m. – 1:00 a.m. TLA Networking After-Hours
(Hospitality Suite)

Friday, May 1, 2026

6:30 a.m. – 7:30 a.m. Fun Run/Walk

7:30 a.m. – 8:30 a.m. Breakfast

7:30 a.m. – 1:00 p.m. Registration

8:30 a.m. – 9:30 a.m. **Skyfreight: AI-Powered Intelligence
for Maritime and Intermodal
Operations**

As AI and automation transform logistics and supply chains, transportation lawyers face new questions around liability for predictive decision-making, data protection, and tech contracting. This panel takes you inside the high-stakes world of AI-powered maritime and intermodal operations, where algorithms act as double agents and compliance is your license to operate. Panelists will decode how artificial intelligence is reshaping contracting, liability, and regulatory obligations across global supply chains and explore legal risks tied to AI-powered scheduling, routing, and freight allocation systems used across maritime, aviation, and trucking sectors.

Like any Bond mission, success depends on precision, foresight, and knowing when to act. Join us for a briefing that blends cutting-edge tech with tactical legal insight—because in this game, data is the ultimate weapon.

Moderator: AI-Generated Moderator

Speakers:

Nigah Awj, Founder & Partner, Asha Legal Solutions, Montreal, Quebec, Canada

Robin Squires, Partner, Borden Ladner Gervais LLP, Toronto, ON, Canada

Kristopher Chandler, Senior Managing Associate, Benesch Friedlander Coplan & Aronoff LLP, Columbus OH

9:30 a.m. – 10:30 a.m.

Managing Tomorrow Never Dies: Cross-Generational Law Firm Leadership & Ethics

Every generation brings its own playbook, but in the high-stakes arena of law firm leadership, missteps can be fatal. This panel explores the delicate balance of authority, ethics, and expectations across Baby Boomers, Gen X, Millennials, and Gen Z—because when cultures clash, the fallout can rival Goldfinger's master plan.

Our experts will dissect ethical dilemmas that arise when managing diverse teams, from technology adoption to client confidentiality and leadership strategies. Expect practical advice and real-world scenarios to help you lead with precision and integrity. As Ernst Stavro Blofeld warned, *"The successful criminal brain is always superior."* In law firm management, success demands brains, ethics, and a strategy worthy of MI6.

Moderators: **Alex Karcher**, Partner, Bricker Graydon, Columbus, OH; Co-Chair, TLA Education Program Committee; Chair, New and Young Lawyers Committee

Emileigh Hubbard, Shareholder, Henry Oddo Austin & Fletcher, P.C., Dallas, TX and Denver, CO; Co-Chair, TLA Education Program Committee; Co-Chair, Freight Claims Committee

Speakers: Top Secret: Classified

10:30 a.m. – 10:45 a.m.

Break

10:45 a.m. – 11:45 a.m.

The Intermodal Intersection of the Last Mile: Aligning Law, Logistics, and Liability

As the lines blur between transportation modes and service providers, so do the legal and operational responsibilities. This cross-disciplinary panel examines how counsel and logistics professionals can work together to manage risk, handle regulatory overlap, and prepare for disputes. Expect insights on operational challenges, risk allocation, multimodal contracting, the rise of digital platforms, and how to future-proof operations in a changing industry.

Moderator: **Eric Palombo**, Partner, Flaster Greenberg, PC, Philadelphia, PA

Speakers:

Allen Jones, Deputy General Counsel, STG Logistics

Caroline Synakowski, Assistant Corporate Counsel, Senior Operations for Flexport

Jeffrey R. Brashares, Director, Domestic Intermodal Sales CMA-CGM

11:45 a.m. – 12:30 p.m.

TED Talk – Legal Considerations in Developing, Deploying, and Using Tech

In the world of technology, every innovation is a double-edged weapon—and deploying it without a plan can be fatal. Join Agent Billy Davis (00Legal) for a high-stakes TED Talk that uncovers the legal minefields in developing, deploying, and using advanced

tech tools. This briefing will decode the rules of engagement for tech-driven operations.

Speaker: Billy Davis, Partner, Taylor Nelson Slattery Bernard, Atlanta, GA

12:30 p.m. – 1:00 p.m. **Quantum of Mystery:
Secrets Yet to Be Revealed**

Into the world of classified intelligence. In this exclusive briefing, our mystery operative from will provide updates from within – a glimpse into the decisions, rulemaking, and day-to-day concerns from the viewpoint of Chief Counsel to a federal agency. Your mission: attend and uncover what others can only speculate.

Due to changes to resource allocation and approval requirements within federal agencies, we cannot yet announce this speaker.

1:00 p.m. – 2:45 p.m. Lunch on your own

1:00 p.m. – 2:45 p.m. Past President's Lunch

2:45 p.m. – 4:15 p.m. **Committee Meetings: Committee meetings with CLE accreditation will be provided with preference.**

5:30 p.m. – 6:30 p.m. President's Reception

6:30 p.m. – 7:30 p.m. Reception

7:30 p.m. – 10:00 p.m. Annual Banquet

10:00 p.m. – 1:00 a.m. TLA Networking After-Hours (Hospitality Suite)

Saturday, May 2, 2026

9:00 a.m. – 10:00 a.m. Breakfast

9:00 a.m. – 11:00 a.m. CTLA Mid-Year Meeting

12:00 p.m. – 4:00 p.m. Community Event Organized by the NYL Committee

5:00 p.m. – 8:00 p.m. Self-Directed Dinner

10:00 p.m. – 1:00 a.m. TLA Networking After-Hours (Hospitality Suite)



Nominating Committee Report

Katherine T. Garber, TLA Nominating Committee Chair

In accordance with Article V, Section 2A(1) of the Bylaws of the Transportation Lawyers Association, Immediate Past President Katherine T. Garber chaired the Nominating Committee for the 2026 election of Officers and Representatives-at-Large to the Executive Committee. The following members constituted this year's Nominating Committee, along with the Chair:

Bradley A. Bertkau

*Canty Novy Bertkau Gordon, LLC
Chicago, IL*

Kristen M. Johnson

*Flexport, Inc.
Safety Harbor, FL*

Donald J. Vogel

*Scopelitis, Garvin, Light, Hanson & Feary,
P.C.
Chicago, IL*

Sam Hallman

*Clark Hill
Frisco, TX*

Thomas C. Martin

*Price, Meese, Shulman & D'Arminio, P.C.
Woodcliff Lake, NJ*

Carol McAfee Wallace

*Gardiner Roberts LLP
Toronto, ON*

Robin Squires

*Borden Ladner Gervais LLP
Toronto, ON*

Pursuant to Article V, Section 2A of the Bylaws, President-Elect Patrick E. Foppe automatically succeeds to the office of President upon completion of Louis Amato-Gauci's term as President at the 2026 TLA Annual Conference. Mr. Amato-Gauci automatically succeeds to the office of Immediate Past President at the same time. The Nominating Committee's nominees for the other offices are as follows:

President-Elect

Roger S. Watts

*Northpoint Legal
Vancouver, BC*

First Vice President

Kristen M. Johnson

*Flexport, Inc.
Safety Harbor, FL*

Second Vice President

Carlos M. Sesma, Jr.

*Sesma, Sesma & McNeese
Delegation Benito Juárez, MX*

Secretary/Treasurer

Robert L. Reeb

*Marwedel, Minichello &
Reeb, PC
Chicago, IL*

Pursuant to Article V, Section 2E of TLA's Bylaws, the Nominating Committee's nominees for Representatives-at-Large to serve two-year terms on the Executive Committee beginning May 2026 are as follows:

Kevin T. Brejcha

*Blitch Westley Barrette, S.C.
Oak Brook, IL*

Katherine Flett

*Danna McKittrick, P.C.
St. Louis, MO*

Eric C. Palombo

*Flaster/Greenberg P.C.
Conshohocken, PA*

Carol McAfee Wallace

*Gardiner Roberts LLP
Toronto, ON*

Pursuant to Article V, Section 2E of TLA's Bylaws, the Nominating Committee's nominee to serve a one-year term as the designated representative, being a Canadian citizen and a member in good standing of both the Canadian Transport Lawyers Association and the Transportation Lawyers Association, is:

Jaclyne Reive

Miller Thomson LLP

Toronto, ON

On behalf of the entire Executive Committee, we appreciate the input and participation from the Representatives-at-Large whose terms will end in May 2026:

William B. Davis

Bovis, Kyle, Burch & Medlin, LLC
Atlanta, GA

Emileigh Hubbard

Henry Oddo Austin & Fletcher,
P.C.
Dallas, TX

Alexander C. Karcher

Roetzel & Andress, LPA
Columbus, OH

Joelle G. Nelson

Lewis Brisbois Bisgaard &
Smith, LLP
Houston, TX

The Nominating Committee was fortunate to have a number of well-qualified candidates who are ready, willing, and able to serve the Association. As Chair of the Nominating Committee, I wish to express my gratitude to the committee members for their professionalism and thoughtful insights expressed in performing our duties as committee members. Because of the continued dedication of our long-time members and the enthusiasm of our new members, I complete my duties as a TLA Officer assured that the TLA will grow and continue to thrive under our new and future leaders.

Membership – the Power of Collaboration and the Impact of History

Robin Squires, Chair of International Outreach Committee and
Co-Chair of the “Damm” Recruitment and Membership Committee

It is my honour and privilege to write about an historic award for one of our most distinguished members bestowed upon him at the CTLA meeting in Victoria this past September. At the same time, I will take the opportunity to write about the new Chairs of TLA’s “Damm” Recruitment and Membership Committee, and the history of collaboration between the CTLA and the TLA. If you have any questions about anything in this article, please feel free to reach out to me.

Let me begin by reporting that Fritz Damm, the long-time Chair of TLA’s “Damm” Recruitment and Membership Committee will take an “emeritus” role this year, as the new committee Co-Chairs (Joelle Nelson and I) get up to speed on all of the significant work required to do the work of the committee. It should come as no surprise to any of you that the tasks involved are many, and the energy and time required is huge. We are all lucky to have had Fritz doing the impressive job he has done for so long.

On that note, let me tell you all about the historic award issued to Fritz by the CTLA at their Annual Meeting in the fall in Victoria. Much of the following is taken from the speech TLA President, Louis Amato-Gauci gave at the time, and Fritz’s acceptance speech. It sums up all of the reasons Fritz received the award, and how exceptional a person he is, extremely well.

On September 20, 2025, a moment of history was made. CTLA bestowed its highest honour–Lifetime Membership–on Fritz Damm, Past President of the TLA and a towering figure in the transportation law community on both sides of the border.

For nearly three decades, Fritz has been more than a colleague; he has been a connector, a mentor, and a friend. As Louis Amato-Gauci noted in his presentation speech, Fritz’s influence on CTLA began long before this award: “It was right here in Victoria, back in 1999, that Fritz–then the incoming First Vice President of TLA–sat down with CTLA’s Louise Baillargeon to hammer out the details that transformed *The Transportation Lawyer* into the joint TLA/CTLA publication we know today. That meeting wasn’t just productive, it was historic.”

That spirit of collaboration has defined Fritz’s career. As Chair of TLA’s Membership Committee, he championed joint membership, tirelessly building bridges between Canadian and American lawyers. “If you’ve ever received a warm welcome at a TLA or CTLA event,” Louis quipped, “chances are Fritz had something to do with it.”

Fritz served as TLA President from 2001 to 2002 and earned

every major TLA award, including Distinguished Service and Lifetime Achievement. Earlier this year, TLA created a new honour–the Extraordinary and Enduring Service Award–just for him.

In his acceptance remarks, Fritz reflected on the journey that brought him here, “Having been part of CTLA for three decades, I’ve enjoyed the privilege of journeying to some of this nation’s most iconic, breathtaking places, sharing ideas and laughter along the way. I’m deeply grateful for the friendships, memories forged through the community, and even more grateful for the opportunity to continue learning from all of you.”

Fritz underscored the unique value of these associations, “CTLA is a lot like TLA–it’s a friendship network. Business gets done, sure, but it starts with trust and camaraderie. That’s the history of our organizations.” He urged members to keep strengthening these ties. “The two organizations have amazing histories. Keep them helping each other–whether it’s joint programs or our new membership deal. We can make each other better.”

This award is not just a tribute to Fritz’s extraordinary service; it is a celebration of the enduring partnership between CTLA and TLA. From that coffee-fueled meeting in Victoria in 1999 to today’s joint initiatives, these associations have proven that collaboration across borders enriches us all.

As we honour Fritz, we also look forward. Both CTLA and TLA offer unique opportunities for professional growth, education, and networking. If you are a member of one association, consider joining the other. Broaden your connections. Deepen your expertise. Strengthen the cross-border ties that make our community exceptional.

On that note, let me suggest that you all engage in a short exercise:

1. Ask yourself if you are a member of only one of the two organizations.
2. Ask yourself if there is a chance that belonging to both and taking part in what they offer would enrich your practice or your organization.
3. If the answer is “yes, there’s a chance,” then ask yourself why you haven’t joined both organizations – the cost is small, and the possible benefit is large.

We have a discount for anyone that wants to give this a try – **reach out to Joelle or I if you want to learn more.**

The Age of AI - Using AI for All Aspects of Legal Practice: Contracts, Litigation, and Compliance



Heather Devine*



Warren Hodges**



Eyesenia Reyes***

I. Introduction

Choosing from the many available AI programs can be overwhelming, as each offers unique features. While artificial intelligence is not new, generative AI is experiencing rapid adoption, and the profession owes it to both attorneys and clients to adapt. Enhancing technological fluency is no longer optional—it is essential to delivering effective representation.¹ Getting familiar with these tools may feel daunting, but investing the effort now can lead to greater efficiency and stronger outcomes in the long run. This article aims to provide guidance for both litigators and in-house counsel as they navigate the expanding AI marketplace.

Thesis: AI is transforming legal workflows, but its adoption requires a balanced assessment of benefits, risks, and ethical obligations.

Attorneys remain fully accountable for the use of AI in legal practice, and the *ABA Model Rules*² of Professional Conduct provide the framework for that responsibility:

- Rule 1.1 (Competence): Lawyers must represent clients competently, which now includes a reasonable understanding of the benefits and risks of AI. Ignoring its spread in the legal

profession risks falling short of the duty of competence. Competence means staying informed, asking the right questions, and using available tools responsibly.

- Rule 1.4 (Communication): Attorneys must consult with clients about the means used to achieve their objectives. If AI tools are deployed for discovery, contract review, or compliance monitoring, clients should be informed of their role and limitations.
- Rule 1.6 (Confidentiality): Uploading sensitive client data into third-party systems raises privacy and data security concerns. Lawyers must ensure that providers offer encryption, prohibit data retention, and include strict confidentiality protections.
- Rule 5.3 (Supervision of Nonlawyers): AI platforms function as “nonlawyer assistants.” Attorneys must supervise their outputs as they would those of paralegals or contract attorneys, ensuring accuracy and consistency with professional duties.
- Rule 3.3 (Candor to the Tribunal): Filing false or fabricated information—even if generated by AI—violates the duty of candor. Courts have

sanctioned attorneys under Federal Rule of Civil Procedure 11 for submitting AI-fabricated citations, making clear that lawyers cannot outsource responsibility for accuracy.

Organizations adopting AI—whether building systems in-house, licensing from third parties, or combining approaches—must also evaluate contract terms addressing risk allocation, indemnification, liability limits, and data protection. Data privacy concerns are real, but they should not deter responsible use. Rather, they underscore the need for diligence, oversight, and contractual safeguards to ensure compliance with ethical duties.

II. AI in Legal Contracts

As AI tools become increasingly embedded in legal workflows, attorneys are uniquely positioned to harness their capabilities for contract analysis, management, and drafting. Choosing the right tool requires a clear understanding that no single platform does everything; each has its strengths and limitations.

Think of AI as a backup team member. When one associate is unavailable, another steps in. AI can do the same—handling routine tasks, generating insights, and answering questions that might otherwise require outside counsel. To evaluate these tools, consider what you want to get “BAK” from it:

* TRAFFIX

** Hanson Bridgett LLP

*** BlueGrace Logistics

- Benefit – What tangible improvements will the tool bring?
- Application – How will it be put into daily practice?
- Key Performance Indicators (KPIs) – How will you measure its impact?

