Q2 – 2025

InterConnect

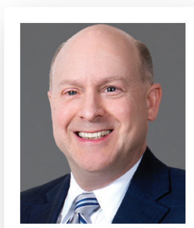
For the seventh time, Benesch is honored to announce that it has been named **Law Firm of the Year in Transportation Law** by Best Lawyers® Best Law Firms. This marks our 12th consecutive year (2014–2025) as a national first-tier ranked firm in Transportation Law.

The Best Lawyers® "Best Law Firms" rankings are based on an evaluation process that includes the collection of client and lawyer evaluations, peer review from leading attorneys in their field, and review of additional information provided by law firms as part of the formal submission process. For more information on Best Lawyers, please visit www.bestlawyers.com.

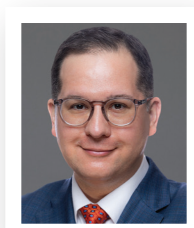
A publication of Benesch Friedlander Coplan & Aronoff LLP's Transportation & Logistics Practice Group

In this issue:

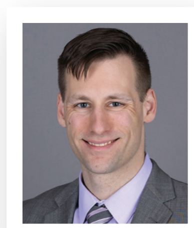
English Language Proficiency Requirements for Drivers



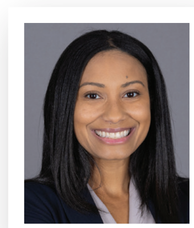
Marc S. Blubaugh



Jonathan R. Todd



Robert A. Pleines, Jr.



Vanessa I. Gomez

The Federal Motor Carrier Safety Administration (FMCSA) issued an internal agency enforcement policy on May 20, 2025 (the Policy), outlining its approach to English language proficiency (ELP) for commercial motor vehicle drivers. This Policy is more stringent than past enforcement posture and is effective immediately. It reverses a 2016 directive from the Obama Administration that discouraged placing drivers out of service for ELP violations.

No Change to FMCSR Driver Qualification

President Trump's recent Executive Order on "Enforcing Commonsense Rules of the Road for America's Truck Drivers" does not change the Federal Motor Carrier Safety Regulations (FMCSRs). The FMCSRs require motor carriers to qualify drivers against several standards shown at 49 CFR § 391.11. One of those requirements is that a driver must be able to "read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records" 49 CFR § 391.11(b)(2).

The EO expressly recognizes that this requirement is and remains in force. The EO does not change the existing English proficiency requirement. It does, however, suggest that federal enforcement of this requirement has been absent in recent years, and the White House believes that the roads are less safe as a result.

continued on page 2

English Language Proficiency Requirements for Drivers

continued from page 1

The EO seeks to address this perceived government enforcement gap by directing the U.S. Department of Transportation's (DOT's) Federal Motor Carrier Safety Administration (FMCSA) to take new actions to enforce the existing English language proficiency requirement. The EO further requires the DOT to rescind its 2016 guidance limiting enforcement of this requirement and to issue new guidance in its place with procedures for FMCSA and law enforcement personnel. The Secretary of Transportation is authorized to take actions necessary to ensure that violations of the English language proficiency requirement result in the driver being placed out-of-service and to review non-domiciled commercial driver's licenses (CDLs) issued by state agencies.

New Regulatory Enforcement Policy Changes

Out-of-Service Criteria: The Policy does not change motor carrier compliance obligations under the Federal Motor Carrier Safety Regulations (FMCSRs). It does however signal that the FMCSA will begin placing drivers out-of-service for failing to demonstrate proficiency in reading, speaking, or understanding the English language.

Roadside Enforcement: The Policy also advises FMCSA personnel to initiate all roadside inspections in English. Drivers who cannot adequately communicate in response to the inspector's initial instructions are subject to a two-part test involving: (1) a verbal interview of the driver and (2) an assessment of the driver's ability to identify and interpret U.S. traffic signs. Failure to demonstrate ELP requirements during either part of the test may result in the driver being immediately placed out-of-service.

Consistent Enforcement: The Commercial Vehicle Safety Alliance (CVSA) added ELP violations to the North American Standard Out-of-Service Criteria, effective June 25, 2025, ensuring uniform enforcement of the Policy across all states. Once effective, inspectors may place the driver immediately out-of-service. When warranted, inspectors may initiate the disqualification of the driver from operating in interstate commerce.

Increased regulatory enforcement may lead to more frequent OOS orders for noncompliance, replacing the citations that have been common in recent years. These OOS orders risk the consequence of swift and immediate interruption to the business operations of drivers and their motor carriers. Shippers, brokers, and other commercial users of those services may also face interruption on a load-by-load basis where service providers are not compliant.

The message out of the White House is clear that motor carriers and drivers must prepare for increased scrutiny of driver qualification files over the coming months. It is time for trucking companies to review their driver qualification practices, policies, and recordkeeping to ensure that all drivers meet this requirement and can withstand stricter enforcement.

Key Takeaways for Motor Carriers

The risks of enforcement consequences from failing to comply with the ELP element of driver qualification requirements at 49 CFR § 391.11 is now higher. Motor carriers must ensure all drivers can meet the ELP requirements to avoid drivers being placed out-of-service. Enforcement against even a single driver will disrupt operations, shipper experiences, and published compliance metrics.

Now is the time to review driver qualification procedures and qualification files. ELP assessments and compliance or awareness training in preparation for enforcement will be helpful as industry transitions to the new Policy. The precise enforcement instructions were redacted in the published version of the Policy. This means that motor carriers do not know exactly what questions and enforcement standards may be used at roadside. At its most basic level, ensuring drivers are adequately proficient in English and industry terminology and have an in-depth familiarity with U.S. traffic signs will be valuable.

Benesch's Transportation and Logistics team stands ready to proactively advise on safety compliance best practices, driver qualification policies, and training programs, and to defend all manner of enforcement actions when those occur.

MARC S. BLUBAUGH is Co-Chair of Benesch's Transportation & Logistics Practice Group and may be reached at 614.223.9382 and mblubaugh@beneschlaw.com.

JONATHAN R. TODD is Vice Chair of the Group and may be reached at 216.363.4658 and jtodd@beneschlaw.com.

ROBERT PLEINES, JR. is a senior managing associate in the Group and may be reached at 216.363.4491 and rpleines@beneschlaw.com.

VANESSA I. GOMEZ is a managing associate in the Group and may be reached at 216.363.4482.

Mining for Gold: Little-Used Regulatory Golden Nuggets That Can Make Life Easier for Shippers, Brokers, and Carriers

Eric L. Zalud

The transportation and logistics sector has always been one that is heavily regulated, both by pertinent federal agencies and by various state agencies. Although there is now a movement for selected deregulation by DOT, the bulk of the regulatory structure will undoubtedly remain intact. While this smorgasbord of federal regulation involves many parameters, restrictions, limitations, and guidelines, when mining deeply into the regulatory framework, there *are* various favorable regulatory morsels. These morsels can be extremely helpful to both those who *provide* transportation services, i.e., transportation brokers, forwarders, and carriers, and also to the *consumers* of transportation services, i.e., shippers and consignees. Two of the most putatively helpful, but yet rarely used, regulatory golden nuggets involve oft-litigated issues in transportation casualty and (cargo loss and) damage cases—Preventability Determinations and Carrier Selection.

"Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to 49 CFR Part 385 …, it is authorized to operate on the nation's roadways."

Preventing Preventability Determination Admissibility— A Federal Register Escape Hatch

The FMCSA has an ongoing program to evaluate the "preventability" of 21 categories of crashes, to modify motor carrier information in the FMCSA's Safety Measurement System (SMS) to distinguish non-preventable crashes. This evaluation emanates from submissions of Requests for Data Review (RDR) to its national data correction system, through "Data Qs." This schematic occurs in the context of the overall SMS, which has used safety performance information in the Behavior Analysis and Safety Improvement Categories (BASIC), in addition to recordable crashes involving commercial motor vehicles, to prioritize carriers for safety interventions and to calculate crash indicator basic percentiles for each particular motor carrier.

To encourage reporting by motor carriers through this system, the FMCSA noted that preventability determinations made under the program would *not* affect a motor carrier's safety rating or ability to operate, nor would FMCSA issue penalties or sanctions based upon these determinations. The program was intended to more accurately track the safety records of motor carriers, and also give motor carriers the opportunity to contest particular "crashes," through these submissions. Thus, the system contemplated the possibility that it would have a favorable impact upon motor carriers overall within the SMS system. However, to further encourage, and not penalize, reporting under this system, the FMCSA promulgated, in the Federal Register, a very clear explanation of what preventability determinations cannot do in civil litigation:

> "A crash preventability determination does not assign fault or legal liability for the crash. These determinations are made on the basis of information available to FMCSA by persons with no personal knowledge of the crash and are not reliable evidence in a civil or criminal action. Under 49 U.S.C. § 504(f), these determinations are not admissible in a civil action for damages. The absence of a not preventable determination does not indicate that a crash was preventable. …

See, 85 Fed.Regis. 27017, 2018 (updated, December 24, 2024) *See also Cameron v. Werner Enterprises*, 2016 WL 3030181 (D. Miss. 2016) (agreeing that prepared preventability report was inadmissible). This is a relatively narrow window of inadmissibility, since the contested evidence must specifically relate to preventability reporting. However, in the Reptile Theory era, every little bit helps!

Carrier Selection: Another Regulatory Assist from FMCSA! Another very helpful regulatory enactment that really aids in mitigating liability, here in carrier selection situations, is a fairly recent promulgation enacted by FMCSA. The FMCSA made changes to CSA's Safety Measurement System (SMS) public website to address concerns regarding the display of

continued on page 4

Mining for Gold: Little-Used Regulatory Golden Nuggets That Can Make Life Easier for Shippers, Brokers, and Carriers

continued from page 3

information on a commercial motor carrier's safety performance. The key changes that FMCSA made to the SMS public website and contained in the Code of Federal Regulations states that:

> "Readers should not draw conclusions about a carrier's overall safety condition simply based on the data displayed in this system. Unless a motor carrier in the SMS has received an UNSATISFACTORY safety rating pursuant to 49 CFR Part 385 or has otherwise been ordered to discontinue operations by the FMCSA, it is authorized to operate on the nation's roadways." *See* Pub. L. No. 114-94, § 5223(d)(2), 49 USC § 31100.

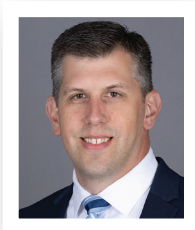
This regulatory proclamation is potent ammunition to dispel the notion, in any case at the trial court level, that there was negligent selection of a motor carrier in a personal injury action—or otherwise. It is a clear pronouncement by the governmental agency specifically charged with regulating commercial transport on the public highways that motor carriers who have received "Conditional" ratings (or those that are unrated) are deemed to be authorized to operate on the nation's public highways. This regulatory enactment can be used as guidance by brokers and shippers in selecting carriers, and can provide them with a certain level of comfort. It can also be used by counsel, in litigation proceedings, to help to defeat negligent selection claims involving conditional carriers, by having the court take judicial notice of the regulatory promulgation.

An Ounce of Prevention: All that said, *conditional* carriers *do* create greater litigation risk for the broker or shipper that is selecting them. Although no counsel has held that a conditional safety rating carries the day for a plaintiff in a negligent selection action as a matter of law, courts remain skeptical of such ratings. *See, e.g., McKeown v. Rahim*, 446 F. Supp. 3d 64 (W.D. Va. 2020) (granting plaintiff leave to amend complaint to cure negligent hiring claim with allegations regarding a motor carrier's conditional safety rating). So, plaintiff's counsel *will* still use a conditional safety rating as ammunition. Consequently, it is advisable to, if at all possible, in the heat of operations, develop some additional due diligence for the qualifications of carriers that have a conditional rating. This due diligence could include a series of follow-up targeted inquiries to the motor carrier (which can be pre-prepared for operations people), a request for backup documentation on the carrier's response to the rating and/or appeal of the rating, and background documents that support the carrier's rationale and explanation. Importantly, any additional due diligence efforts in this regard should be retained by the broker or shipper. So, conditional carriers can be retained, but with an added level of precaution.