A. Benefit

Attorneys are typically seen as a cost center, so it's important to choose AI software that offers the greatest benefit and track its impact. Decide whether your department would benefit most from improvements in legal research, drafting, contract analysis, due diligence, litigation support, or document management. Since each AI tool has specific strengths, select one aligned with your needs and measure results to ensure it saves costs rather than adds them. Once you have identified the type of benefit you want to receive from AI, you can make an informed decision regarding which software best suits your needs. To facilitate your selection process, the following section highlights some of the leading AI tools available for legal professionals that have a primary focus on contracts.³

- **CoCounsel** (Thomson Reuters): Specializes in contract review, compliance, and document analysis. Runs on secure GPT-4 servers. Premium add-on; does not support case law research.
- **Harvey**: Built on OpenAI models, enhanced with case law and firm data. Supports contract analysis, litigation, and compliance. Designed for large firms.
- **Spellbook**: Integrated into Microsoft Word for transactional lawyers. Automates clause suggestions, redlining, and drafting. Not designed for post-signature contract management.
- **ChatGPT (OpenAI)**: General-purpose tool for drafting and research. Customizable via GPTs. Requires careful verification due to potential inaccuracies.
- **Diligen**: Focused on contract review and due diligence. Identifies clauses and changes, generating summaries for compliance support.

B. Application

Application is key: simply stating the benefits of your AI tool isn't enough—you must actively use it to achieve results. To reach specific outcomes, users should prompt and practice. When prompting, it is helpful to identify the role of the AI, give it a tone, and clearly state the desired output. Providing precise instructions can lead to improved results, and detailed examples tend to elicit better responses from AI systems.⁴

The following is an example of what a well-written prompt looks like:

I want you to act as an accountant and come up with creative ways to manage finances. You'll need to consider budgeting, investment strategies, and risk management when creating a financial plan for your client. In some cases, you may also need to provide advice on taxation laws and regulations in order to help them maximize their profits. My first suggestion request is "Create a financial plan for a small business that focuses on cost savings and long-term investments".⁵

In the example provided, the AI is assigned a defined professional role—accountant—rather than described using general attributes such as "smart" or "intelligent." This approach is more effective, as it instructs the AI to operate within a specific domain of expertise, thereby producing responses that are more relevant and actionable. The prompt also directs the AI's analytical framework by requesting a creative financial plan. Similarly, when drafting prompts, users may instruct the AI to adopt a particular tone or method—such as being creative, outlining a step-by-step process, or providing illustrative examples. Here, the AI was instructed to think creatively. Moreover, the prompt introduces specific parameters—namely, budgeting, investment strategies, and risk management—that serve to narrow the scope of the AI's analysis and ensure its output aligns with the user's objectives. These constraints function similarly to legal issue-spotting: they guide the AI to focus on relevant considerations within a defined framework.

The prompt then assigns a concrete task: to develop a financial plan tailored to a small business. This not only clarifies the deliverable but also implicitly identifies the intended audience, enabling the AI to calibrate its response accordingly.⁶

In an ideal scenario, a flawless prompt would yield a flawless response. But in reality, AI—like any person receiving instructions—can make mistakes. It's your role to build on previous prompts and guide the system. Just as you would correct an associate to improve their work, you should provide feedback to the AI to help it refine its output and perform better over time.

Ultimately, the key is to treat AI as a collaborative partner: guide it, correct it, and build upon its outputs to achieve increasingly precise and valuable results.

C. Key Performance Indicators (KPI)

Securing approval for AI investment is only the first step. Proving value requires tracking KPIs such as workload volume, cycle times, legal spend, internal client satisfaction, and the percentage of staff actively using the tool. These metrics show whether the tool improves efficiency, highlights training needs, or warrants renewal.

III. AI in Litigation

A. Applications

Artificial intelligence has become a practical reality in litigation, particularly through tools developed specifically for lawyers and law firms. Unlike general-purpose models, lawyer-focused platforms such as Westlaw's CoCounsel, Lexis+ AI, and Bloomberg Law's AI research assistants are designed to integrate directly with case law databases, court rules, and proprietary legal content.

One of the most impactful applications is technology-assisted review (TAR) in e-discovery. Modern TAR tools—often integrated into Relativity, Everlaw, or DISCO—use supervised machine learning to prioritize documents based on attorney coding. These platforms, when paired with AI-powered analytics, reduce the burden of reviewing terabytes of emails, driver logs, and shipment data common in transportation litigation.

Generative AI legal assistants like CoCounsel extend beyond document review. They can draft deposition outlines, summarize contracts, and conduct rapid case law research across vetted databases. Because they are built on curated legal content, their risk of “hallucinations” is significantly lower than consumer models. For instance, CoCounsel’s deposition prep tool can instantly generate topic outlines keyed to jurisdiction-specific rules of procedure, saving litigators hours of manual preparation.

Another growing application is predictive analytics. Platforms like Lex Machina and Gavelytics leverage docket data to forecast case outcomes, analyze judge-specific tendencies, and evaluate opposing counsel’s litigation history. For transportation carriers or logistics companies defending personal injury or contract disputes, these insights help counsel decide whether to press for summary judgment, settle early, or prepare for trial.

B. Benefits

1. The benefits of deploying **law-firm-oriented AI tools** in litigation are tangible and measurable.
2. **Efficiency and Cost Savings**
TAR and AI-driven e-discovery routinely cut document review costs by more than 50%. For corporate clients managing transportation-related class actions or regulatory investigations, this efficiency can mean millions saved. By automating routine review tasks, attorneys can focus on high-value work such as witness prep or case strategy.
3. **Accuracy and Reduced Risk of Error**
Unlike public LLMs, Westlaw CoCounsel and Lexis+ AI rely on closed legal datasets, which greatly reduces the risk of fabricated citations. These tools provide direct links to the underlying case law, allowing attorneys to validate sources instantly. This safeguard not only mitigates Rule 11 risk but also strengthens client confidence in the accuracy of attorney work product.

4. Strategic Insights

Predictive platforms like Lex Machina identify judicial behavior patterns that give litigators a competitive edge. For example, if a carrier faces recurring cargo-loss disputes, analytics may reveal how a specific federal judge in the Southern District of New York has historically treated Carmack Amendment claims. That knowledge helps shape motions, settlement strategy, and trial themes.

5. Enhanced Client Communication

General Counsel expect outside firms to deliver fast, cost-effective, and data-driven advice. By leveraging AI tools that produce clear, fact-backed insights, outside counsel can present risk assessments and budget forecasts in ways that align with business priorities.

C. Challenges and Ethical Considerations

Despite their promise, even lawyer-specific AI tools raise serious challenges.

1. Verification and Hallucinations

Although CoCounsel and Lexis+ AI reduce the risk of hallucinations by grounding outputs in proprietary databases, no system is foolproof. A recent study found that legal AI tools produced errors in 17–33% of research tasks. Attorneys must verify all citations against primary sources and treat AI outputs as a starting point, not a finished product.

2. The Morgan & Morgan Sanctions

The Morgan & Morgan sanctions in *Wadsworth v. Walmart Inc.* illustrate the danger of over-reliance on unchecked AI. There, attorneys filed a motion citing non-existent cases generated by an internal tool. Sanctions under Federal Rule of Civil Procedure 11 followed, with fines imposed on both the filing attorney and supervising partners. The court emphasized that “reliance on AI does not excuse counsel from their professional responsibilities.”⁷

3. Judicial Skepticism and Certification Orders

Judges have responded with heightened scrutiny. Judge Brantley Starr (N.D. Tex.) now requires certifications confirming that any AI-generated content in filings has been independently verified by a human lawyer. Magistrate Judge Fuentes (N.D. Ill.) and Judge Baylson (E.D. Pa.) have issued similar orders. These developments show courts expect attorneys to maintain full accountability regardless of AI assistance.⁸

4. Data Privacy & Security Risks

Transportation litigation often involves sensitive operational data. Firms must ensure AI vendors use strong encryption, do not retain client data, and meet regulatory requirements. Enterprise-grade systems like CoCounsel explicitly guarantee data confidentiality and non-use of client inputs for training.

5. Procedural Fallout of AI Errors

Errors can compromise judicial integrity. In 2025, judges in Mississippi and New Jersey vacated rulings after attorneys identified inaccuracies believed to stem from AI-assisted drafting.⁹

IV. AI in Compliance and Risk Management

A. Applications

AI is also transforming compliance and risk management, particularly for organizations operating in highly regulated industries such as transportation, logistics, and supply chain. Tools like Westlaw CoCounsel, Lexis+ AI, Thomson Reuters Regulatory Intelligence, and compliance automation platforms provide attorneys and in-house counsel with real-time monitoring and auditing capabilities.

- **Regulatory Monitoring:** CoCounsel and Regulatory Intelligence track changes across federal, state, and local regimes, from FMCSA safety standards to state-level independent contractor rules like California’s AB 5. Instead of manually reviewing

regulatory bulletins, counsel receives automated alerts with analysis tailored to their client's industry.

- **Policy Audits and Internal Reviews:** AI can audit company policies against current laws and regulations. For example, a CoCounsel compliance module can evaluate a carrier's Hours-of-Service policies under 49 C.F.R. Part 395 and flag gaps that could expose the company to FMCSA enforcement or civil liability.
- **Compliance Documentation:** Platforms like Lexis+ AI assist with drafting compliance manuals, risk assessments, and codes of conduct. Because these outputs are tied to verified legal databases, attorneys can create tailored documents that align with specific regulatory frameworks, such as OSHA workplace safety rules or TSA supply chain security requirements.
- **Risk Scoring and Predictive Compliance:** Some platforms use data analytics to identify potential areas of exposure by analyzing patterns in enforcement actions, whistleblower complaints, or audit findings. This enables proactive compliance management, rather than reactive responses to violations.

Collectively, these applications shift compliance from a reactive, document-heavy process to a proactive, data-driven system of governance.

B. Benefits

The integration of AI into compliance offers three key benefits:

1. Real-Time Risk Detection

Unlike manual monitoring, which can lag months behind regulatory updates, AI compliance engines provide immediate alerts. For instance, if the FMCSA issues an emergency exemption or if a state like California modifies its AB 5 independent contractor rules, AI systems notify in-house counsel within hours. This enables businesses to adapt before violations occur.

2. Streamlined Reporting and Documentation

AI simplifies recurring compliance tasks such as drafting annual reports, updating employee handbooks, and documenting regulatory certifications. By generating structured, audit-ready documentation, tools like CoCounsel reduce the risk of inconsistencies and save hundreds of attorney hours each year.

3. Enhanced Governance and Accountability

Compliance platforms often include dashboards that map obligations across jurisdictions and assign responsibility to specific business units. This not only enhances governance but also demonstrates regulatory accountability—a factor increasingly scrutinized by the DOJ in corporate enforcement policies.¹⁰

C. Challenges

While the benefits are substantial, compliance-focused AI tools also raise significant challenges.

1. Bias in Automated Decision-Making

AI compliance systems often rely on predictive models. If training data reflects past enforcement priorities or corporate demographics, the output may unintentionally perpetuate bias. For example, if an AI system weights enforcement risk based on historical OSHA inspections, industries with more inspections (like trucking) may be flagged disproportionately, even where risk levels are comparable.

2. Legislative Requirements for Bias Audits

Governments are responding to these risks with bias audit mandates:

- **New York City's Local Law 144 (2023)** requires annual independent audits of automated employment decision tools.
- **California AB 331 (2023) and Illinois' Artificial Intelligence**

Video Interview Act (2019) impose transparency and audit obligations on AI use in employment and compliance.

- Similar legislation is being drafted at the federal level, particularly around financial services and health care compliance.

Transportation companies using AI hiring tools to screen drivers or warehouse staff must ensure compliance with these emerging audit requirements.

VI. Conclusion

Artificial intelligence is no longer theoretical in the practice of law—it is embedded in how attorneys approach litigation, contracts, and compliance. From e-discovery and legal analytics in litigation, to contract review and negotiation support, to regulatory monitoring and compliance governance, AI tools designed for lawyers and law firms are reshaping workflows at every stage of representation.

The benefits are clear: efficiency, accuracy, and strategic insight that were previously unimaginable. Lawyer-focused platforms like Westlaw CoCounsel, Lexis+ AI, Relativity, and Bloomberg Law's drafting assistants demonstrate that when applied responsibly, AI can reduce costs, improve decision-making, and enhance client service. These tools, grounded in authoritative legal databases, offer a safeguard against the risks of consumer-facing generative AI.

But the risks cannot be ignored. Courts have sanctioned attorneys for relying on unverified AI outputs, and regulators are imposing new obligations for transparency, bias audits, and data security. Ethical duties under the ABA Model Rules—competence, confidentiality, candor, and supervision—apply fully to the use of AI. Judges are beginning to issue standing orders governing AI filings, and corporate clients are asking tough questions about how outside counsel deploy these technologies.

The age of AI in legal practice is not about replacing lawyers—it is about reshaping the lawyer's role. Attorneys must pair technological fluency with professional judgment, ensuring that every AI-assisted task is reviewed, verified, and defensible.

Firms that adopt governance frameworks, educate their attorneys, and partner with enterprise-grade providers will gain both efficiency and credibility. Those who cut corners risk sanctions, reputational harm,

and loss of client trust.

For litigators, transactional attorneys, and compliance counsel alike, the mandate is simple: embrace AI as a tool, not a crutch. The future of legal practice belongs

to lawyers who can leverage technology while upholding the profession's highest standards of integrity and accountability.

Endnotes

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- ¹⁰ DOJ's March 2023 Evaluation of Corporate Compliance Programs with updates occurring in September 2024.

Georgia On My Mind: Reptile Smiting in the Peach State!



Eric Zalud*

Pulling Back the Curtain on Litigation Funding in Georgia

Now, another state has been added to pantheon of states that are seeking, via focused legislation, to counter the nuclear verdict trend – Georgia. One of the principal facilitators of Reptile theory tactics leading to nuclear verdicts is the relatively new phenomenon of litigation funding. By this modus, a third-party company assists plaintiffs' counsel with funding the expenses of the litigation as it progresses. Then, if there is a favorable settlement or verdict, the litigation funding company takes a percentage cut of that settlement or verdict – right off the top. Obviously, this schematic fuels Reptilian litigation tactics and increases the overall volume of such lawsuits. These funding schematics enable plaintiffs' counsel to proceed with litigation, but with lessened risk to them and their clients. This mechanism also serves to alter the risk/benefit calculations typically made by plaintiffs' counsel in these cases. Often, these arrangements are opaque and shuttered from the outside world. They also rarely are permitted to be disclosed during discovery and/or at trial – but Georgia is changing that.

Georgia's new statute regulates such third-party litigation financing practices in the state. The new statute requires that any entity who will be engaged in litigation financing in the state of Georgia, must officially register with the state as a "Litigation Financier." The registration statement of such a financier must provide the legal name and other identifying information for *each person* who has an ownership stake in the entity. This requisite helps pierce the rather opaque and obfuscatory netherworld of litigation financing. A company must also describe its business operations for the past

five years, identify any subsidiaries, and identify all its directors. No foreign entity may be registered as a litigation financier. Similarly, no principal of a litigation financier may be a convicted felon.

The Act then goes on to regulate the *involvement* of litigation financiers in the actual litigation. The Act prohibits them from making any decisions with regard to the merits of the claim, expert witnesses, nor litigation strategy, or settlement negotiations. This provision effectively (we hope) eliminates the sully of the litigation decision-making process for plaintiffs' counsel, *and the plaintiffs themselves*. The Act also prohibits the litigation financier from recovering any amount greater than that actually recovered by the plaintiff in the lawsuit which, surprisingly, happens a lot. The litigation financier is also forbidden by the Act from securitizing or assigning the financing agreement – which also happens a lot and further sullies the litigation decision-making process. The Act also makes the litigation financier jointly and severally liable for any sanctions related to actions that are deemed to have been brought frivolously and without merit. The financier must also indemnify the plaintiff against any adverse costs, attorney's fees, damages or sanctions in the lawsuit. The Act also provides that any person who violates its provisions, including failure to register, could be guilty of a felony, and be imprisoned for up to five years, or fined up to \$10,000 – so, it has some teeth.