ERIC L. ZALUD is a partner and Co-Chair of Benesch's Transportation & Logistics Practice Group and may be reached at 216.363.4178 and ezalud@beneschlaw.com.

China Shipbuilding—Industry and Shippers Prepare for Tariffs

Jonathan R. Todd



J. Philip Nester

"China's global tonnage of shipbuilding market share grew from less than 5% in 1999 to over 50% in 2023."

Domestic U.S. shipping interests are closely monitoring a United States Trade Representative (USTR) proposal for import and export trades involving Chinese vessels. There is a Section 301 investigation prompted by domestic industry concerns about China's industrial ambitions in sectors critical to U.S. economic and national security. The outsized role of China in international ocean shipping is greater than many would expect. China's global tonnage of shipbuilding market share grew from less than 5% in 1999 to over 50% in 2023. China owns over 19% of the commercial world fleet, controls production of approximately 95% of the world's shipping containers, and 85% of the world's intermodal chassis.

Extraordinary service fees and restrictions are anticipated to have a near-term effect of escalating certain ocean shipping costs. Commercial users of those services including cargo owners and the NVOCC intermediaries they use are widely expected to shoulder the cost through higher rates charged by vessel operators and through the net restriction in global shipping capacity.

China Shipbuilding Strategy Under Review

Five labor unions petitioned for this investigation on March 12, 2024, alleging that China exerts unreasonable and discriminatory policies that provide an unfair advantage across maritime industries. The USTR initiated investigation on April 17 of that year. In a report issued on January 16, 2025, the USTR determined that China's objective of dominating the maritime, logistics, and shipbuilding sectors represents an unreasonable risk to United States commerce. This is understood by the USTR as part of the China's Military-Civil Fusion strategy. The country's initiative will increase supply chain risk and reduce resiliency, deprive market-oriented businesses from opportunities, and allow for extraordinary control over these vital sectors.

The USTR found on April 17, 2025, that China has indeed methodically targeted the maritime, logistics, and shipbuilding sectors for global dominance over 30 years. The initiative included a series of overlapping national strategies such as its Five-Year Plans and the "Made in China 2025" initiative, as well as sector-specific policies to achieve its objectives. China is understood to have implemented top-down plans to gain global share in the sector through non-market advantages, such as direct and indirect state subsidies; preferential access to land, credit, and raw materials; suppressed labor costs and lack of effective labor rights; state-directed mergers and restructuring to create "national champions;" and export incentives and market access barriers to foreign competitors.

The USTR determined that these interventions enabled Chinese firms to undercut global competition, seize market share, and set the terms across the global maritime industry and supply chains. Moreover, China's targeting of the maritime industry has had profound and adverse effects on U.S. interests, including:

- **Displacement of U.S. Firms:** As China's share of global shipbuilding and logistics markets has grown, U.S. companies have lost market access, commercial opportunities, and investment returns.
- **Reduced Competition:** China's global overcapacity has impacted U.S. businesses and workers by depriving fair competition and commercial opportunities.
- **Supply Chain Vulnerabilities:** Increased dependency on Chinese-built ships, marine equipment, and logistics infrastructure has created economic security risks and undermined U.S. supply chain resilience.

Early Proposed Fees and Restrictions Very High

Market stakeholders expressed widespread concern about the initial proposal for tariffs and other restrictions on Chinese interests in the U.S. trades. The USTR initially proposed significant service fees on certain maritime services as well as other industry restrictions in response to these identified threats. For example, Chinese vessel operators would be charged up to $1 million per entrance of any vessel at a U.S. port or $1,000 per net ton of vessel capacity. Vessel operators would be charged up to $1.5 million per entrance of any vessel at a U.S. port based on a tiered schedule for the percentage of Chinese-built vessels in their global fleets. Exports of U.S. goods are restricted to U.S.-flagged, U.S.-built vessels by U.S. operators under a seven-year escalation plan. Exceptions may be granted for vessels not built in the U.S. if it can be shown that over 20% of U.S. products per year are transported on U.S.-flagged, U.S.-built vessels.

continued on page 6

China Shipbuilding—Industry and Shippers Prepare for Tariffs?

continued from page 5

Newly Proposed Fees and Restrictions

In response to its findings in April of this year, the USTR announced the initiation of a rulemaking process for robust remedial measures that may include:

- Imposing additional tariffs on Chinese ships, marine equipment, and related logistics service.
- Importing restrictions on Chinese-built vessels and maritime services.
- Enhanced scrutiny of Chinese investments in U.S. maritime and logistics sectors.
- Supporting domestic industry through federal investment and incentives for U.S. shipbuilding and logistics firms.

The tariff burden for vessel owners and operators has gained the greatest attention from clients and commentators. This new proposal will impose tariffs in two phases. The first phase is intended to begin on October 14, 2025. Chinese vessel owners and operators would pay $50 per net ton landed at U.S. ports, which escalates every year until reaching $140 per net ton in 2028. All other vessel operators of Chinese-built vessels would pay the higher of $120 per container or $18 per net ton landed at U.S. ports, which escalates every year until reaching $250 per container or $250 per net ton in 2028. The second phase is intended to begin on April 17, 2028. Total LNG exports on U.S. flagged, U.S. built, and U.S. operated vessels must meet 1% of all utilized vessels, which steadily escalates to 15% in 2047.

Considerations for U.S. Businesses and Stakeholders

The USTR's newly proposed rule is more targeted in its application and timeline than earlier proposals. The possibility for cost impacts on the U.S. trades is nonetheless real because Chinese-made vessels and operators hold a significant share of the global shipping market. Beneficial cargo owners and non-vessel operating common carriers must take notice. At face value, service contracts and spot rates could see a $250 per container increase within three years due to this action alone. Longer term, a reinvigorated maritime industrial base in the U.S. and a diversified fleet across steamship lines may yield economic and strategic advantage for domestic stakeholders.

The potential for retaliatory and countermeasure efforts from China is also real and could negatively impact U.S. trades as well as overseas operations.

One thing is certain: This action marks a decisive shift in U.S. trade policy, reflecting a broader strategic effort to confront systemic practices in the maritime sector. The Benesch team is closely monitoring USTR developments from the perspective of our broad experience in ocean contracting, counseling shippers and intermediaries, and developing trade and compliance strategies that can help stakeholders reduce their net exposure and lessen the effect of supply chain disruptions.

JONATHAN R. TODD is Vice Chair of Benesch's Transportation & Logistics Practice Group. He may be reached at 216.363.4658 and jtodd@beneschlaw.com.

J. PHILIP NESTER is a senior managing associate in Benesch's Transportation & Logistics Practice Group. He may be reached at 216.363.6240 and jpnester@beneschlaw.com.

Benesch

CHICAGO VICE

Navigating Risk in Transit:

Legal Insights on the Storage and Transport of Cannabis, Hemp, Alcohol, Hazmats and Munitions (Including Tariff Implications)

Tuesday, July 15, 2025

1:30pm – 4:30pm
(pending 3 hours CLE credit)

Benesch
71 South Wacker Drive
Suite 1600
Chicago, IL 60606

Registration Fee: $100

REGISTER
https://bit.ly/BeneschChicagoVice

Join attorneys from **Benesch's nationally recognized Transportation & Logistics Practice Group** for a half-day seminar focused upon the complex and rapidly evolving legal landscape surrounding the storage and movement of regulated goods—including cannabis and hemp, alcoholic beverages, and munitions/hazardous materials.

As supply chains grow more interconnected and compliance requirements tighten, companies involved in the transport, warehousing, and logistics management of sensitive cargo face heightened legal scrutiny and risk, both domestically and internationally.

This afternoon seminar will provide practical guidance and legal insights on federal and state regulatory frameworks, licensing and permitting challenges, contractual risk-shifting, insurance implications, and best practices for mitigating liability and dispute resolution.

Intended for in-house counsel, compliance officers, risk managers, and logistics professionals, this session offers real-world takeaways to help your business stay ahead of regulatory changes and avoid costly missteps.

Topics will include:

- The patchwork of federal and state laws governing cannabis and hemp transportation
- Alcohol distribution laws, tied house rules, and transportation restrictions
- DOT, EPA, and ATF regulations impacting hazmat and munitions logistics
- Contractual risk allocation and insurance coverage for high-risk shipments
- Enforcement trends and what's on the horizon, including tariff implications

Network with peers, gain critical legal updates, and hear directly from attorneys and industry experts who advise some of the industry's most sophisticated players.

Followed by
First Lady River Cruise

5:30 – 7:30 pm
(Boarding at 5:15 pm)

112 E. Wacker Drive
on the Chicago Riverwalk;
shuttles will be provided.

Cocktails and Heavy Appetizers

Cargo Loss and Damage Liability in eVTOL and UAV Transportation


Jonathan R. Todd


Brian Cullen


Megan K. MacCallum

Electric vertical takeoff and landing aircraft (eVTOLs) and Unmanned Aerial Vehicles (UAVs or, colloquially, drones) are increasingly being integrated into supply chains. The potential advantages are numerous. Widespread adoption of eVTOLs and UAVs (collectively, Advanced Air Mobility) would significantly transform air cargo logistics, providing faster, more efficient, and significantly more flexible delivery options for certain use cases than traditional aircraft.

Traditional air cargo shipping has a different risk character compared to this new method of transportation. The potential risk gap between current air cargo liability laws and commercial standards on the one hand and Advanced Air Mobility on the other leaves many unique risks for both users and providers of Advanced Air Mobility to consider when negotiating commercial agreements. This means that shippers, carriers, logistics services providers, and technology services providers must navigate a relatively new contracting landscape. One critical feature of those contracts is the need for risk-appropriate cargo loss and damage liability standards reflective of what is new, but also what is old, for this means of air transportation.

This article presents an overview of the existing air carriage liability regime established by the Montreal Convention of 1999, followed by a review of emerging considerations for cargo loss and damage liability when buying or selling Advanced Air Mobility carriage.

The International Montreal Convention and Primarily Urban Air Carriage

Applicability of the Montreal Convention

The Montreal Convention of 1999 (Montreal Convention) governs the international transportation of air cargo shipments via aircraft between the U.S. and international signatory countries. Montreal Convention's standards are so common across the globe that they are also often adopted for domestic air transportation generally, including intrastate movements. An air cargo carrier's limitation of liability under the Montreal Convention is set at 26 Special Drawing Rights (SDRs) per kilo (which as of the publication date of this article converts to approximately $35.39 USD) and serves as both the industry standard as well as the metric against which air cargo shipping rates are established. However, the Montreal Convention's liability regime as written was not intended to govern domestic air transportation and was adopted long before Advanced Air Mobility was envisaged. Given the ever-increasing usage and application of Advanced Air Mobility, now is the time for Advanced Air Mobility stakeholders to consider developing and implementing new cargo loss and damage liability standards that are tailored specifically to Advanced Air Mobility.

Operational and Service Differences between Advanced Air Mobility and Traditional Aircraft

The key difference from a cargo liability perspective is how Advanced Air Mobility offers a qualitatively different service capability from crewed aircraft. Advanced Air Mobility mechanisms are designed to carry substantially less weights for shorter distances. Although Advanced Air Mobility manufacturers are continuously developing their offerings, the strongest use cases for Advance Air Mobility currently are almost exclusively domestic in nature.

Another qualitative difference is how Advanced Air Mobility will very likely play a critical role in expediting high-value mission-critical freight. The largest cargo UAVs and eVOTLs currently on the market have a maximum payload of 1000 -1500 lbs. and a range of up to 500 nautical miles. The emerging utility of Advanced Air Mobility is therefore short-range, domestic, urban and regional cargo flights. The very nature of this equipment permits new and novel operating strategies, such as landing on top of buildings, as they cover shorter routes between distribution centers, warehouses, hospitals, manufacturing sites, and even customer doorsteps. The nature of those routes yields a far higher volume of trips (with fewer volumes) relative to traditional aircraft.

At present there is no universal commercial or legal standard for loss or damage by Advanced Air Mobility beyond the traditional air cargo practices under the Montreal Convention. This is an opportunity for knowledgeable purchasers and service providers to utilize the very broad freedom as a weapon to mitigate cargo loss and liability-related risks. Navigating this new legal landscape allows for creativity but requires consideration of the circumstances and risks that are unique to Advanced Air Mobility.