Financial Funding Arrangements Discoverable - and Maybe Admissible

Importantly for counsel for defendant motor carriers, brokers, and even shippers, *the Act specifically provides that litigation*

Unfortunately, the nuclear verdict phenomenon grows and prospers in 2025. A "nuclear verdict" is described as a verdict of \$10 million or more. In a nuclear verdict case, plaintiffs' counsel, propagating a sophisticated yet primordial strategy known as the Reptile Theory, seek to vilify the trucking company, as opposed to seeking recompense for actual damages. The propagation of nuclear verdict litigation is an albatross around the proverbial neck of the motor carrier industry and the transportation brokerage sector. Nuclear verdicts have jumped over 300% in the past decade. There are many effective ways to counter Reptile theory tactics before litigation, and in the heat of litigation itself. However, defense counsel can be aided in litigation by legislatively enacted state laws, which codify more rational decision-making processes for these cases. Such legislation can serve to curb the inflammatory and non-proximate causally related aspects of that type of litigation. That helps smite Reptile tactics, at least in part. Several states have already enacted legislative reforms that will assist transportation industry defendants in litigation, to achieve results that are not tainted by prejudice. The most recent of these is Florida, but efforts have also been made in states such as Texas, Missouri, Iowa, West Virginia, Louisiana, Massachusetts, and Montana.

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financing agreements are discoverable. It does not specifically comment upon admissibility at trial, but it states that it is not specifically *forbidding* admissibility.

Guardrails Around Non-Economic Damages

The Act also prohibits plaintiffs' counsel from arguing the worth or monetary value of non-economic damages, at trial, nor eliciting any testimony or making a reference to any specific amount or range of non-economic damages. Those arguments may be made only after the close of the evidence. They also must be rationally related to the evidence of non-economic damages presented at trial. This enactment should help prevent catastrophic, unsupported non-economic damage proclamations by plaintiffs' counsel, which "anchor" the jury at elevated and disproportionate damage thresholds.

Buckle Up - Or Else It's Admissible

In another all-star edict, the Act makes clear that evidence that the occupant and/or driver of the plaintiffs' vehicle, failed to wear a seatbelt instead of being previously *inadmissible* - is now *admissible* on the issues of negligence and comparative fault.

Rationally - Based Medical Expenses/Controlling Hired Doctors

The Act also reigns in abuses relating to medical expenses and health care providers retained only for litigation. It first states that damages for medical and health care expenses shall be limited to the

reasonable value of medically necessary care. It also permits evidence that medical expenses are covered by workers' compensation programs or insurance. This provision essentially abrogates the collateral source rule that no evidence of insurance payments is permitted, but the statute provides that the court can issue appropriate jury instructions as to those collateral source payments. The Act also takes aim at the cottage industry of treating physicians, who treat patients in conjunction with payment arrangements with plaintiffs' counsel. It states that in those cases in which the health care provided has agreed that plaintiffs' medical and health care expenses will be paid by a judgment or settlement, a copy of that letter is discoverable. Also, if the physician *sells* the accounts receivable for the plaintiffs' medical expenses to a third party (it happens, believe it or not!), the name of that third party and the amount of the sale is also discoverable.

Bifurcation Reigns

Finally, the Act bifurcates the trial of any bodily injury or wrongful death case into a first phase of fault only, prior to any determination of total damages. Only if the defendant is found liable, can the jury hear evidence of possible compensatory or possible punitive damages. This procedural schematic prevents plaintiffs' counsel from inflaming the jury with hyperbolic damage arguments, which cloud the jury's objective determination of fault and liability. The Act is not retroactive.

The factfinding process, during discovery, pretrial proceedings, and trial, in state and federal courts has always been intended

to be fair, measured, and deliberative, with each party in a civil case, the plaintiff—and the defendant—being able to tell their side of the story without an emotional rush to judgment. That process is intended to be guided by principles of logic and equity, and by a rationally balanced assessment of the facts under applicable law. It was never intended to be dominated by inflammatory, Reptilian efforts to inspire passion and prejudice for matters completely unrelated to the underlying facts of the accident. These principles are fair to both sides and are certainly not unfair to plaintiffs. The legislatures in the states mentioned in this article, and now Georgia too, have taken rational and measured responses to tactics that often result in bountiful bonanzas for plaintiffs' lawyers; windfalls beyond fair compensation to injured plaintiffs; and seismic, destructive reckonings for motor carrier defendants who are vilified, demonized, and pilloried for matters beyond the scope of the accident at hand, often driven out of business as a result of inflated nuclear verdicts. These state legislatures are taking action in response to a problem that is evolving within their state's borders and are seeking to do so in a manner that not only protects defendants from unfair and irrelevant inflammatory evidence, but simultaneously maintains the rational, logical and equitable judicial factfinding process for the plaintiffs. Time will tell how this Georgia legislation affects catastrophic accident litigation in the transportation world, but at the very least—it is a start. 🐢

Every Victory is a New Beginning: U.S. Supreme Court Agrees to Consider Freight Broker Liability



Marc S. Blubaugh*

On Friday, October 3, 2025, the United States Supreme Court announced that it will provide vital guidance regarding the extent to which freight brokers are liable for alleged negligence in selecting motor carriers that transport goods for brokers' customers. The announcement was immediate cause for celebration among those the freight brokerage industry for the reasons explained below.

I. What is the Underlying Case?

The case now before the Court is *Shawn Montgomery v. Caribe Transport II, LLC*. In *Montgomery*, a customer retained a freight broker, C.H. Robinson Worldwide, Inc. ("CHR"), to arrange for the interstate transportation of a load of plastic pots. CHR contracted with a federally licensed motor carrier, Caribe Transport II, LLC ("Caribe"), to perform the transportation for the customer. Caribe's driver veered off the road while he was transporting the load through Illinois, colliding with a tractor-trailer that was stopped on the side of the road. The tractor-trailer was being driven by Shawn Montgomery, who was injured as a result of the collision.

Mr. Montgomery commenced litigation in federal district court in Illinois to recover for his injuries. He sued not only Caribe and

Caribe's driver but also CHR and certain affiliates of CHR. Mr. Montgomery alleged that CHR negligently selected Caribe to perform the transportation and that CHR was vicariously liable for the torts of Caribe and its driver due to alleged control exercised over Caribe and its driver. CHR moved for summary judgment on the vicarious liability claim, which the district court granted after finding that Caribe and its driver were independent contractors—not agents—of CHR. The district court also ultimately granted judgment for CHR on the negligent hiring claims on the basis that such claims were preempted by a federal statute, the Federal Aviation Administration Authorization Act (the "FAAAA"). Mr. Montgomery appealed to the U.S. Court of Appeals for the Seventh Circuit, which affirmed the district court's dismissal of the negligent hiring claims.

Mr. Montgomery then sought review from the U.S. Supreme Court. Notably, despite winning at the federal district court and in the Seventh Circuit, CHR also requested that the U.S. Supreme Court review the decision in order to provide clarity to the freight brokerage industry. The Court has now agreed to hear the case.

II. What Is the FAAAA?

In the late 1970s and early 1980s, Congress began to deregulate various types of interstate transportation services, culminating in the mid-1990s with the passage of the FAAAA and the Interstate Commerce Commission Termination Act ("ICCTA"). The FAAAA expressly preempted a wide variety of state and local regulations and state law claims affecting motor carriers. Among other things, the ICCTA also expanded federal preemption under the FAAAA to include preemption of claims not only against motor carriers but also against *freight brokers* in particular. The deregulatory goal of the FAAAA was to facilitate

interstate commerce by eliminating the patchwork quilt of conflicting state laws and regulations that was hampering the operations of motor carriers and brokers.

However, the FAAAA not only pre-empts positive laws enacted by states but also other forms of state action (i.e., court judgments and jury verdicts) that have the effect of regulating the services of freight brokers. This latter form of state regulation often presents an existential risk to the freight brokerage industry. After all, personal injury lawsuits against motor carriers and freight brokers can end with multi-million-dollar verdicts. In recent years, the number of lawsuits against brokers has only increased, causing insurance premiums to skyrocket and leaving brokers confounded about what level of "due diligence" they should be applying when selecting the motor carriers that haul their customers' goods.

III. What is the Legal Issue that the Court will Decide?

The key legal issue that the Court will decide is whether the so-called "safety exception" in the FAAAA saves negligence claims against brokers from being preempted. As amended, the FAAAA provides:

Except as provided in paragraphs (2) and (3), a State, political subdivision of a State, or political authority of 2 or more States **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 any** motor carrier (other than a carrier affiliated with a direct air carrier covered by section 41713(b)(4)) or any motor private carrier, **broker**, or freight

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forwarder with respect to the transportation of property.

49 U.S.C. § 14501(c)(1). While courts have broadly agreed that this language preempts claims against freight brokers as a general rule, courts disagree about the meaning of one of the statutory exceptions in the FAAAA. At issue here is the meaning of the so-called "safety exception," a savings clause that provides that the FAAAA does not "restrict the safety regulatory authority of a State **with respect to motor vehicles**." *Id.* § 14501(c)(2)(A) (emphasis added).

The straightforward text of the exception seems clear enough: Under the FAAAA, states retain regulatory authority over motor vehicles, despite the otherwise broad preemption language in the statute. Stated another way, the savings clause allows states to continue to regulate the safety of motor carriers, trucks, and other vehicles operating in the state.

Yet, the federal appellate courts are deeply divided over the meaning of this exception when it comes to freight brokers. Stretching the law's text to its breaking point, plaintiffs' lawyers have argued that the phrase "with respect to motor vehicles" permits states to exercise safety regulatory authority not only over motor carriers (who obviously operate motor vehicles) but also over brokers (who do not operate motor vehicles).

IV. Why is the Supreme Court Decision So Important to Freight Brokers?

Courts across the nation have reached conflicting decisions about the extent to which the FAAAA protects freight brokers from such lawsuits.

Two federal circuits (the Ninth and Sixth Circuits) have accepted plaintiffs' interpretation and allowed state tort law claims to proceed against brokers. Those circuits include federal courts in Alaska, Arizona, California, Hawaii, Idaho, Kentucky, Michigan, Montana, Nevada, Ohio, Oregon, Tennessee, and Washington. Two other federal circuits (the Seventh and Eleventh Circuits) have rejected that approach, holding that the so-called safety exception

covers only motor carriers, not brokers, meaning that claims against brokers remain preempted. Those circuits include federal courts in Alabama, Florida, Georgia, Illinois, Indiana, and Wisconsin. District courts in other circuits and state courts across the country have likewise issued differing opinions.

The resulting landscape leaves brokers subject to a dizzying array of conflicting standards across the country. For instance, a freight broker sued in federal court in California or Ohio remains exposed to negligence claims. However, if the same freight broker is sued in federal court in Illinois or Florida, the freight broker is protected from negligence claims. Freight brokers cannot function effectively in an environment where liability depends on how far the chosen motor carrier made it down the road—and in which federal Circuit that road lies—when an accident occurs. Without a single, uniform ruling about the meaning of the so-called "safety exception" in the FAAAA, brokers are simply left to guess about what law governs their businesses.

The U.S. Supreme Court has now agreed to resolve this deep divide over an issue that is of exceptional public importance. The Court's eventual decision will bind not only federal courts but all state courts as well.

V. When Will the Court Issue a Decision?

Persuading the Court to accept a case for review is an achievement in and of itself, since the Court only accepts a small handful of the many thousands of petitions submitted for review each year. However, CHR must now persuade the Court on the merits of the issue. The granting of certiorari kicks off a schedule that, absent any extensions, will extend well into the new year.

Mr. Montgomery's merits brief were due in mid-November, and CHR's brief was due 30 days afterwards in mid-December. Mr. Montgomery is entitled to a reply brief that will be due in mid-January 2026. Likewise, any amicus briefs supporting either party must be filed within seven days of the date on which the party supported by

the amicus filed its merits brief. The Court will schedule an oral argument to occur after briefing is complete. Oral arguments are generally scheduled on specified Monday, Tuesday, and Wednesday mornings between now and the end of April. The Court issues its decisions weeks to months after oral argument depending on the Justices' respective workloads and the number of concurring and dissenting opinions.

Regardless, the Court will issue a decision before the Court's summer recess in late June or early July 2026.

VI. Are Any Other Cases Pending Before the U.S. Supreme Court on this Issue?

Total Quality Logistics, LLC ("TQL") has a petition for review pending before the U.S. Supreme Court on the very same legal issue. Whereas the court decision in *Montgomery* held that the negligence claims against CHR were preempted, the court decision in *TQL v. Robert Cox* held that the negligence claims against TQL were *not* preempted. When the Court granted certiorari in *Montgomery*, the Court did not announce what it will do with the petition in *Cox*. Several possibilities exist.

First, the Court could consolidate, group, or otherwise link the petition in *Cox* with the petition in *Montgomery* since the two petitions obviously raise the same core legal issue, albeit from different procedural postures and with subtle distinctions in the respective petitioners' arguments. Second, the Court could let *Cox* linger on the docket without any action and then, upon disposition of *Montgomery*, could "GVR" the petition in *Cox* (meaning "grant" certiorari, "vacate," and "remand" based upon the decision that it renders in *Montgomery*). Third, the Court could simply treat *Montgomery* as the effective "stand in" for *Cox* (while not expressly stating so) and deny cert in *Cox*, which would seem counterintuitive but is possible.

Regardless of the procedural treatment of *Cox*, the core issue is now going to be addressed by the U.S. Supreme Court.

VII. What Does This Mean for the Industry in the Meantime?

When issued, the Court's decision will have a profound effect upon the way in which brokers perform their core service of selecting and arranging motor carriers to transport freight.

In the meantime, while the briefing and oral argument to unfold over the upcoming months, various interest groups on both sides of this issue will begin preparing amicus briefs to support or oppose a particular outcome in the U.S. Supreme Court. As a practical matter, certain parties currently embroiled in freight broker

litigation should consider seeking to stay their cases until the Court issues its decision in *Montgomery*. Underwriters who insure the freight brokerage industry should begin planning for various possible outcomes in *Montgomery* and evaluating what effect those possible outcomes could have on reserves and future premiums. Motor carriers must also assess how to prepare for the Court's eventual decision; a reversal of *Montgomery* would effectively eliminate some motor carriers from the transportation market altogether since brokers would be driven to work with only the most established motor carriers. Shippers, who themselves have benefited from FAAAA

both directly and indirectly, will also begin evaluating the effect that a favorable or unfavorable decision will have upon their procurement of transportation services. And, of course, forward-thinking freight brokers themselves will be workshopping the ways in which they will operate going forward depending on the Court's decision.

In short, while the granting of certiorari in *Montgomery* is truly momentous news for the freight brokerage industry, this victory is simply the beginning of a new phase of the important fight to preserve Congress' deregulatory goals in enacting the FAAAA.



Risk in Motion: Applying the Unified Linkage Model (ULM) to Transportation Liability



William B. Pentecost, Jr.* and
Henry J. Sienkiewicz**



I. Executive Summary.

In the modern logistics and freight ecosystem, legal liability no longer ends at the warehouse door.¹ As transportation systems become more digitized, networked, and AI-enabled, the boundaries of accountability shift—often in ways that are invisible until a failure occurs. Today, a single transportation incident may involve a telematics vendor, an AI routing engine, a carrier's in-cab device, a cloud storage provider, and a fleet dashboard—each playing a role in performance, compliance, and ultimately, exposure.

Transportation attorneys are increasingly asked to assess not just contracts, but systems.² They must weigh questions like: Who owns the data? *Who controls the AI decision logic?* and *What due diligence was done across vendors and platforms?* The traditional tools of contract law, while necessary, are no longer sufficient. Emerging technologies—particularly generative AI, machine learning, logistics optimization, and real-time monitoring—introduce a dynamic complexity that requires new frameworks for risk analysis.

II. Introduction.

The transportation sector has always been subject to liability frameworks grounded in duty of care, proximate cause, negligent entrustment, and failure to warn. Yet in the age of AI-enabled systems,

contractually networked logistics software, and autonomous vehicles, the anatomy of risk has changed. In the age of AI-enabled systems, contractually networked logistics software, and autonomous vehicles, the anatomy of risk has changed, liability no longer resides only with physical assets or the human operator but extends into data networks, software linkages, and system contexts.³ For transportation counsel, it is critical to view emerging technology not merely as architecture but as a web of legal exposures.

As is well established, the cornerstone of tort liability begins with duty: a carrier, broker, logistics provider, or vehicle owner owes a duty of reasonable care to those who entrust goods, transport persons, or rely on operational systems, e.g., common-carrier duty cases. When a duty exists, a breach (negligent act or omission), causation (proximate cause and but-for cause), and damages follow.

In the transportation sector, traditional liability often focused on human drivers or equipment failure. But as systems become layered and linked, the inquiry expands: which entity held operational control? Who delegated supervision? Which software component malfunctioned? And how do adjacent systems interplay to produce harm?⁴

For autonomous or semi-autonomous vehicles, liability may shift from the driver to the software vendor, owner/operator, or even the upstream data-service provider. Kubica observes that while traditional U.S. tort law places the burden of compensation on the human driver under fault systems, autonomous vehicles complicate the chain of control and foreseeability of harm.⁵

Likewise, Widen outlines how the “computer driver” fiction is emerging and must be evaluated through traditional negligence frameworks applied to new actors.⁶

From a transportation law standpoint, new risk chains involve:

- Negligent entrustment/supervision: e.g., where a motor carrier uses an AI-routing service without oversight.
- Duty to warn: e.g., of limitations of an AI system or rerouting logic.
- Proximate cause in layered systems: e.g., a software glitch in a logistics engine causes an unsafe reroute, leading to an accident.
- Vicarious liability and subcontracting chains: e.g., a broker contracts with a motor carrier, which subcontracts further—how does liability travel across that chain?

Accordingly, legal counsel must map out not only direct duty relationships, but also adjacency and linkage: which systems are “adjacent” (i.e., connected but under separate control), which “inherit” configurations or control, and which trust linkages (service-providers, AI modules, marketplaces) create potential gateways for liability.

III. A Legal Perspective on Linkage.

The Unified Linkage Model (ULM) has been described in conceptual and technical architecture terms.⁷ For transportation

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counsel, it can be reframed as a legal risk-mapping tool: a means to model liability exposure, trace control/inheritance chains, and identify vectors of negligence or failure. In essence, ULM becomes not just about system design. It also addresses who owes what duty, how it flows across parties, and how adjacent systems amplify risk.⁸

A. Linkage as Legal Attribution.

Linkage refers to the connection between one system or actor and another, such that liabilities may cascade.⁹ The key legal terms here: proximate cause (to what extent a breach by one actor foreseeably caused injury), negligent entrustment (did a party entrust control to a negligent actor), failure to warn (did an actor inform downstream users of risk), and duty of care (did the actor owe a duty to those harmed). By modeling adjacency (systems under different control but interacting), inheritance (control or design passed down), and trust (service-provider relationships), counsel can map how liability might flow.

For instance, a logistics software provider offers AI-driven rerouting. A motor carrier relies on it; the carrier then dispatches a driver into an unsafe reroute that results in an accident. In this scenario:

- The software provider may owe a duty to ensure safe algorithms
- The carrier may owe a duty of supervision
- The driver/operator may owe the human driver's duty of care.
- By modeling via ULM, counsel can trace liability exposure across all nodes: software, carrier, and driver.

Kubica asserts that AV liability cannot rest purely on the human driver, since control is divided.¹⁰ This diffusion of control extends across software developers, data providers, and fleet operators. It creates a shared operational space between human judgment and algorithmic decision-making. Determining liability requires an understanding of how authority, data flow, and technical causation overlap, an approach that challenges traditional, driver-centric models of negligence.

B. Trust Linkages and Federation.

Freight operations have become increasingly complex. They involve federated technology stacks, with multiple vendors, subcontractors, AI modules, sensors, and telemetry services. Trust linkages can reveal how one vendor's failure may lead to harm in another's operations. For counsel, this raises contractually significant issues, including who assumed which obligations, how oversight was delegated, how data sharing was handled, and what warnings were given. Widen (2023) notes that negligence claims will arise when operators fail to intervene in acceptable circumstances for autonomous assist systems.¹¹

C. Mapping Liability Exposure Through ULM.

In practical terms, counsel can use a modified ULM overlay as a Legal Linkage Map. This diagram visually represents the interconnectedness of different stakeholders in the transportation ecosystem, including the Vendor, Carrier, OEM (Original Equipment Manufacturer), Broker, and Driver, through various legal and operational relationships that impact liability exposure. It serves as a practical legal tool for transportation attorneys to identify how responsibility, control, and potential blame may propagate across entities in complex, AI-enabled environments.

- Nodes are the legal actors (e.g., OEMs, software vendors, fleet operators, brokers, subcontractors).
- Links refer to contractual, operational, or data-sharing connections.
- Edges depict adjacency (different parties, shared control), inheritance (a party inherits design or power), and trust (a party relies on another's assurances).
- Legal risks annotated to include duty owed, potential breach mechanism, foreseeable risk, chain of causation.

This type of visualization can assist attorneys and compliance officers to:

- Understand who controls what and whether such control is explicitly stated in contracts.
- Trace legal causality in the event of

system failure or misbehavior.

- Identify blind spots in due diligence and risk transfer mechanisms.
- Support contract design and litigation strategy by visually laying out potential liability chains.

By mapping the chain this way, transportation counsel gain visibility into where exposure lies: the software engineer's error becomes proximate cause if it was foreseeable and the carrier relied on the output; the carrier's failure to monitor becomes negligent supervision; the broker's negligent selection becomes negligent entrustment. The diagram should clearly illustrate control, contractual relationships, risk nodes, and liability paths, rather than merely showing system architecture. This map can be adapted case-by-case:

- In procurement: Identify which vendors introduce trust or data inheritance risks.
- In litigation: Demonstrate the chain of operational decisions or inherited failures leading to a loss.
- In compliance: Inform required documentation under evolving AI and cybersecurity governance regulations.

IV. AI and Legal Adjacency in Motion.

The evolution of transportation operations—from traditional carrier models to AI-assisted systems, autonomous vehicles, and interconnected logistics platforms—has expanded the boundaries of liability.¹² This expansion is captured in three principal vectors: autonomous vehicles, logistics/real-time routing AI, and contracted multi-party tech stacks (federation).

A. Autonomous Vehicles and New Duty Landscapes.

With partially or fully autonomous vehicles (AVs), the human driver may have limited control; as a result, software manufacturers, data providers, sensor vendors, fleet operators, and maintenance vendors now enter the liability frame. McCarthy argues policymakers should maintain traditional negligence/product liability frameworks while adapting them for AVs.¹³

Kim evaluates how torts of negligence, product liability, and vicarious liability apply when a “computer driver” takes over.¹⁴ Legal scenarios in transportation can include:

- A fleet operator deploys Level 4 autonomous trucks under a service contract. A sensor failure causes an accident. The sensor vendor may owe a duty of reasonable care; the fleet operator may owe a duty to monitor and intervene; the trucking company may owe a duty to maintain oversight.
- A broker arranges autonomous vehicle transport through a sub-contracted vehicle operator. Issues may include negligent selection (entrustment) of an operator with an inadequate safety program, vicarious liability for a subcontractor’s driver/operator, and the chain of control in the autonomous system.

Proximate cause becomes especially salient: did the software malfunction foreseeably cause the accident, or was human inaction the superseding cause? As Kubica notes, traditional driver liability may account for only 90% of accidents, accelerating the need to redefine duty and control.¹⁵

B. Logistics Software, Real-Time Routing and Adjacent System Failures.

Transportation today often involves real-time routing AI, telematics, sensors, weather sensing, and fleet dispatch systems. These “adjacent” systems are under distinct control but feed into operational decisions. When an adjacent system fails—say, a real-time rerouting AI directs a truck into a restricted area or an unsafe route—the liability chain may extend from the software vendor to the carrier to the driver.

For example, if a GPS-based rerouting service fails to warn of a road closure, and the carrier’s dispatch system defaults to that route without manual oversight, then liability may involve:

- Failure to warn by the software provider (if disclaimers were inadequate).
- Negligent supervision/monitoring by the carrier for dispatching the unsafe route.
- Entrustment liability if the carrier

used the routing software, knowing its limitations.

The ULM helps counsel map each adjacency: the routing service (vendor A), the dispatch system (vendor B), the carrier (entity C), and the driver/operator (entity D). Mapping helps identify where contractual obligations exist, where data flows occur, and where oversight gaps expose liability.

C. Contracted, Federated Tech-Stacks and Shared Liability.

In modern transportation chains, particularly in logistics and mobility, it is common to see subcontracting, service platforms, data marketplaces, and federated systems. For counsel, this introduces shared liability—from brokers to carriers, from OEMs to software-as-a-service (SaaS) vendors to data-providers. Trust linkages become critical: did one party rely on another’s assurances or design? Did the contract allocate risks and liability? Was oversight delegated appropriately? In the case of *Aspen American Insurance v. Landstar Ranger, Inc.*, a broker was found to have breached its duty to “retain a reputable motor carrier” when it ignored verification protocols and forwarded the shipment to a fraudulent actor, an example of liability in brokerage/subcontractor chains.¹⁶

In the federated tech stack environment, counsel must evaluate:

- Contract terms: Who has operational oversight? What SLA metrics apply?
- Insurance exposures: Does the carrier’s insurance cover software failure? Are vendors insured against cyber or system failure risk?
- Shared liability clauses: indemnities between vendor, carrier, broker, subcontractor.
- Discovery implications: In litigation, layered systems may require the production of software logs, AI training data, and sensor records, each of which need to be mapped via ULM so that counsel can anticipate discovery demands.

Ultimately, legal adjacency in transportation is no longer just about the driver and vehicle, it encompasses the network of vendors, systems, contracts, and responses.

ULM is the tool to make visible the hidden linkages and liability nodes.

V. Case Studies: How Linkage Creates Liability.

In this section, two case studies are presented. The first involves autonomous vehicles and another focuses on logistics and real-time routing software. Each example is reframed for legal analysis, emphasizing how evolving technologies redistribute responsibility and reshape liability frameworks. The cases explore the resulting chains of accountability, contractual and oversight gaps, and the evidentiary challenges they pose in litigation. Each scenario concludes by illustrating how linkage mapping under the ULM would assist counsel in identifying exposure, clarifying duty, and developing defensible governance strategies.

Case Study 1: Autonomous Truck Fleet and Sensor Failure

A mid-sized carrier partners with an OEM to deploy Level 4 autonomous trucks in a regional freight corridor. The OEM sources LiDAR and sensor modules from Vendor X, integrates them with software from Vendor Y, and the carrier retains human Override operators. During night operations, a sensor fusion failure causes the truck to swerve into a highway guardrail, injuring the driver and damaging the cargo.

Legal issues:

The incident raises several intertwined questions of tort and contract law, illustrating how the diffusion of technical control complicates traditional theories of duty and causation. The following issues frame how liability might be distributed among the parties under existing principles of negligence and product responsibility.

- Did Vendor X owe a duty to downstream users (the OEM and further the carrier) to ensure safe integration of its sensors?
- Did the OEM properly supervise and verify Vendor X’s modules (in terms of their inheritance relationship)?
- Did the carrier properly entrust the autonomous trucks to the OEM’s

system without independent verification (negligent entrustment)?

- Was the driver/operator adequately trained/supervised to intervene (failure to warn/human oversight duty)?

Linkage Mapping Via ULM:

Viewed through the Unified Linkage Model, the same event can be reinterpreted as a network of operational and contractual relationships. Mapping these linkages clarifies how authority, reliance, and duty propagate across the system—revealing the pathways through which liability may cascade.

- Node 1: Vendor X (sensor supplier)
- Node 2: OEM (system integrator) – inherits design, controls integration
- Node 3: Carrier – relies on OEM and human override
- Node 4: Driver/operator – human intervening role
- Links: Vendor X → OEM (inheritance); OEM → Carrier (service contract); Carrier → Driver (employment/training)

By modelling this, counsel can identify each liability node, examine contract terms (Vendor X warranty, OEM SLA, Carrier oversight), and anticipate discovery (sensor logs, override logs, training records). The carrier may argue it relied on the OEM's warranty; the OEM may point to Vendor X's specification; Vendor X may point to sensor limitations. Without the linkage model, it's harder to see the duty-chain and where the proximate cause may attach.

Case Study 2: Real-Time Routing AI and Unsafe Reroute.

A large logistics broker utilizes a SaaS provider for real-time GPS routing across its subcontracted motor carrier network. The routing AI automatically diverts a truck into an urban detour during a weather event. The detour includes a low-clearance bridge not accounted for in the AI's dataset; the vehicle strikes the bridge, injuring the driver and damaging the cargo.

Legal issues:

This scenario illustrates how the use of AI-driven routing systems redistributes operational decision-making and creates overlapping layers of duty among technology vendors, brokers, and carriers. The resulting questions of liability turn on whether each party exercised reasonable care in deploying, supervising, and relying on an automated system whose decisions directly affect physical safety.

- SaaS provider's duty: Did it warn users of dataset limitations and accuracy issues? (failure to warn)
- Broker's duty: Did it adequately select/monitor its motor-carrier subcontractors (negligent entrustment) and verify the suitability of the routing tool?
- Motor-carrier's duty: Was the driver properly trained to question the AI reroute?

Linkage mapping:

When analyzed through the Unified Linkage Model, the event reveals a chain of contractual and operational dependencies connecting digital and human actors. The linkage map highlights how obligations transfer through service agreements and delegation of control, exposing where accountability may fragment as information and authority move across organizational boundaries.

- Node 1: SaaS Routing Vendor (data/AI)
- Node 2: Logistics Broker (contracts with SaaS vendor, dispatches motor-carrier)
- Node 3: Motor-Carrier(subcontractor)
- Node 4: Driver/Vehicle
- Links: Vendor → Broker (service contract/trust link); Broker → Carrier (brokerage/selection); Carrier → Driver (employment/training)

Provisioning these nodes helps counsel identify contract clauses (such as routing vendor indemnity, broker-carrier SLA, and carrier training responsibilities), oversight gaps, and the foreseeability of harm (e.g., the risk of a low-clearance bridge). The broker may attempt to invoke the SaaS

vendor's limitation of liability or disclaimer. The vendor may try to disclaim responsibility by stating that the dataset excludes certain bridges. The carrier may argue that the driver had no realistic chance to deviate.

These cases illustrate how adjacency (e.g., an AI vendor adjacent to a carrier), inheritance (e.g., a vendor's design being adopted by broker operations), and trust linkages (e.g., a broker trusting a routing vendor) combine to create complex liability exposure. Counsel using the ULM framework can anticipate exposure, allocate responsibility, and counsel clients on contract terms, operational oversight, and risk mitigation.

VI. Contracts, Controls, and Compliance in Federated Environments.

In modern, federated, tech-driven transportation networks, contract design, operational controls, and compliance oversight are key levers for managing liability.

A. Contractual Risk Allocation.

Contracts should clearly define: scope of services, data-sharing obligations, system limitations, liability/indemnity caps, audit rights, warranties of performance, and interface responsibilities. For example, does the SaaS routing vendor warrant the accuracy of its dataset?

Does the carrier warrant proper training and override readiness? Are indemnities mutual or one-sided? Where the chain of subcontracting is long, provisions should address upstream vendors, direct obligations to carriers, and audit/verification rights.

In the broker-carrier context, negligent selection (or entrustment) claims arise when a broker fails to vet a carrier's safety program or ignores warning indications. In Aspen, the broker was alleged to have ignored discrepancies in its verification protocol and was held liable for negligent selection.¹⁷ Counsel must ensure that contracts impose verification obligations and audit rights.

B. Insurance and Shared Liability.

Insurance coverage must reflect the complexity of the tech stack. Traditional

motor-carrier liability insurance may not cover failures of AI modules, data vendors, or software controllers. Entities must review: (1) whether policy exclusions apply to software failure or cyber-related events, (2) if vendors carry appropriate liability insurance, and (3) whether additional umbrella policies or cyber-liability coverages are needed.

Moreover, layered liability means that when an AI system fails and causes harm, multiple entities may be held liable: the software vendor, the fleet operator, and the broker. Counsel should model worst-case exposure, ensure coverage is aligned with contractual indemnities, and anticipate subrogation issues.

C. Compliance, Oversight, and Governance.

Governance becomes key for federated systems. Entities must maintain documentation of system testing, upgrade history, training records, override protocols, data logs, and audit trails. In litigation, discovery may include AI training data, telematics logs, system override logs—so the linkage model must identify these nodes in advance. Counsel should advise clients to:

- Maintain oversight committees for AI/automation decisions.
- Review vendor SLAs and audit rights periodically.
- Conduct periodic safety/algorithmic audits of vendors.
- Ensure the chain of subcontractors is monitored and liability flows are documented.
- Map all adjacency and inheritance relationships via ULM-style diagrams for governance.