Liability Considerations in Advanced Air Mobility Contracting

Urban Air Mobility

Shippers and carriers in Advanced Air Mobility transportation contracts are planning for short-range point-to-point cargo flights that do not use major airports. Instead, these operations must navigate localized and much more congested environments rife with increased risks from weather, theft, and even misconduct of the general public. It is not difficult to visualize a generic Advanced Air Mobility operation. Equipment will operate between nontraditional hubs, such as logistics centers, medical facilities, and rooftop landing zones in urban areas. They will fly at low altitudes and interact with ground-based infrastructure (for example, in automated warehouses and with local delivery networks). Localized weather and airspace congestion will be greater challenges than traditional air cargo. UAVs will need to adequately navigate an even more aggressive combination of low altitude and ground-based infrastructure, landing on streets, sidewalks or doorsteps, and may face interference by the general public beyond cargo theft. These operating fact patterns may very well increase the risk and character of cargo loss over time. Shippers and carriers must consider the unique liability risks associated with shorter-distance but more sensitive Advanced Air Mobility transportation when drafting and negotiating cargo loss and damage provisions. As one example, shippers and carriers may wish to review their force majeure clauses, since those typically include "Acts of God," including weather events. This may be the bargained exchange between the parties, since it is consistent with the legacy air cargo industry. Still, if shippers have concerns about the potentially more frequent impact of weather-related claims (including rain or certain atmospheric conditions) then careful consideration of available claims and carrier defenses will be essential to expectation setting.

Unique Cargo Value and Related Risks

The Montreal Convention limits a carrier's liability to 26 SDR per kilogram (approximately $34 per kilogram). This liability model works for bulk cargo transported in large freighters or arranged by indirect air carriers. Domestically it may not apply, allowing carriers to limit liability to any metric. Even if 26 SDR is accepted between the parties, it may not adequately address the loss of high-value cargo shipments for which Advanced Air Mobility is useful. Even small shipments of urgent medical supplies, just-in-time manufacturing parts, and high-value e-commerce goods may significantly exceed that value. Additionally, a weight-based compensation model may not appropriately measure loss for the urgent, time-sensitive nature of potential Advanced Air Mobility deliveries where even minor delays can result in appreciable losses.

The good news is that there is no rate regulation for Advanced Air Mobility services. Shippers and carriers are free to develop higher liability levels, or even approaches to liability or service, against which commensurate rates will be charged. One option is for shippers to negotiate liability based on the value of the goods or resale potential. That could amount to an agreed-upon recovery per shipment, similar to parcel carrier contracts today. Another option is to contract for time-sensitive service levels and commensurate rates. A third option is to potentially procure shipper's interest cargo insurance so that the insurance carrier receives and pays out on a claim rather than the carrier, thereby reducing pressure on service rates. These approaches (or a combination of these approaches), could address particular risks in the Advanced Air Mobility space.

Risk factors such as weather, atmospheric conditions, or interference from others pose more difficult challenges to contract parties. Advanced Air Mobility carriers will sometimes negotiate for flexibility to manage delays due to weather or airspace events. This operational need may impact other contractual provisions. For example, in an Air Cargo Services Agreement that incorporates Key Performance Indicators (KPIs), the Advanced Air Mobility carrier may wish to lower on-time delivery KPIs. Express waivers of liability for Acts of God or Acts of Public Enemy may be included regardless of whether those defenses are already available under the law. For time-sensitive freight, a shipper may wish to include specific alternative transportation to be performed or arranged by the air cargo carrier in the event that a flight is not possible due to conditions. In the extreme, low limitations of liability may be used for domestic service since those are both lawful and place onus on shippers for any insurance requirements.

The theme to these risks and responses is that both shippers and carriers will need to ascertain their specific use application of Advanced Air Mobility, new risks, the impact of cargo liability exposure for each party, and how those factors are addressed under contract. For some users of these services the approach to buying is similar to a commodity service and lowest rates will win the day. For others, particularly those with high-value and time-sensitive cargoes, these factors can mean the difference between electing to use Advanced Air Mobility services or using other legacy transportation services. In all events, both parties will often spend considerable time and energy establishing a baseline cargo loss and liability standard as well as communicating expectations for exceptions in day-to-day traffic.

Tracking and Chain-of-Custody Transparency Is Key

Chain of custody is another meaningful point of discussion when selling or procuring Advanced Air Mobility services. The first- and last-mile nature of the service means that deliveries often involve multiple handling points. Those increased nodes on the supply chain can challenge visibility to throughput and convolute responsible parties for claims. Shippers, carriers, and logistics stakeholders alike may benefit from the adoption of technologically advanced tracking systems that record cargo condition at each transfer point. Those solutions may help to preliminarily assess potential issues in real time and assign liability based on where and when damage occurs. Greater transparency of chain of custody and tracking will deliver higher quality of service to commercial users and their customers while also assisting in faster claims resolution by better substantiating claims and eliminating ambiguities.

Conclusion: The Need for Strategic Cargo Liability Frameworks

In very short time the reality of widely deployed domestic, short-distance Advanced Air Mobility deliveries may be upon us. Those buying and selling the services face an interesting challenge due to the unique risks and operating models of these technologies. Liability considerations when contracting for these services may include: cargo-appropriate liability levels and terms, claims filing requirements, relevant KPIs and SLAs, accounting for new service risks in the operating environment, focus on technological implications and risks, and chain of custody technologies. Advanced Air Mobility stakeholders can begin establishing their desired baseline liability framework now to help manage service experiences, service compensation, operational clarity, and ultimately the long-term sustainability for Advanced Air Mobility logistics.

The Benesch team is experienced at representing shippers, logistics services providers, airlines, indirect air carriers, Advanced Air Mobility carriers, and technology service providers throughout the transportation & logistics sector. We are ready to assist with contract drafting and negotiation for eVTOL and UAV transportation services, the standup of operations in the space, and navigating regulatory hurdles associated with the same.

JONATHAN TODD is Vice Chair of Benesch's Transportation & Logistics Practice Group and may be reached at 216.363.4658 and jtodd@beneschlaw.com.