By proactively using a linkage map, transportation lawyers help clients anticipate compliance exposures, set contract terms, allocate insurance responsibility, and prepare for discovery demands.

VII. Governance Through Linkage Awareness.

The modern transportation enterprise must view governance not as a checklist, but as linkage-aware risk governance. The

ULM reframed for legal purposes provides counsel and clients with an operational artifact: a map of control, trust, and linkage. With that map, governance becomes systematic rather than ad hoc.

A. Oversight of AI-enabled Systems.

For entities that deploy AI or autonomous systems, oversight requires more than a dashboard. It demands:

- Continuous monitoring of vendor performance and data flows.
- Periodic review of system redesigns, firmware/algorithm changes, and safety updates.
- Governance bodies with representation from legal, safety, operations, and IT.
- Logging and retention policies for system data/integration events.
- If a vendor changes its algorithm, the liability map must reflect which carrier units are affected, what new risks emerge, and how training or override protocols must be updated.

B. Documentation and Audit Trails.

Discovery in transportation litigation increasingly targets data from AI modules, sensor logs, telematics, and vendor system logs. For counsel, mapping via ULM involves knowing which node holds which logs, identifying existing data-sharing agreements, and understanding how to request production in the event of a claim. For example, if a routing-AI vendor pushed an update without notifying the broker, litigation may focus on the bulletin trail, version control, and training records.

C. Scenario Planning and Governance Playbooks.

A “Linkage-Aware Governance Playbook Overlay” diagram presents a conceptual framework that integrates legal governance responsibilities with the system linkages defined in the ULM. The diagram is structured as a matrix or overlay, showing how different governance domains (vertical pillars) align with the three ULM linkage types (horizontal layers) to form a dynamic, cross-functional approach to managing legal and operational risk. Governance playbooks should include:

- Risk-mapping workshops using linkage diagrams;
- Contract-review checklists for new vendors/subcontractors;
- Incident response protocols that trace system logs, vendor notifications, and override responses;
- Insurance alignment reviews (which party is insured for which node of the chain);
- Board-level reporting of aggregated liability exposure across federated systems (not just vehicles/trucks, but sensors, AI modules, routing systems, platform marketplaces).
- In short: a legal standard of connection. The somewhat technical ULM becomes the governance standard by which counsel and clients reason about liability.

VIII. Applying ULM in Legal Practice: A Toolkit for Transportation Counsel.

The ULM offers transportation attorneys a structured way to visualize and manage risk across increasingly networked operations. The model's value lies in converting technical interdependence into legal traceability—making visible who controls, who benefits, and who must bear responsibility when systems fail. The following steps illustrate how practitioners can operationalize ULM within everyday practice:

1. Contract Drafting and Review: Map *adjacency clauses* where one party's software, data, or AI outputs interact with another's systems. Require clear audit rights for inherited code, shared algorithms, or telematics data. Embed linkage accountability language to specify how updates, model retraining, or automated routing decisions are communicated and approved.
2. Compliance and Governance Audits: Utilize *linkage diagrams* to pinpoint where legal obligations intersect, including data privacy, cybersecurity, safety, and environmental

compliance. Flag ungoverned “hand-off” points between carriers, brokers, or digital platforms where control and liability diverge.

3. Litigation and Discovery: Treat each linkage as a discovery vector. Identify log files, version histories, and communication records that demonstrate operational control or delegation of authority. Linkage mapping can clarify the proximate cause and show how negligence propagates through a networked system.
4. Risk Transfer and Insurance: Coordinate with insurers to ensure policy language addresses algorithmic dependencies, autonomous operation, and data sharing. If liability is relational, then coverage must also be relational.

Applied systematically, ULM helps attorneys translate technical complexity into legal accountability—turning system

interdependence from a liability trap into a map for defensible governance.

VIII. Conclusion: A Legal Standard of Connection.

In transportation law, the transition from single-actor vehicle liability to multi-actor, AI-enabled, federated networks has shifted how the industry should think about duty, causation, and liability. The ULM, when reframed through a legal-risk lens, offers transportation counsel a visual and analytical tool to map adjacency, inheritance, and trust linkages across systems, vendors, carriers, and vehicles.

By focusing on legal risk rather than system architecture, counsel can guide clients through emerging exposures, including autonomous truck fleets, real-time routing AI, broker-subcontractor chains, and federated data-service platforms. Contractual structures, compliance governance, insurance arrangements, and

litigation readiness all coalesce around the linkage map.

In an era where “platformization” (a single-vendor stack) is giving way to federated, networked systems, the proper legal standard becomes connection-driven. It is simply a matter of who controls what, but rather how systems and actors interconnect, trust each other, inherit responsibilities, and share risk. Transportation lawyers who master this linkage mindset will be better equipped to advise on duty of care, foresee proximate cause across nodes, allocate liability, negotiate contracts, and prepare for discovery in the AI-enabled age.

In sum, ULM becomes more than a technical framework—it becomes a standard for diagramming modern transportation risk. Transportation counsel must adopt it not as optional, but as necessary to navigate the new landscape of adjacency, linkage, and liability. 

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In its analysis, the Eleventh Circuit reviewed the definition of the various players involved in the domestic trucking industry:

The shipper is the “person who ... owns the goods being transported”—like a manufacturer, retailer, or distributor. See 49 U.S.C. § 13102(13) (defining “individual shipper”). The motor carrier is the truck driver—the person who transports the goods from the shipper to the purchaser. See id. § 13102(14) (defining “motor carrier”). The broker is the person who connects the shipper and carrier; he acts as the middleman between the two to arrange for the transportation of the shipper’s *1265 goods by the carrier by, for instance, negotiating rates and routes. See id. § 13102(2) (defining “broker”); 49 C.F.R. § 371.2(a) (same). *Aspen*, 65 F.4th at ____.

¹⁷ *Id.* Compare *Cox v. Total Quality Logistics, Inc.*, 142 F.4th 847 (6th Cir. 2025) (disagreeing with *Aspen* and holding where a negligent hiring claim against a broker substantively concerns motor vehicles and motor vehicle safety, that claim does fall within “the safety regulatory authority of a State with respect to motor vehicles.” 49 U.S.C. § 14501(c)(2)(A)). On October 3, 2025, the U.S. Supreme Court granted certiorari in the case *Montgomery v. Caribe Transport II LLC*. 222 L.Ed.2d 1241 (U.S. 2025). The question presented in the petition for certiorari is whether “§ 14501(c) preempt[s] a state common-law claim against a broker for negligently selecting a motor carrier or driver?” Pet. at i, *Montgomery v. Caribe Transport II LLC*, No. 24-1238 (June 2, 2025).

Tariffs, The Automotive Supply Chain, and Cross-border Issues in 2025

Perspectives From Mexico, the United States, and Canada

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MEXICO

Tariff and Cross-Border Issues 2025

By **Manuel Moctezuma**

This paper analyses how political decisions on trade and cross border matters, and changes in the law in Mexico may disrupt business activities for foreign companies doing business in Mexico.

The first part discusses how political decisions imposing tariffs to Mexican products have been unpredictable to the legal and the business community. The second section provides an overview of the legal framework on trade in Mexico including comments to the recent notice by the Mexican government initiating a public consultation process on the operation of the United States – Mexico – Canada Agreement (USMCA). The third section discusses the legal remedies available for companies when adverse political decisions are taken, and how corporations may prevent themselves from being damaged in the event of business disruptions caused by changes in the law, contract termination and government actions. Furthermore, reference is made to the politicization of the Mexican judiciary under a recent judicial reform in Mexico which affects the independence of

the judiciary, the rule of law and confidence by the business community.

In today's business environment, global corporations with operations in Mexico must know and be familiar with its legal system, which is based in a civil tradition, especially since cross border business disputes are increasing. Global corporations expect a certain level of legal certainty and clear rules when they decide to do in business in Mexico.

I. Talk less and follow the rule of law.

Since 2018, the new federal government in Mexico has moved to differentiate itself from past governments. The new Mexican federal administration has promised to fight corruption, poverty, insecurity and violence. So far, government actions on such issues have failed. The efforts of the Mexican government to achieve these goals have been demanded by the international community, especially the United States, rather than by any initiative of the Mexican government.

For example, as a response to the United States government threat to impose tariffs on Mexican imports if Mexico did not stop undocumented immigration as well as drug trafficking to the United States, Mexico deployed soldiers to its southern border with Guatemala to stem the flow of undocumented immigration and to control drug trafficking. Also, Mexico has cooperated with the extradition of criminals related to drug cartels to the United States. Despite those tariff and border issues, Mexico continues to be one of the United States' largest trading partners, if not the largest.

In a political decision, the United States administration announced it would legally designate Mexican drug cartels as

terrorist groups. This designation could bring devastating effects to Mexican and United States companies since sanctions may include: tariffs; controls on exports and sales; restrictions on financial assistance; litigation in Mexican and United States courts; and limiting corporations and citizens from engaging in financial and business transactions in Mexico.

Mexico has traditionally provided investors with a safe haven from political risk. However, making decisions and changes in the law, particularly regarding the Mexican judiciary, which directly affect the confidence of the investors has caused the implementation of actions against the Mexican government through legal recourses and preventive actions.

Mexico faces a difficult challenge to continue to welcome international investment, as well as to protect and provide clients who have long trusted the system with practical and effective legal solutions, to facilitate and care for their businesses in Mexico. Mexican attorneys remain focused on responding to such challenges imposed by governmental decisions in Mexico together with the United States policies.

II. Legal framework

Within this whole set of political decisions, there is encouraging news. As an important step toward the ratification of trust of international investors, in mid-2019 Mexico became the first country to ratify the USMCA. Also, on September 17, 2025, Mexico initiated a public consultation process regarding the operation of the USMCA in preparation for the review of the USMCA beginning on July 1, 2026.¹ Such consultation process is an opportunity for the business community in Mexico, the United States and Canada to let their respective

government authorities know about their interests and concerns in various industries and trade that should be addressed during the USMCA review process. In Mexico, comments can be submitted to the Ministry of Economy by November 16, 2025.

It is also worth to note that the Mexican legal framework protects private parties' investments. Mexico is a member to multiple bilateral, regional and multilateral treaties where investment arbitration is available for companies against national governments. International litigation and arbitration provided in contracts are also available in Mexico. Mexican law recognizes and enforces foreign judgments and arbitral awards giving legal certainty to the business community.

From a trade perspective, Mexican legislation consists primarily of the *Customs Law*, the *Foreign Trade Law*, the *Fiscal Code*, the *Insurance Contract Law*, the *Business Corporations Act* and the general foreign trade rules.

However, the business community and legal community in Mexico and abroad are eagerly awaiting the first rulings on trade and contract disputes the new federal judges will begin to issue as a result of the widely criticized judicial reform in Mexico.

III. Fighting political decisions by legal means.

The revocation remedy is an administrative procedure (as opposed to a judicial procedure) available to challenge actions and resolutions issued by government authorities including Mexican trade authorities. Such remedy must be filed before the same government authority that performed the action or issued the resolution that is being challenged. The revocation remedy allows the government authority to review its own actions or resolutions before the matter reaches the court system.

It is important to note that the filing of a revocation remedy is optional before filing a lawsuit with a competent court in Mexico. In the event a negative resolution is issued after pursuing a revocation remedy before a Mexican government authority, there is a legal remedy called an 'annulment trial' before the Administrative Court. Under an annulment trial, the Administrative Court

will determine whether the Mexican government authority's action or resolution violated the law or caused damages to a private party, and, if applicable, such court will declare null and void such action or resolution.²

The Federal Law on Administrative Contentious Procedure provides an appeal for review against final judgments issued by the Administrative Court, including but not limited to resolutions issued in foreign trade matters.³

Lastly, a constitutional proceeding named Amparo Directo is available against final resolutions issued by an Administrative Court, by means of which a review of the legality and constitutionality of such resolutions is carried out to protect the constitutional rights of the plaintiff.⁴

IV. The judicial reform in Mexico

A judicial reform was passed on September 15, 2024.⁵ On November 20, 2024, initiatives on secondary legislation were presented by the executive branch to the Mexican Congress to implement the judicial reform. Such initiatives include amendments to the *Organic Law of the Judicial Branch of the Federation*; creation of the *Judicial Career Law of the Judicial Branch of the Federation*; and amendments to the *General Law on Administrative Responsibilities*. On December 20, 2024, and January 2, 2025, such initiatives were published in the Official Gazette of the Federation.⁶

Such secondary legislation (i) instrumented the election of federal magistrates and Supreme Court Justices by popular vote; (ii) introduced a Court of Judicial Discipline to resolve cases involving responsibility of members of the judiciary; (iii) created a judicial administration body to manage human, material, and financial resources of the Mexican judiciary; (iv) regulates transparency related to the promotion of public officers working for the judiciary; and (v) provides regulations applicable to public officers working for the judiciary with obligations from a disciplinary and ethical standpoint.

The judicial reform, as presented in its secondary legislation faced challenges associated with the legitimacy and quality

of justice; the process of guaranteeing the election of independent and impartial judges; and the day-to-day operation of the court system including not only the courts, but the newly created judicial administration body and the Court of Judicial Discipline.

In June 2025, federal judges, including Supreme Court Justices, were elected by popular vote. The renewal of the entire federal judiciary as a result of a single election affected the principle of continuity of judicial proceedings initiated before such election. All former federal judges concluded their term in office on the day of election.

The method of designating candidates and judges elected to judicial positions was favored by their proximity to political authorities, political parties, and judicial leaders. Thus, there are no current checks and balances in Mexico as the current conformation of Mexican Congress, as well as the composition of Mexican executive branch and Supreme Court Justices are biased as they have certain degree of ties with the ruling political party.

Before such reform, there was a judicial career in place for the judicial officers and judges, where training, evaluation, promotion, permanence and dismissal of judges and officers was based on competitive examinations, academic programs, incentives and selection of suitable profiles. Such judicial career provided legitimacy and independence to the judiciary. The recent judicial reform has negatively affected judicial independence and the rule of law including separation of powers; transparency, hierarchy of laws and legality.

Lawyers and experts in the law can help strengthen judicial independence by promoting respect and observance to the law and judicial resolutions (even the most controversial resolutions). In some countries, judicial independence can be strengthened by defending courts against unfair attacks. Others like Mexico seek to press on and lobby towards the amendment of current structures and processes in the judiciary which are sending negative signals to investors about the rule of law in Mexico.

USA

Tariffs and Tension: Cross-Border Restructuring in a New Trade Landscape

By: **A.J. Webb**

Introduction

The Trump-era tariffs and the implementation of the United States-Mexico-Canada Agreement ("USMCA") have reshaped the landscape of North American commerce. For financially distressed companies, these trade policy shifts have introduced new layers of complexity in restructuring and insolvency planning. This article explores how tariffs and trade agreements affect distressed businesses, particularly those with cross-border operations, and how professionals can adapt their strategies to meet these evolving challenges.

I. The Role of Tariffs in Triggering Financial Instability

Tariffs, especially when imposed suddenly or unpredictably, can act as a shock to a company's financial system. Industries that are heavily reliant on cross-border supply chains, such as the automotive sector, have been particularly vulnerable.⁷ The imposition of tariffs on steel, aluminum, and other key inputs has squeezed margins, disrupted liquidity, and has accelerated the risk of corporate insolvency. In its recent bankruptcy case, automotive parts manufacturer Marelli Holdings, who supplies component parts for Nissan and Stellantis, cited tariffs as a key causation factor in which led to its bankruptcy filing.⁸

To illustrate the impacts of tariffs, consider a hypothetical automotive parts manufacturer that sources components from Mexico and is subject to a sudden 25% tariff, which renders its current pricing model unsustainable. Without the swift ability to pass costs to customers or renegotiate supplier contracts, such a company may find themselves in a downward spiral toward financial distress. Tariff volatility might also complicate forecasting and strategic planning, making it harder for companies to secure financing or attract investment.

II. Cross-Border Insolvency Planning under Trade Policy Uncertainty

While the USMCA modernized

aspects of the North American Free Trade Agreement, it did not eliminate the legal and operational complexities of managing financially distressed companies with cross-border operations. These challenges are magnified when trade policies, such as tariffs or export controls, are in flux.

Importantly, restructuring professionals should consider how tariffs affect the valuation of foreign assets, the feasibility of cross-border sales, and the enforceability of contracts. Jurisdictional questions, such as where to file for bankruptcy or how to coordinate proceedings in multiple countries, become more pressing when trade barriers disrupt normal business operations. Such inquiries are critical as poor coordination between domestic and foreign courts can lead to inefficiencies, conflicting rulings, and asset dissipation.⁹

Strategic planning may involve preemptive restructuring of supply chains, reallocation of assets to more favorable jurisdictions, or the use of Chapter 15 of the U.S. Bankruptcy Code to coordinate international insolvency proceedings. An important tool in helping resolve cross-border challenges, Chapter 15 allows a "foreign representative" to petition a U.S. court for recognition of a foreign proceeding. Once recognized, the foreign representative can access U.S. courts, seek relief, and participate in domestic insolvency cases.¹⁰ Chapter 15 is also designed to promote cooperation between U.S. and foreign courts, ensure fair and efficient administration of cross-border cases protect the value of the debtor's assets and facilitate the rescue of financially troubled businesses.¹¹

III. Contractual and Supply Chain Disruptions in Bankruptcy

Tariffs frequently give rise to contractual disputes, particularly in supply chain and logistics agreements where pricing and delivery terms are sensitive to cost fluctuations. In bankruptcy, debtors have a powerful tool under Section 365 of the U.S. *Bankruptcy Code*, which allows them to reject executory contracts that are economically burdensome or no longer beneficial to the estate.¹² This provision can be a critical lifeline for companies locked into unfavorable agreements that have

become unsustainable due to tariff-induced cost increases. By rejecting such contracts, a debtor can shed liabilities, renegotiate terms, or restructure operations without being bound by outdated pricing models. This flexibility is especially valuable in industries where tariffs have disrupted cost structures and supply chain predictability.

Tariff pass-through clauses—contractual provisions that allow suppliers to adjust prices based on tariff changes—have become a focal point of litigation and renegotiation.¹³ In bankruptcy, debtors may challenge the enforceability of such clauses or seek to renegotiate terms to preserve operational continuity. Providing relief from such burdensome contracts is critical as it allows companies to maintain supply chain stability during restructuring. Supply chain disruptions can lead to lost customers, reputational damage, and further financial deterioration. Bankruptcy professionals must balance the need to shed liabilities with the imperative to keep core operations running smoothly.

IV. Tariffs and Financing Challenges in Distressed Situations

Trade policy uncertainty also affects financing. Tariffs can reduce the value of collateral, especially inventory and receivables tied to cross-border transactions, making lenders more cautious. Increased risk premiums and tighter credit conditions¹⁴ can hinder a company's ability to secure post-bankruptcy petition financing or restructure existing debt.

Lenders may demand higher interest rates, additional covenants, or more robust collateral packages. Restructuring professionals must be prepared to negotiate aggressively and present a clear plan for mitigating trade-related risks. Creative financing solutions, such as asset-based lending tied to domestic operations or equity infusions from strategic partners, may be necessary.¹⁵

V. Operational Restructuring: Near-Shoring and Supply Chain Realignment

Tariffs have prompted many companies to reconsider their geographic footprint. Near-shoring—relocating production closer to end markets—has gained traction as a way to reduce exposure to trade barriers

and improve supply chain resilience.¹⁶

Bankruptcy can serve not only as a financial reset but also as a platform for operational transformation. Companies may use the restructuring process to exit unprofitable foreign operations, invest in domestic facilities, or renegotiate labor and logistics arrangements. This dual focus - financial and operational restructuring - can position companies for long-term success in a volatile trade environment or while tariff-related price changes have yet to settle.

Conclusion

The intersection of trade policy and financial distress presents both challenges and opportunities. Tariffs and the USMCA have reshaped the rules of engagement for cross-border commerce, requiring professionals to adapt their strategies accordingly. By understanding the financial, legal, and operational implications of trade policy shifts, practitioners can better guide distressed companies through complex restructurings and toward sustainable recovery.

CANADA

Tariffs, cross-border trade, and the Canadian automotive industry

By: **Robin Squires**

[The author notes that this article was written in August & September 2025, and so its content is time-stamped to that period. Given the speed of change we have seen recently, some of the information contained in this article may be out of date by the time it is read.]

Background

The history of North American trade agreements is, in the eyes of the author, complex and political. The North American Free Trade Agreement (NAFTA) was an early example of a multi-lateral trade agreement involving more than two nations. It came into effect on January 1, 1994.¹⁷ NAFTA effectively added Mexico to the Canada-US Free Trade Agreement, which was already in force, and in doing so, created the largest free trade area in the world.¹⁸

The Canada-United States-Mexico agreement (CUSMA) came into force on

July 1, 2020.¹⁹ CUSMA replaced NAFTA processes and procedures, with the objective of modernizing the program and making it easier for importers and exporters to comply.²⁰ At the time President Trump signed CUSMA in 2018, he called it a "colossal victory" to end the "NAFTA nightmare" and the "best trade deal ever made".²¹

For the automotive sector, CUSMA brought in new rules of origin for goods to increase the levels of North American content in goods for the sector, with the goal of strengthening North American industry.²² In general, the rules of origin under CUSMA for the automotive sector are:

- a 75% regional value content requirement;
- a 70% North American steel and aluminum requirement; and
- a labour value content requirement (that a significant percentage of labour used to manufacture covered goods earned a minimum of USD \$16 / hour).²³

Shortly after CUSMA took effect, the makeup of Canada's automotive industry was principally:

- Assembly of vehicles by five global OEMs
- Nearly 700 parts suppliers supporting the vehicle assembly
- One only five machine-tool-die-and-mould clusters in the world²⁴

As of the end of 2024, only 12% of the vehicles assembled in Canada were sold in Canada.²⁵ This made the automotive sector Canada's second-largest export sector after oil and gas.²⁶

The automotive industry split between Canada and the United States is fairly balanced, but with a slight leaning toward the U.S. as the leader, as shown by the following statistics:²⁷

- The share of parts and vehicles flowing between the U.S. and Canada was \$900M in favour of the U.S. in 2024.
- More than half of parts used in the assembly of vehicles in Canada come from the U.S.
- Canada builds 9% of cars sold in the

U.S., and the U.S. builds 40% of those bought by Canadians.

David Adams is the President & CEO of Global Automakers of Canada. The members of his organization account for:

- 62% of vehicles sold in Canada in 2024 with 1,152,000 vehicles sold
- 70% of vehicles produced in Canada with Honda and Toyota producing more than 957,000 units
- 110,486 people directly employed in Canada in dealerships, vehicle assembly plants, regional offices etc. and our members support an additional 106,773 indirect jobs across the country
- \$24.9 B contribution annually to Canada's GDP
- \$10.6 B in government revenue annually
- 56% of the total investments in vehicle assembly and EV battery cell manufacturing (realized or announced) = \$25.2 B²⁸

There is no doubt that the topic of tariffs for the automotive industry is of significant importance to Canadians.

Regardless of the economics, since NAFTA, the automotive industry's reliance on supply from both sides of the border has become extremely complex and integrated. As an example, auto parts can cross over the U.S.'s northern border and southern border as 8 times for various manufacturing steps and finishing requirements before they are installed. This perhaps makes it easier to understand the treatment of the automotive supply chain under CUSMA.

Timeline of Recent Events

CUSMA also prescribed that a mandatory review was to take place in 2026. Initially, in Canada, government and industry seemed poised to try for a simple rollover of CUSMA into another identical deal.³⁰ However, this was seen as an unlikely outcome by some due to the unrest in the United States regarding certain areas of trade including the automotive sector.

After President Trump's re-election, he began commenting on what he called an unacceptable trade deficit with Canada. He

also began making negative references to CUSMA, going so far as to say "I look at some of the deals made. I say: 'Who the hell made these deals? They're so bad.'"³¹

On March 4, 2025, the United States imposed by Executive Order a 25 per cent tariff on the importation of nearly all Canadian-origin goods (10 per cent on certain energy-related exports). The tariffs were implemented under the International Emergency Economic Powers Act (IEEPA).

Days later, the United States announced that goods imported from Canada that qualify for duty-free preferential treatment under the Canada-United States-Mexico Agreement (CUSMA) would be exempted from the tariffs. This exemption remains in effect.

The changes in situation have led to significant uncertainty within the industry, with resultant cost instability, procurement delays and lack of investment in the sector.³²

Current Situation

The potential lost investment that companies face due to the assumption that CUSMA would continue to rule the day is just one aspect of the crisis facing the Canadian automotive industry in light of the see-sawing of tariff measures. President Trump appears to be thinking about U.S. absorption of the Canadian automotive industry, at least in the initial phase of his tariff announcements. Given the interwoven nature of the industry in all three countries in North America, doing so would be an extremely complicated manoeuvre. This may be why the President has backed off of some of his efforts, and, for now, left CUSMA alone. After all, if the outcome was the dismantling of the current supply chain such that the U.S. went forward alone, it has been estimated that it would cost \$50 billion, which would have to be passed on to the consumer.³³

Impacts on Canadian auto industry

How all of this will ultimately impact on the Canadian automotive industry remains to be seen. The industry may have to choose from some unpalatable options, including shutting doors, reducing scope, or evolving to meet the challenge. The difficulty is knowing what the final position will be so

that an informed business decision can be made.

Practical Effects

We have already seen some practical effects of this uncertainty. There have been significant job losses in the transportation, warehousing, and manufacturing sectors in Canada.³⁴ Due to the uncertainty, it appears that much of the industry is in a holding pattern, with the key impact being a pause on any significant investments in the sector.³⁵

From a legal perspective, the opportunities are growing. There is a need for legal advice on labour strife, layoffs, and reorganizations. Trade law advice is becoming more critical than ever before.

Importantly, there is a need to revisit contracts throughout the supply chain and renegotiate aspects that are impacted by the tariffs. Some examples of contractual principles or remedies that should be carefully examined are *force majeure* clauses and the doctrine of frustration.

Force majeure: Some *force majeure* clauses allow non-performance in cases of governmental action, but this is entirely dependent on the clause and the circumstances. This issue arose many times during the COVID-19 pandemic due to government restrictions on a number of activities. For example, in *Windsor-Essex Catholic District School Board v. 2313846 Ontario Limited o/a Central Park Athletics*,³⁶ school boards rented facilities from Central Park Athletics, but could not use them during the period from March 17 to August 11, 2020 due to the government restrictions in place. The school boards argued that the *force majeure* clause in their agreement applied, and so rent should be abated for the period. The clause included "restrictive governmental laws or regulations" as a *force majeure* trigger. The court agreed, and determined that rent was abated for the period in question.

However, the situation of tariffs is likely to receive different treatment in Canada. In *Canadian Pacific Railway Company v. Univar Canada Ltd.*,³⁷ the Federal Court of Canada considered a decision of the Canadian Transportation Agency and a *force majeure* clause in a rail dispute. In the outcome at the Agency and on appeal to the Federal Court, CP Rail (as it was then) was found not

to have met its level of service obligations to provide direct rail service to its customer, and was therefore ordered to take remedial measures. The reason why CP could not provide the required service levels was that the only bridge that serviced the customer was severely damaged by fire. CP declared a *force majeure* event and declined to continue service by repairing the bridge. The court considered CP's argument that *force majeure* had been triggered, and disagreed. While the *force majeure* clause contained language that included fire as a trigger, the clause also contained the clause "[l]ack of funds shall not be considered an event of *force majeure*". While the tariff argument did not play a central role in the overall decision to require CP to provide service to its customer, the court considered the role money can play in considering a *force majeure* event. It approved the statement from the Agency that the costs of living up to promises by a service provider are not necessarily determinative of whether a *force majeure* event can be triggered. It is only where the costs are so disproportionate to the initial bargain that they may tip the balance and allow the *force majeure* clause to apply.

Frustration of contract. In the case of *Braebury Development Corporation v. Gap (Canada) Inc.*,³⁸ the Gap argued that it was unable to pay rent for one of its leased properties due to the COVID-19 lockdowns. The court found that payment of rent was not an act that was excused under the *force majeure* clause, even though the Gap argued that the COVID-19 pandemic was not foreseeable at the time the lease was negotiated. The lease in the case contained language that made rent payable despite a *force majeure* event, so the court moved on to consider the doctrine of frustration of contract. Based on the analysis the court used in that case, frustration of contract is another possible shield parties have in the current tariff situation under Canadian law.

The Gap argued that the lease was frustrated because the lockdowns made the bargain radically different from the expectations of the parties, and Gap's performance had been rendered impossible. The court considered the Supreme Court's definition of frustration:

Frustration occurs when a situation has arisen for which the parties made no provision in the contract and performance of the contract becomes 'a thing radically different from that which was undertaken by the contract'.³⁹

The court then found that:

[T]o radically alter the terms of the lease, the supervening event must not merely increase the burden of satisfying the contractual obligations, but must "affect the nature, meaning, purpose, effect and consequences of the contract so far as concerns either or both parties."⁴⁰

The court considered the following factors in finding that the doctrine of

frustration did not apply in this case:

- The lease did not require the Gap to operate a retail store, which was what was not possible during the pandemic lockdowns;⁴¹ and
- For frustration to be available, the situation must not be temporary only.⁴²

Based on this understanding of the case law, then, a party may be able to avoid an existing agreement due to the unforeseen tariff situation based on frustration of contract. To do so, however, the objective of the agreement must be arguably impossible to achieve, and the court will have to agree that the situation is so enduring as to be permanent.

Legal Advice and the Correct Lens

The tariff situation is by no means

stable, and this creates a good deal of uncertainty with regard to any legal advice. However, seeing the problem through that lens and making clients aware of the fact that advice is given based on the situation at hand can help to make advice suited to purpose. Lawyers should carefully consider the impact of the situation on performance under existing contracts and encourage clients to leverage their commercial relationships to renegotiate wherever possible. Lawyers should also try to keep up with tariff developments and obtain a general understanding of trade law. Following the above tips can make lawyers invaluable resources to their clients that are seeing impacts of the uncertainty on their business. 

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Water Carrier Statutes and Regulations – FMCSA Says “Goodbye” Through Regulatory Reforms



Jonathan Todd* and
Phil Nester*



Water carriers have a moment of clarity on the horizon. An area of conflict between legal jurisdiction and technical obligations is being settled through Trump Administration regulatory reforms. In May 2025, the U.S. Department of Transportation's Federal Motor Carrier Safety Administration ("FMCSA") issued a Notice of Proposed Rulemaking ("NPRM") to eliminate requirements for "water carriers" that have become obsolete over the decades.

This change is part of an overall approach to regulatory reforms by the Trump Administration, the policy objective, which was first announced by Executive Order shortly after Inauguration Day. The stated aim is to "significantly reduce the private expenditures required to comply with Federal regulations". The president also announced a Ten-to-One initiative in the Executive Order and a separate Fact Sheet that aims to remove 10 regulations for every new regulation that goes into effect. The regulatory compliance cost of this approach is intended to reduce incremental costs to less than zero.

The comment period on the FMCSA's NPRM ended on July 29, 2025. If finalized, it will signal low levels of regulation for the transportation mode due to the FMCSA's acknowledgment that it will not exercise jurisdiction.

The FMCSA had long held

technical jurisdiction over certain water carrier activities, together with the Surface Transportation Board ("STB"). The statutory definition for "water carrier" found at 49 U.S.C. § 13102 refers simply to "a person providing water transportation for compensation," which includes traffic over the U.S. inland waterways or in the noncontiguous domestic trades. It did not refer to traffic in the international trades, which is subject to Federal Maritime Commission ("FMC") jurisdiction. In practice, the term "water carrier" includes barge operations, other brown water vessels, and blue water vessels that do not service foreign traffic.

Legacy statutes addressing water carriage resulted in interesting legal effects, despite the low level of regulation. As one example, third parties who arranged for water carriage were often technically required to hold "freight forwarder" registration with the FMCSA pursuant to 49 U.S.C. §§ 13102(8), 13901, and 13903. This effect resulted from the broad-sweeping definition of freight forwarder as one who provides for transportation, including by water carrier, through assembling, consolidating, distributing, and assuming responsibility for cargoes. In contrast, the STB had no technical licensing or permit requirement for forwarders.

This scenario of water carriers remaining "on the books" under Title 49 without any meaningful regulation arose out of the *Interstate Commerce Commission Termination Act of 1995* ("ICCTA"). Water carriage along with other modes of transportation, including interstate motor carriage, were subject to tariff filing requirements and rate restrictions prior to the wave of deregulation that started in 1980. The passage of ICCTA eliminated the

Interstate Commerce Commission and in part established the STB to regulate rates and services. Statutory references to water carriage remained without any meaningful regulatory activity in the subsequent 30 years, despite the FMCSA maintaining technical jurisdiction over the mode.