BRIAN CULLEN is Of Counsel with the Group and may be reached at 312.488.3297 and bcullen@beneschlaw.com.

MEGAN K. MACCALLUM is a managing associate with the Group and may be reached at 216.363.4185 and mmaccullum@beneschlaw.com.

Government Contracting Under the Trump 47 Administration

Jonathan R. Todd

Christopher C. Razek

Robert Pleines, Jr.

The transportation sector has long served a vital function in service of the U.S. government at home and abroad. Examples of private industry's role in the workings of government include civil functions such as hauling U.S. mail and defense functions such as relocating servicemembers and their possessions. The Trump Administration is demonstrating a new course in many ways that will affect government contracting. This article explores those directional changes and the value in strategically developing a business response.

Emerging Trump Administration Policy. The White House is signaling priorities and policies by both breaking new ground and revoking policies of the prior presidential administrations. Simply put, there is a fundamental change in course as to what satisfactorily promotes efficiency for government contracting.

The New Ground. The most impactful development of the new Administration has been the emergence of the Department of Government Efficiency (DOGE). As part of the implementation of the DOGE structure, the Administration issued a variety of Executive Orders that we expect will directly impact the supply of existing and new contracting opportunities. Of note is Executive Order (EO)14222, Implementing the President's "Department of Government Efficiency" Cost Efficiency Initiative. This EO directs federal agency heads to review all existing covered contracts and grants to determine whether they should be terminated, modified, or negotiated to reduce overall federal spending. EO 14222 directs federal agencies to complete a comprehensive review of their contracting policies, procedures, and personnel within 30 days. During that review process, agencies cannot issue or approve new contracting officer warrants unless the agency head deems it necessary. Prior to entering into any new contracts, each agency head must, in consultation with the agency's DOGE team lead, issue guidance on signing new contracts or modifying existing contracts to promote government efficiency, adding to the administrative burden of granting new contracts.

Elimination of Prior Policies. Elimination of prior policies is the broadest data set available for direction on government contracting. Four Biden-era Executive Orders with relatively broad implications for government contracting have been revoked to date:

1. Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency (Executive Order 14069 dated March 15, 2022; Recission on January 20, 2025).

   This EO set out to promote economy, efficiency, and effectiveness in federal procurement by enhancing pay equity and transparency for job applicants and employees of federal contractors and subcontractors. Specifically, the Biden Administration issued this EO in conjunction with the Office of Personnel Management's similar rule and directed the Federal Acquisition Regulatory Council to consider limiting or prohibiting federal contractors and subcontractors from seeking and considering information about a job applicant's and employee's existing or past compensation when making employment decisions. Revocation of this EO halts the direction to prevent such federal contractor and subcontractor hiring practices.

2. Nondisplacement of Qualified Workers Under Service Contracts (Executive Order 14055 dated November 18, 2021; Recission on January 20, 2025).

   This EO required that agencies, to the extent permitted by law, ensure that service contracts and subcontracts that succeed a contract for performance of the same or similar work contain clauses that require federal contractors and subcontractors to offer rights of first refusal to employees performing work under a government contract.

3. Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Executive Order 14091 dated February 16, 2023; Recission on January 20, 2025).

   This far-reaching EO set out to enhance Agencies' commitment to equity-advancing initiatives, including particular investment in historically underserved federal contractor groups, such as in rural communities. Notably, this EO established Agency Equity Teams charged with implementing the prior Administration's equity initiatives and increased the government-wide goal for federal procurement dollars awarded to small-business concerns owned and controlled by socially and economically disadvantaged individuals (known as Small Disadvantaged Businesses or SDBs) to 15 percent for Fiscal Year 2025. Revocation of this EO practically reduces the small-business concern set-aside requirement to the statutorily required five (5) percent.

4. Increasing Minimum Wage for Federal Contractors (Executive Order 14026 dated April 27, 2021; Recission on March 14, 2025).

   This EO raised the minimum wage required of federal contractors and subcontractors to workers performing work on or in connection with covered federal contracts to $15.00 per hour. The Department of Labor under the prior Administration subsequently proposed to increase the minimum wage to $17.75, beginning on January 1, 2025. Revocation of this EO effectively requires federal contractors and subcontractors to comply with general federal minimum wage law.

"The very best advice in these changing times is that it remains 'good business' to stay knowledgeable and strategic, but not reactionary, in running your business."

The Biden Administration used these Orders to advance the themes of set-asides, such as those for minority-owned businesses and women-owned businesses, requiring retention of certain workers under the Service Contract Act, and instituting an increased minimum wage for contractors. In setting his own course, many more executive actions already issued by President Trump may be impactful, depending on the particular contracts or agencies served by transportation services providers.

The Cautious Road Ahead and an FCPA Case-In-Point

At this time, the Trump Administration's recissions are merely indicative of what may come. It is too quick for business leaders to file bid protests, assume contracts will not be renewed, or decrease pay for workers. Among other reasons for pause, executive action may not itself eliminate final rules enforceable by the respective regulatory agencies even if the risk of enforcement by the Trump Administration is low.

The Trump Administration's approach to Foreign Corrupt Practices Act (FCPA) enforcement is a single data point for new terrain that the Administration will cover, and a visualization of how change is best met with cautious strategy. The FCPA, found at 15 U.S.C. 78dd-1 *et seq.*, in essence prohibits bribing foreign government officials by giving anything of value. President Trump ordered a pause on enforcement of the FCPA so that the Attorney General may review enforcement policy and develop guidelines before enforcement commences once again. The rationale for this pause in enforcement is that the White House viewed historic enforcement as inconsistent and disadvantaging United States businesses abroad.

Caution is required for the immediate next steps by businesses working with foreign governments or requiring foreign government approvals. There are four simple reasons to avoid a reactionary response: (1) the FCPA itself remains an act of Congress; (2) the only change is a review of enforcement policy by the Department of Justice (DOJ); (3) the new enforcement policy of the Trump Administration remains to be seen; and (4) the FCPA has a lengthy five-plus-year statute of limitations. Viewing this change as permitting risky government interactions risks a future Presidential Administration's prosecution or, if the Trump Administration were to change perspective, its DOJ could nonetheless prosecute.