Today, the FMCSA's stated position is that it "does not specifically regulate water carriers except to the extent that such carriers also engage in motor carrier operations. In such cases, the existing FMCSRs provide appropriate coverage of the carrier's motor carrier operations." This is true to the name of the Administration (the "Motor Carrier Safety Administration") and thus amounts to an admission that the water carriage language is a historic holdover without any contemporary purpose. The FMCSA does not and will not seek to assert oversight of those domestic water carrier operations. The last remaining agency with jurisdiction is the STB.

Although the STB has jurisdiction over domestic water carriers under Title 49, the agency narrowly construes its power and rarely exercises its authority in this regard. For example, the licensing and registration requirements under 49 U.S.C. § 13102 include water carriers and freight forwarders that operate in domestic inland waterways and the noncontiguous domestic trade of the U.S. (to or from Alaska, Hawaii, or the U.S. territories), but the STB does not impose these obligations or engage in related enforcement activities. In large

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part, the STB's regulatory posture for water carriage is reactive and event-driven to adjudicate the occasional tariff rate or charge dispute or service-related complaints that arise in noncontiguous domestic trade.

The passive posture of the STB stands in contrast to the active oversight and role exercised by the FMC as the sole regulator for the common carriage of goods by water in the foreign commerce of the U.S. 46 U.S.C. § 40101. Under the *Shipping Act*, the FMC regulates international ocean transportation that supports the U.S. economy and protects the public from unfair and deceptive practices by enforcing licensing, registration, and bond requirements, monitoring the compliance of ocean practices and services, as well as filing requirements for tariffs, rates, charges, and service contracts, and the agency administers an adjudicatory system with administrative law judges versed in admiralty and maritime law, the *Shipping Act*, and related regulations. FMC

jurisdiction excludes domestic water carriage. Such services operating under the Jones Act and other purely domestic trades fall outside the scope of the *Shipping Act* and FMC jurisdiction, which emphasizes the regulatory gap between the domestic and foreign waterborne commerce of the U.S.

Although the FMCSA confirmed in its NPRM that it would no longer interpret its statutory jurisdiction to reach domestic water carriers or their intermediaries, the underlying statutory provisions have not been repealed. Indeed, the definitions of "carrier" and "freight forwarder" under 49 U.S.C. § 13102, and their corresponding registration requirements under 49 U.S.C. §§ 13901 and 13903 remain intact. Despite the fact that the FMCSA disclaims its regulatory authority over water carriers that are not engaged in motor carrier operations, the underlying statutory framework for water carriage remains. Accordingly, while the agency's position represents meaningful

progress in regulatory clarification and deregulation, it does not amount to a statutory repeal or removal.

For industry participants, the net practical effect is substantial in that the FMCSA's retreat eliminates longstanding ambiguity about registration requirements for carriers, freight forwarders, and brokers in the domestic water context. With the STB maintaining its passive posture and the FMC well outside the domestic domain, regulatory obligations for domestic water carriage have been reduced to near zero. Service providers performing in the inland and noncontiguous trades can now operate with greater legal certainty and reduced compliance friction – free to focus on service delivery and market competitiveness rather than navigating legacy enforcement risks. The statutes may remain on the books, but the regulatory environment will align with commercial reality. 

Director and Officers' liability and the Load Brokers' Trust Obligation under the Ontario *Highway Traffic Act*

Kim E. Stoll *



Ontario continues to be the only province in Canada requiring that persons who arrange for carriage, typically load brokers who are "load arrangers," must hold "in trust" any freight charges earmarked for the associated carriers.

Prior to the enactment of the current *Highway Traffic Act* ("HTA")¹ provisions, rather familiarly even today, carriers were frequently at the mercy of unscrupulous or eventually insolvent load brokers that had already received freight payment from the shipper, but who then, unsurprisingly, failed to pay the carrier.

To attempt to combat this problem, the *Load Brokers Regulation* (Ontario Regulation 556/92) under the former Ontario *Truck Transportation Act*² was enacted to regulate the activities of load brokers. Regulation 556/92 required load brokers to register with the Ministry of Transportation, to obtain and maintain a surety bond and to hold "in trust" those funds that a load broker owed to carriers for freight charges. To most carriers, this regulation was ineffective, especially given the lack of enforcement by the Ministry of Transportation.

Deregulation efforts saw the repeal of the Ontario *Truck Transportation Act* and Regulation 556/92 as of January 1, 2006. One provision of the *Load Brokers Regulation* was reborn as part of the *Highway Traffic Act*, specifically, Section 191.0.1(3) for the trust fund requirement, applying to all "persons" (which arguably may include any carrier who sub-brokers a load). This section continues to be important as a tool for carriers to collect freight charges (particularly in bankruptcy and

insolvency situations) though there continues to be no regulatory "teeth" to enforce such trust provisions in the normal everyday course of business. The trust protection afforded to carriers regarding freight owed by Ontario-based load brokers is based on an honour system. While not specifically enforced in any way, that provision has been a key factor in priority disputes where the load broker has declared bankruptcy or entered into voluntary receivership.

Case law continues to be limited regarding how the courts have dealt with carrier claims in priority disputes or whether the corporate veil will be lifted, allowing for personal liability of officers and directors, where funds are not held separately in trust.³

Outside of priority disputes, lack of enforcement and litigation regarding unpaid freight charges often leaves the carrier unpaid and opens the doors for legal creativity.

The Legislation - The Statutory Trust

Contracts of carriage

191.0.1 (1) Every contract of carriage for a person to carry the goods of another person by commercial motor vehicle for compensation shall contain the information required by the regulations and shall be deemed to include the terms and conditions set out in the regulations. 2002, c. 18, Sched. P, s. 34.

...

Money for contract of carriage held in trust

(3) A person who arranges with an operator to carry the goods of another person, for compensation and by commercial

motor vehicle, shall hold any money received from the consignor or consignee of the goods in respect of the compensation owed to the operator in a trust account in trust for the operator until the money is paid to the operator. 2002, c. 18, Sched. P, s. 34.

Other rights unaffected

(4) Nothing in subsection (3) derogates from the contractual or other legal rights of the consignor, the consignee, the operator or the person who arranged for the carriage of the goods with respect to the money that is held in trust under that subsection. 2002, c. 18, Sched. P, s. 34 (emphasis added).

Personal Liability of Directors and Officers for Freight Charges

There is an avenue that might assist when the carrier is left unpaid by an insolvent or unscrupulous load broker or such other person taking control of such arrangements. This involves consideration of the trust and the exposure of certain individuals to liability. Success will depend very much on the facts.

Personal liability of directors of closely held corporations for breach of trust by the corporation was considered by the Supreme Court of Canada in *Air Canada v. M&L Travel Ltd.*, [1993] 3 SCR 787 ("Air Canada").

* Gardiner Roberts LLP

Iacobucci J. for the Court held, at page 26,

"...whether personal liability is imposed on a stranger to a trust depends on the basic question of whether the stranger's conscience is sufficiently affected to justify the imposition of personal liability"

There are two bases on which personal liability can attach:

(1) As trustees *de son tort*, where such persons, "although not appointed trustees, 'take on themselves to act as such and to possess and administer trust property'" Trustees *de son tort* are personally liable only if he or she "commits a breach of trust while acting as trustee."

(2) Strangers to the trust who knowingly participate in a breach of trust. This basis of liability is established where a person is either "in receipt and chargeable with trust property" in his or her personal capacity (referred to as "knowing receipt") or is "knowingly assist[ing] in a dishonest and fraudulent design" (referred to as "knowing assistance") (at p. 28).

Knowing assistance may be proved by actual knowledge, recklessness, or willful blindness (at p. 29). If a trust is created by statute, the trustee "will be deemed to have known of it" (at p. 30).

Receipt of a benefit as a result of the breach of trust "may ground an inference that the stranger knew of the breach", but this is neither a sufficient nor a necessary ground (at p. 30).

There were two lines of cases with respect to the "knowing assistance" branch: one requiring fraudulent and dishonest conduct, and the other requiring only innocent or negligent breach of trust if the person knowingly assisted in that breach of trust. Iacobucci J. held, at p. 42, that "a stranger will be liable if he or she knowingly assisted the trustee in a fraudulent and dishonest breach of trust," so, therefore, "it is the corporation's actions which must be examined."

Iacobucci J. referred to *Scott v. Riehl* (1958), 15 DLR (2d) 67 (BCSC) where the

directors of the defendant corporation failed to comply with the statutory trust in the *Mechanics' Lien Act*, 1956, SBC 1956, c. 27. Funds payable to the corporation were deposited into one bank account that was always overdrawn. The director and president of the corporation knew that monies deposited should not be used for the general purposes of the company in abuse of the trust. The Court found that the corporation was the instrument of its operation, but the defendant was the director and the acts of the corporation, while not physically his, were entirely directed by him. The director received a benefit from this breach of trust of payment of his salary out of the account into which these trust funds were paid. In such circumstances, not only the principal, but also the agent was liable.

Iacobucci J. also referred to *Wawanesa Mutual Insurance Co. v. J.A. (Fred) Chalmers & Co.* (1969), 7 DLR (3d) 283 (Sask. QB) where the defendant corporation was under a statutory obligation to hold premiums in trust for the insurer. The defendant corporation collected insurance premiums and deposited them into its general account from which office expenses and salaries had been paid. The personal defendant also transferred funds between two of his businesses. The judge held that the conversion of the trust funds to other purposes was a wrongful or illegal act or series of acts and that the breach was inspired and directed by the personal defendant who made all the corporate decisions. The personal defendant was found liable for the plaintiff's loss.

The proper description of fraudulent and dishonest conduct is, therefore, the taking of a risk to the prejudice of another's rights, which risk is known to be one, which there is no right to take. Iacobucci J. held, at page 43, that the taking of a knowingly wrongful risk resulting in prejudice to the beneficiary is sufficient to ground personal liability.

With respect to the knowledge requirement, Iacobucci J. held, at page 44, that such requirement would not generally be a difficult hurdle to overcome in cases involving directors of closely held corporations because they, if active, usually have knowledge of all of the actions of the corporate

trustee. Where the personal defendant knew that the trust funds were being deposited in the general bank account, this constituted actual knowledge of the breach of trust.

Load Broker Cases

There is recent case law in this area from the Court of Appeal for Ontario.

(a) *Paul's Transport Inc. v. Immediate Logistics Limited*, 2022 ONCA 573

A number of procedural issues arose in this matter. The case is actually cited often for its decision relating to the expression of and quantum of interest applied on outstanding invoices. However, the Court also fielded a breach of trust obligation issue. For the purposes of this paper, the review is restricted to the appeal regarding whether the HTA trust obligation can be imposed directly upon directors and officers of a load broker.

Immediate Logistics Limited ("Immediate") was a carrier and load broker that verbally contracted with a carrier, Paul's Transport Inc. ("Paul's"). Paul's performed carriages at the direction of Immediate, moving goods for Immediate's shipper customers. After completing its carriage mandate, Paul's would invoice Immediate for its freight charges for its carriage services. Immediate would receive payment for the invoice that it in turn provided to its shipper customers. Immediate then, in the normal course, would pay Paul's invoice.

Immediate, however, shut down its business leaving Paul's unpaid on certain freight charges even though Immediate had been paid by their shipper customer in respect of Paul's services. Paul's statement of claim specifically alleged a breach of the HTA trust obligation to hold any monies received in this regard in trust until paid to Paul's. Immediate's principal, William O'Connor, was also named as an individual defendant ("O'Connor"). Paul's alleged that O'Connor as director, officer, and manager had consented to, acquiesced, or directed Immediate to breach the statutory trust obligation. The motions judge agreed, finding that O'Connor had admitted to personally sending Immediate's invoices to their shipper customers then

receiving funds from those customers and depositing same into the company's general account and not a designated trust account as required under the HTA.

The motions judge found that Immediate was in breach of the trust obligation by failing to utilize a trust account to protect the carrier's funds, improperly diverting those funds to others when the funds should have been held and paid out to Paul's benefit. This occurred even though O'Connor knew or ought to have known that Paul's was unpaid and the funds should have been earmarked and held in trust for Paul's. O'Connor knowingly assisted Immediate to commit the breach. Judgment was rendered against Immediate and O'Connor for damages of \$220,000.

Immediate and O'Connor appealed. The Ontario Court of Appeal agreed with the motions judge calling Immediate's actions at page 32, "fraudulent and dishonest" and then applying the test in *Air Canada v. M & L Travel Ltd.*, noted above, as having taken "a risk to the prejudice of the beneficiary, knowing it had not right to take the risk." Immediate knew that diverting statutorily earmarked funds meant for Paul's to others increased the risk that Paul's would not be paid, which was prejudicial to Paul's. The Appeal Court confirmed that O'Connor had actual knowledge of the breach by Immediate of the trust requirement to hold funds in trust and their diversion to others and consented to or acquiesced in or directed Immediate to do so. O'Connor was deemed to have knowledge of the trust as it was imposed by statute.

The appeal was dismissed with costs to Paul's.⁴

(b) *Sager Transport Ltd. v. Varga Trucking Ltd.*, [2004] OJ No 4923 ("Sager")

Sager considered the issue of whether the HTA trust obligation can be imposed personally on directors and officers of a load broker. The defendant, Varga Trucking (operated by its principals Dennes and Candace Varga), occasionally operated as a load broker by "double-brokering" loads to other carriers. The Court held that monies paid to Varga by various shippers did not go to pay the plaintiff carrier *Sager's* invoices but rather went to the "ultimate benefit" of

the personal defendants.

Justice Harris referred to *Commercial Union Life Assurance Company of Canada v. John Ingle Insurance Group Inc. et al.* (2002), 61 OR (3d) 296 (CA) where Weiler J.A. held that the personal defendant not only had knowledge of the breach of trust (as majority shareholder of the corporation, as the person who directed that the premiums be withheld, and who "benefited significantly" from the withholdings by developing the business) but "as the directing mind... participated or assisted in the breach of trust" (at para. 72). Weiler J.A. also held that if a statutory trust exists, the corporation is deemed to have knowledge that the monies are to be held in trust because it is deemed to have knowledge of the law.

Weiler J.A. also referred to *Wawanasa*, noted above, that was referred to by the Supreme Court in *Air Canada* for the proposition that "liability for breach of trust is not confined to express trustees, but extends to all who are actually privy to the breach," where the breach of trust was "inspired and directed by [the personal defendant] who made all the corporate decisions" (at para. 74).

Justice Harris, (at para. 12), referred to *Air Canada* for the proposition that:

"Irrespective of good faith or intent, in an instance where a corporation had a duty to pay out funds from the designated proceeds but such proceeds were used for other purposes, the directors were held personally liable because they had a duty to see that the funds were used for the agreed upon purpose and they could not excuse themselves on the grounds that they did not dissipate or misappropriate the funds nor were they, in other respects, derelict in their duties."

The judgment was given against the corporate and personal defendants for breach of the statutory trust.

(c) *Sunbelt Transport Inc. v. Bonair Logistics Inc.*, 2006 CanLII 5460 (ON SC)

In this case the plaintiff moved unsuccessfully for summary judgment against the sole director and officer of the load broker.

Applying *Air Canada v. M & L Travel Ltd.*, noted above, the Court observed that the director's evidence of his non-involvement in the routine business of the corporation had not been contradicted and that the plaintiff's position amounted, in essence, to holding the director personally liable simply because he was the sole director and president.

The Court considered *Sager*, noted above, as proof of the proposition that the directors of the load broker could be held personally liable on the basis that they had a duty to ensure that the funds were used for their proper purpose. However, as the trust funds in *Sunbelt* were distributed to entitled carriers other than the plaintiff, and because the defendant director of the load broker was not personally involved in the business of the defendant, *Sager* was distinguished on the basis that the two directors in that case had been found to have substantial involvement in the corporation's affairs.

(d) *4 Star Courier & Logistics Inc. v. Domino's Pizza Canadian Distribution ULC*, 2012 CanLII 98318 (Ont Sm Cl)

In this Ontario Small Claims Court case, Deputy Judge Winny also held that the statutory trust obligation imposed on load brokers could be extended to directors of the corporation if the requirements in *Air Canada*, noted above, could be made out. The Court confirmed that *Air Canada* applied to statutory trusts.