The very best advice in these changing times is that it remains "good business" to stay knowledgeable and strategic, but not reactionary, in running your business.

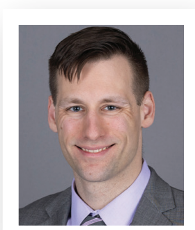
JONATHAN R. TODD is Vice Chair of Benesch's Transportation & Logistics Practice Group. He may be reached at 216.363.4658 and jtodd@beneschlaw.com.

CHRISTOPHER C. RAZEK is a senior managing associate in the Group. He may be reached at 216.363.4491 and crazek@beneschlaw.com.

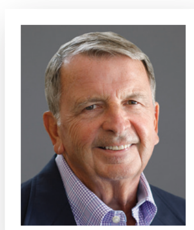
ROBERT PLEINES, JR. is a senior managing associate in the Group. He may be reached at 216.363.4491 and rpleines@beneschlaw.com.

Final-Mile Delivery and Nature of Commerce—The Most Important Legal Question Providers Struggle to Answer

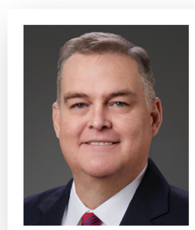
Jonathan R. Todd



Robert Pleines, Jr.



Richard A. Plewacki



Thomas O'Donnell

The growth of final-mile package deliveries, especially to residential delivery following the global pandemic, raises important legal questions about the transportation service performed by delivery drivers and their companies. A final-mile carrier is a specialized transportation company offering delivery services from a local hub, warehouse, or fulfillment center directly to a customer's designated destination, typically their home or business. Many final-mile carriers misunderstand whether they are engaged in intrastate or interstate commerce when their vehicles do not cross state lines.

Understanding nature of commerce is fundamental to determining whether federal or state law and regulation apply. Failure to correctly determine nature of commerce can lead to regulatory enforcement such as civil penalties and injunctions, litigation risk as evidence of negligence, and reputational harm for customers as well as personnel. Accordingly, this article examines the distinction between intrastate and interstate commerce and why it is key to lawfully building final-mile carriage operations.

Interstate vs. Intrastate Commerce

The federal government has jurisdiction over foreign and interstate commerce as granted by the Commerce Clause of the U.S. Constitution. The federal government holds authority under the Commerce Clause to enact laws and create regulatory agencies, such as the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA), to regulate interstate transportation by motor carriers. Meanwhile, individual state governments hold jurisdiction over intrastate commerce in their respective states (between locations exclusively within that state) and may regulate intrastate commerce.

The FMCSA defines *interstate commerce* as: (i) between a place in a State and a place outside of such State (including a place outside of the United States); (ii) between two places in a State through another State or a place outside of the United States; or (iii) between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States. The FMCSA defines *intrastate commerce* as any trade, traffic, or transportation in any State which is not described in the term "interstate commerce." 49 C.F.R. § 390.5.

Whether transportation is considered interstate or intrastate does not depend on the physical route or the distance traveled, but rather, on the broader context of the transportation and the intent of the shipment. Courts do not just focus on the location where the transportation occurred when determining nature of commerce, but rather on the shipper's intent at the time of the shipment. For instance, if a shipper intended to send a package from one state through another state to its final destination, then the movement would be considered *interstate* commerce. This would apply even if a final-mile carrier making the delivery to the customer only operated within the single state in which the package was delivered. Conversely, if the shipper intended the shipment to move only within a single state, the package will remain in intrastate commerce. Additional considerations when determining the nature of commerce include:

Continuity of Movement. Transportation within a single state is in interstate commerce within the meaning of the Fair Labor Standards Act where it forms a part of a "practical continuity of movement" across state lines from the point of origin to the point of destination.

Multiple Carriers or Modes. Accomplishing transportation using multiple carriers, types of equipment, or modes *does not* in and of itself bring the packages outside of interstate commerce. Today many e-commerce and retail operations involve middle-mile movements across state lines in tractor trailers with the last-mile delivery accomplished in sprinter vans operating only within state lines. Here the nature of commerce would remain interstate.

Storage in Transit. Storage in transit, when packages are placed into temporary short-term storage at a warehouse or distribution center, *does not* bring the packages outside of interstate commerce. Storage in transit is considered a "temporary pause" in the transportation journey and not a final delivery or change in the nature of the shipment. If the packages are placed into long-term storage, however, they will likely be removed from the interstate stream of commerce.

Product Type. If a product is a raw material that is shipped from one point to another in a single state but is then used to produce a product that is shipped to the other state, the nature of commerce often depends on the degree of alteration of the raw material.

Final-Mile Implications

The nature of commerce determination, as interstate or intrastate, has significant impacts on a final-mile carrier's operations and the set of laws and rules by which they must comply. To illustrate this point, here are a few examples highlighting the need to comply with federal laws and requirements even when a final-mile delivery driver may not cross state lines:

a. A driver transports a package from an online retailer in Melbourne, Florida, to Denver, Colorado. In this case, the driver engages in ***interstate*** commerce because the driver physically crossed numerous states from Florida to Colorado.

b. A driver transports packages from a factory in Cleveland, Ohio, to a temporary storage facility in Cincinnati, Ohio. The next day another driver picks up the packages and drops them off to the customer in Covington, Kentucky. Because the intent of the shipper was to have the shipment cross state lines, the nature of the commerce for both legs of transportation is ***interstate***.

c. A shipper in Mount Ephraim, New Jersey, wants to ship its goods to its customer in Asbury, New Jersey. The last-mile driver decides to cut through Pennsylvania to avoid an accident on the New Jersey side of the Delaware River. This is considered ***intrastate*** commerce because the shipper's intent was to ship its goods through the single state of New Jersey.

No single question is more important. Our business operations counsel on construing the roles of service providers, structuring driver relationships, drafting customer terms and liability provisions, and advising on the adequacy of insurance follows directly from these determinations. Our day-to-day compliance counsel and regulatory enforcement defense begins with these core principles at the heart of transportation law. Our representation during disputes follows directly from the body of law on which these determinations are based and the foundational business operations we built.