The Court stated that the HTA trust obligation is not one imposed on the directors personally. The Court also vigorously critiqued *Sager*, noted above, and held, that while directors could be personally liable for the breach of a load broker's statutory trust if certain factors exist, the suggested presumptive liability or reverse onus regarding the director's personal liability, as found in *Sager*, was contrary to the appellate jurisprudence.

The Court ultimately dismissed the case on the basis that there was no evidence that 4 Star's director knowingly assisted in the breach of the trust obligation.

Despite dismissing the action for evidentiary reasons, an identical conclusion about the state of the law as concerns

load brokers was also made in *Travelers Transportation Services Inc. v 14155557 Ontario Inc.*, 2011 ONSC 44.

(e) *Tripair Transportation LP v. U.S. Consolidators Inc., Linda Earle-Barron and Jonathan Turner*, heard August 2012, Court file SC-1100001987-0000 (Brampton) (unreported)

In this Ontario Small Claims Court case, a carrier sued a load broker along with its three officers and directors for a number of unpaid invoices.

The broker had segregated any freight charges owing to the carrier "in trust" as is required pursuant to the HTA trust obligation. The broker was insolvent and was no longer operating. The personal defendants defended on the basis that they were not liable for the obligations of the load broker as it was an incorporated company.

The trial judge held that the load broker had committed a breach of the HTA trust obligation. The load broker, via the evidence of the personal defendants at trial, admitted that the work was performed and invoiced by the carrier and that monies were received from the various shippers and deposited into a general account and not a

separate trust account. From that account, other creditors of the load broker (including rent and payroll) were paid before the carrier's obligations. The Court found that the fact that the funds were deposited into a general account and not segregated into a specifically designated trust account was, in itself, an act of a breach of trust, as was remittance of those trust funds to entities other than the carrier beneficiary. The broker had subsequently become insolvent and had no assets with which to satisfy any creditor or any judgment for the unpaid invoices.

Per *Air Canada*, the Court further held that two of the three corporate directors and officers "knowingly assisted" the corporation in its breach of trust. To prove "knowing assistance," the directors and officers were required to have actual knowledge (or be reckless or willfully blind) of the corporation's breach of trust and that the disbursement of trust funds was in breach of trust.

The judge imposed personal liability upon two of the corporation's three directors and officers for the corporation's breach of trust as each was personally aware of the corporation's breach of the statutory trust given their intimate knowledge of

the day-to-day running of the corporation and were aware of the details of the broker corporation's accounts.

One director had received trust funds directly from the subject general account pursuant to a contractual agreement and the other director had authorized payment of the trust funds to other creditors despite the requirement that they were to be held in trust. This latter director received a salary and certain benefits paid from the general account and admitted that he and the other director knew that the funds received by the shippers as payment for freight were to be paid to Tripair, but that Tripair remained unpaid. The directors, therefore, not only were deemed to be aware of the trust obligation imposed by the HTA and that such disbursement of funds was in breach of the statutory trust, but they were also found to be fully aware of the broker corporation's breach of trust.

Finally

It is clear that the HTA trust obligation should also be directly addressed in the drafting of the terms of any transportation agreement. 

Endnotes

- ¹ R.S.O 1990 c. H8, as amended.
- ² R.S.O 1990 c. T. 22, repealed January 1, 2006.
- ³ This topic is not the focus of the issues herein and requires its own article.
- ⁴ Gordon Hearn and Conal Calvert of Gardiner Roberts were counsel appearing for Paul's.

Too Quick to Settle? Barriers to Enforceable Settlement Agreements in Canada Remain a Concern



Michael D. Grodinsky* and
Kabrina Péron *



Settlement agreements following the termination of employment are a common tool used by employers in Canada. These agreements help resolve, at an early stage, a multitude of claims, complaints, or legal proceedings that an employee may have against their former employer arising from the termination of their employment.

Recently, case law has shown a trend toward limiting the effectiveness of settlement agreements for Canadian employers that are subject to federal regulation, when resolving unjust dismissal complaints under the *Canada Labour Code* (the “CLC”).

In *Bank of Montreal v. Li*, 2020 FCA 22, the Federal Court of Appeal held that the Canada Industrial Relations Board (the “CIRB”) retains jurisdiction over an unjust dismissal complaint filed within the statutorily prescribed 90-day deadline, even where the employee has signed a full and final release of claims against their employer.

This article will highlight this emerging – and concerning – trend in the case law and offer practical guidance for federally regulated employers in Canada.

Which Employers are Federally Regulated in Canada?

In Canada, an employer falls under

federal jurisdiction if its activities are within the industries listed in the CLC, such as, for example, interprovincial (or international) ground or air transportation, railways, shipping, banking, telecommunications, and postal services.

Employers outside these industries are generally subject to the applicable provincial employment standards legislation in the jurisdictions in which they operate. In fact, most employers in Canada are provincially regulated.

For unionized employees of federally regulated employers, employment conditions are governed by the relevant collective agreement. For non-unionized employees, the CLC establishes minimum employment standards and protections, including rules on termination, severance, and unjust dismissal complaints. The CLC also addresses various protections pertaining to employee health and safety and labour relations.

Background: *Bank of Montreal v. Li*, 2020 FCA 22 (the “BMO Decision”)

In this case, the employee had worked for the Bank of Montreal (“BMO”) for nearly six years. As one of Canada’s big six banks, BMO falls under federal jurisdiction, meaning the employee’s conditions of employment were governed by the CLC, which provides a 90-day period to file an unjust dismissal complaint in the event the employment relationship is severed (or the employee believes they have been subject to constructive dismissal).

Upon termination of employment, the employee entered into a settlement agreement with BMO in exchange for a lump-sum payment, releasing the employer from all claims related to their termination.

Despite this comprehensive release, the employee filed an unjust dismissal complaint under the CLC. BMO challenged the CIRB’s jurisdiction, arguing that the signed agreement barred the complaint. The matter proceeded to the Federal Court of Appeal, which held that the settlement agreement did not prevent the employee from filing a complaint. The Court emphasized that section 168 of the CLC, stipulating that rights under the CLC prevail over any contract or arrangement, takes precedence.

However, the Court noted that any amounts paid under the settlement would be considered when determining remedies if the complaint were upheld.

Since the *BMO* decision, this approach has gained traction and is increasingly influential among certain adjudicators in the federal sector.¹

Possible Blindspot in the BMO Decision: Section 241.2 (1) of the CLC

One important point to note is that the *BMO* decision does not address section 241.2(1)(a)(iii) of the CLC which expressly allows the CIRB to reject an unjust dismissal complaint if “the complaint has been settled in writing between the employer and the complainant.” For this provision to apply, the settlement must be in writing.

However, section 241.2 was not in force when the facts underlying the *BMO*

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(Montreal, Canada)

decision arose.

In practice, some adjudicators suggest that this argument may only succeed where the complaint is filed after the 90-day limitation period – particularly given section 168 of the CLC, which states that rights under the CLC prevail over any agreement, including a settlement agreement.

While not a guaranteed defence, it remains a strategic preliminary objection worth considering.

Implications for Employers

In conclusion, employers should be aware that employees may still file an unjust dismissal complaint within 90 days

of termination, even after signing a settlement agreement. If the complaint is filed after the 90-day period, employers may raise a preliminary objection to the CIRB's jurisdiction under section 241.2 of the CLC, provided a written settlement exists.

The reasoning in the BMO decision raises an interesting question: have tribunals transformed the 90-day filing period under the CLC into a "cooling-off" period of sorts – similar to certain statutory cooling off periods that exist in the United States.

Practical Recommendations

While it does not completely offset the risks that an employee files a complaint for

unjust dismissal, we recommend the following practical advice:

- Include a provision in which the employee expressly waives their right to file an unjust dismissal complaint, which may have a deterrent effect.
- Consider only paying the statutory minimum to the employee in the 90-day limitation period following a dismissal and offering to provide additional compensation if no unjust dismissal complaint is made within the 90-day period.
- Consider deferring the payment for more than 90 days (deadline for filing a complaint). 

Endnotes

¹ *Verma v. Banque SBI Canada*, 2025 CCRI 1177; *Posca v. Banque Royale du Canada*, 2023 CCRI 1092.

Reform of the Special Road Train Operating Permit: Toward Increased Safety



Brian Lipson* and
Marion Couture-Trudel*



On September 3, 2025, a Draft Regulation (the **"Draft Regulation"**) was published in the Gazette officielle du Québec,¹ with a view to reforming the *Special Road Train Operating Permits Regulation* (the **"Regulation"**)². If the Draft Regulation is adopted, a "satisfactory" safety rating will now be required in order to obtain a special permit for the operation of a road train.

As a reminder, a road train consists of a combination of road vehicles comprising a tractor, a semi-trailer, and one of the following vehicles: a dolly, a semi-trailer or a trailer. Large road trains are road trains that exceed the normally permitted dimensions and require a special permit to operate. In short, large road trains allow for the transport of large quantities of low-weight goods and look like this:



Québec regulates the operation of large road trains via the Regulation, administered by the Ministère des Transports et de la Mobilité durable (the **"Ministère"**). Even when a carrier is only transiting through the province, it must hold a valid permit.

The special operating permit applies to a single road train and not to an operator's entire fleet. The permit is required for at least one of the vehicles that make up

the road train and is a separate formality from the registration of each vehicle and registration as a carrier. However, a single permit is sufficient for the entire road train. In other words, the operator can obtain a permit for a dolly, which allows them to use a Type A or C road train (as applicable) with any semi-trailers.

Current Steps for Obtaining a Permit

To obtain a special permit under the Regulation, the carrier must submit an online application to the Ministère, accompanied by the following information:³

- The carrier's contact information and required identification numbers (registration number in the register of owners and operators of heavy vehicles or proof of registration in another province or U.S. state);
- The contact information of the person responsible for the customer account;
- The licence plate or identification number of a vehicle of the road train;
- The desired period for which the permit is applied for.

Safety Rating: A Secondary Issue Until Now

As you probably already know if you have read this far, any carrier whose heavy vehicle is registered in Québec, and any American carrier wishing to operate a heavy vehicle in Québec, must register with the Commission des transports du Québec (**"CTQ"**) to obtain a Register Identification Number (**"RIN"**) in the Register of Owners

and Operators of Heavy Vehicles (*Registre des propriétaires et des exploitants de véhicules lourds* or **"RPEVL"**).⁴ The CTQ assigns each carrier a safety rating: "satisfactory," "conditional," or "unsatisfactory." For its part, the Société de l'assurance automobile du Québec (the **"SAAQ"**) maintains a file on each carrier and monitors its conduct to ensure compliance with applicable laws and standards. The file reflects the carrier's compliance with the *Heavy Vehicle Owner and Operator Assessment Policy*⁵ and may be heavily impacted by violations of the *Highway Safety Code*, including those related to the operation of large road trains. The accumulation of events such as at-fault accidents, non-compliant inspections, and regulatory violations can eventually lead to the CTQ modifying the carrier's safety rating.

However, the Regulation in its current form does not take this rating into account in respect of granting or renewing a special permit for operating a road train. Officials have no discretion in this matter. In other words, a Ministère official who receives an application for a special permit from an operator with a RIN, but with an "unsatisfactory" safety rating, *must* issue the special permit.

Ongoing Regulatory Reform

The Draft Regulation aims to amend the Regulation and the *Vehicle Load and Size Limits Regulation* (**"Regulation**

* McCarthy Tétrault LLP (, Canada)

R-31"),⁶ with a view to harmonizing Québec regulations with two Memoranda of Understanding to which Québec is a signatory;⁷ simplifying the regulatory framework; incorporating new safety standards; and facilitating the application of applicable rules.

New Safety Requirements

The Draft Regulation introduces several technical standards relating to road trains into Regulation R-31, including:

- maximum trailer device setback;
- minimum wheelbase for semi-trailers;
- effective rear overhang;
- minimum axle spread in a tandem or tridem axle group;

- damper type pintle hook hitch with a secondary locking mechanism;
- maximum position of the fifth wheel.

In addition to these technical standards, the Draft Regulation introduces into the Regulation a provision mandating that obtaining or renewing a special permit will now be conditional on the CTQ issuing a "satisfactory" safety rating under the RPEVL (for Québec and US carriers), or on the carrier's holding a recognized safety fitness certificate.⁸ Accordingly, the CTQ's assignment of a "conditional" or "unsatisfactory" rating to a carrier automatically results in the rejection of the application for a special road train operating permit.

Coming into force

The Draft Regulation was published in the *Gazette officielle du Québec* on September 3, 2025. As per the *Regulations Act*,⁹ the government has 45 days following this publication to enact it by order, which it had not yet done as of November 14, 2025. The Regulation will come into force 15 days after the publication of the order enacting it.¹⁰

Certain transitional provisions are enacted, in particular to allow the industry to adjust to the new requirements and standards set out in Regulation R-31, but none of these transitional measures address the new requirement relating to safety ratings.



Endnotes

¹ *Special Road Train Operating Permits Regulation*, Draft Regulation No. 36 (presentation – September 3, 2025), Vol. 157 [Draft Regulation].

² *Special Road Train Operating Permits Regulation*, CQLR, c. C-24.2, r. 36 [Regulation].

³ Draft Regulation, Section 4.

⁴ A carrier operating a heavy vehicle in Quebec that is registered in another Canadian province must be registered in that other province, and such registration is recognized by Quebec under a system of interprovincial agreements that is too complex to be discussed in this blog post.

⁵ Société de l'assurance automobile, Conduct Review Policy for Heavy Vehicle Owners and Operators, Bibliothèque et Archives nationales du Québec, <https://saaq.gouv.qc.ca/blob/saaq/documents/publications/conduct-review-policy-hvoo.pdf>, 2024.

⁶ *Vehicle Load and Size Limits Regulation*, CQLR, c. C-24.2, r. 31 [Regulation R-31].

⁷ These are the *Federal-Provincial-Territorial Memorandum of Understanding on Interprovincial Weights and Dimensions and the Memorandum of Understanding on the Harmonization of Special Permit Conditions for Operation of Long Combination Vehicles in Eastern Canada*: Ministère des Transports et de la Mobilité durable, *Analyse d'impact réglementaire: Règlement réformant le Règlement sur les normes de charges et de dimensions applicables aux véhicules routiers et aux ensembles de véhicules routiers et le Règlement sur le permis spécial de circulation d'un train routier*, February 2025.

⁸ Regulations, Sections 8 and 16.

⁹ RLRQ, c. R-18.1.

¹⁰ Regulation, Section 36.

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 Office Telephone _____ Website Address _____
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5. I received the following academic degrees:
 Degree _____ School _____ Date _____
 Degree _____ School _____ Date _____
6. State(s)/Province(s) to which I am admitted: _____
☐ Yes ☐ No - I am member in good standing of the bar of my current residence. (Please attach a certificate of good standing)
7. I am involved in the following areas of transportation law: _____
8. Who may we thank for referring you to TLA: _____
9. Member Type:

☐ Active Member.....	\$350
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☐ Active Member and <i>First-time</i> Member of Canadian Transport Lawyers Association.....	\$475
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☐ Government/Judicial Member	\$150
☐ Student Member	\$50

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☐ Check enclosed (please make checks payable to TLA in U.S. Currency)

Amount \$ _____

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Name as it appears on card _____ Signature _____

10. I hereby make the following representations:
☐ Yes ☐ No - By submitting this application, I verify that I, as required by the TLA's Bylaws, am a licensed lawyer who is engaged in any field or phase of transportation law which involves representing and/or assisting providers and/or commercial users of logistics and transportation services, and do not hold myself out as one who regularly engages in the prosecution of plaintiff's personal injury claims against providers of logistics and transportation services. (If an explanation is suggested by your response to this inquiry, please provide on a separate sheet.)

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Please send to: Transportation Lawyers Association
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 Chicago, Illinois 60606
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- ☐ Federal Regulations
- ☐ Freight Claims
- ☐ International Trade and Transportation
- ☐ Labor and Human Resources

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January 2025



Canadian Transport Lawyers' Association
Association canadienne des avocats en transport

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2026

JANUARY 22 – 23

Chicago Regional Seminar and Bootcamp
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APRIL 29 – MAY 2

TLA Annual Conference and CTLA Midyear Meeting
Amelia Island, FL

OCTOBER 29-30, 2026

2026 Transportation Law Institute
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2027

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