Conclusion

The classification of commerce as interstate or intrastate impacts every aspect of final-mile carrier operations. Misunderstanding this distinction can lead to significant compliance pitfalls, violation of federal laws and regulations, and increased litigation exposure. The starting point for avoiding those pitfalls is to consider shipper intent on the origin and ultimate destination of its packages, not just the immediate route, to determine the nature of commerce. By clearly understanding and adhering to the correct regulatory framework, final-mile carriers can operate efficiently, avoid costly compliance errors, and expand business opportunities by building on a well-reasoned operating structure.

JONATHAN R. TODD is Vice Chair of Benesch's Transportation & Logistics Practice Group and may be reached at 216.363.4658 and jtodd@beneschlaw.com.

ROBERT A. PLEINES, JR. is a senior managing associate in the Group and may be reached at 216.363.4491 and rpleines@beneschlaw.com.

RICHARD A. PLEWACKI is Of Counsel in the Group and may be reached at 216.363.4159 and rplewacki@beneschlaw.com.

THOMAS O'DONNELL is Of Counsel in the Group and may be reached at todonnell@beneschlaw.com and 302.442.7007.

Jonathan R. Todd and Vanessa I. Gomez Earn 2025 JD Supra Readers' Choice Awards

JD SUPRA READERS' CHOICE TOP AUTHOR 2025

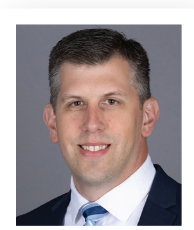
Benesch is pleased to announce that Transportation & Logistics Vice Chair Jonathan R. Todd and Associate Vanessa I. Gomez have been recognized as top authors in Transportation in JD Supra's 2025 Readers' Choice Awards, which honor the most widely read and engaged authors across 33 key topics spanning multiple industries. Each year, only 10 authors per category and one firm are recognized for maintaining consistently high readership and engagement. Out of more than 70,000 authors who publish on JD Supra, just 344 were selected for this distinction.

This marks Jonathan's second time earning this honor.

Jonathan may be reached at jtodd@bneschlaw.com or 216.363.4658.

Vanessa may be reached at vgomez@beneschlaw.com or 216.363.4482.

A Primer on U.S. Non-Contiguous Domestic Trade



J. Philip Nester

The U.S. inland waterway system is a critical and underutilized component of the domestic supply chain that serves intrastate commerce and non-contiguous markets originating in or destined for Alaska, Hawaii, and U.S. territories and possessions. Service providers and shippers in the domestic trade of the U.S., which includes ocean and water carriers, barge operators, and inland waterway providers, can offer and seek cost-effective scalable alternatives to traditional surface and air modes that connect these regions to the U.S. mainland.

Non-contiguous domestic trade involves a legal and operational framework that is complex and shaped by multi-agency oversight, legacy statutes, and evolving operational realities that involve the Surface Transportation Board (STB), the U.S. Army Corps of Engineers (USACE), and the Maritime Administration (MARAD). To navigate these complexities, market participants will benefit from an understanding of the interplay between these legal, regulatory, and operational schemes, as this is a pathway for shippers and service providers to diversify domestic supply chains and expand capacity to strengthen operational resilience, particularly when other modes experience headwinds such as service disruptions.

STB Jurisdiction

The STB has jurisdiction over waterborne transportation in the non-contiguous domestic trade of the U.S., even if a particular shipment moves through international waters. [49 U.S.C. § 13521.] Stakeholders may see this as a benign authority, but recent STB rulemaking activity suggests there is a broader regulatory structure on the horizon. The agency's 2019 rulemaking requires electronic tariff publication, and annual certification under 49 U.S.C. §§ 13701-02 signals a similar trend toward digitization as seen with other regulatory agencies, the impact of which has clear compliance implications for shippers and service providers.

STB Compliance: Tariffs

Legal compliance in waterborne transportation hinges on the tariff publication requirement. Pursuant to 46 CFR § 1312.3(a), all published tariffs for services subject to the jurisdiction of the STB must: (i) be filed in English; (ii) include an accurate description of the services offered to the public; (iii) provide the specific applicable rates explicitly stated in USD and service terms; and (iv) be arranged in a way that allows for the determination of the exact rates and service terms applicable to a particular shipment. Carriers can perform services in the non-contiguous domestic trade only if their rates and related rules and practices for such services are made publicly available on their websites or on a third-party vendor hosting site, which must also be kept on file with the STB. [46 CFR § 1312.2(a).] The only stated exception to the publication requirement is if a carrier provides transport for charitable purposes.

Carriers that fail to comply with the tariff publication (and amendment) requirements, even if there is an intermodal component for a particular movement, create the potential for agency enforcement, which can include suspension or revocation of operating authority. With the increasing digitized compliance obligations of federal agencies, as well as the STB's enforcement trends, market participants should consider implementing internal procedures that address proactive tariff governance and maintain digital-audit readiness.

Areas for Commercial Growth and Infrastructure Development

The Fixing America's Surface Transportation Act (FAST) and the Water Resources Development Act (WRDA) serve as foundational policy tools the STB considers to build out and promote inland water operations and infrastructure, development, and investment. In 2017, the FAST Act accelerated long-delayed lock-and-dam modernization projects, and the 2024 WRDA update reinforced federal support for channel maintenance, port dredging, and equipment upgrades. Carriers are only beginning to leverage programs that are spearheaded through these Acts to structure proposals that meet eligibility requirements, long-term network efficiencies, and commercial return on investment thresholds.

The U.S. Marine Highway Program (USMHP), which is administered by MARAD, is a federal-backed initiative promoting barge and short-sea shipping as a congestion-mitigation tool. Carriers that have tapped into USMHP grants have seen operational improvements, including:

- **Port Decongestion**: Inland ports established in Savannah, GA, and Oakland, CA, during congestion spikes illustrate the viability of a barge-supported network that can provide relief.
- **Labor Disruption Resilience:** During the 2024 port labor strikes, barge operators served as essential lift providers for diverted cargo to service the flow of automotive parts and time-sensitive agricultural goods.
- **Sustainability Metrics:** Environmental, social, and governance (ESG) requirements continue to drive shipper interest in water-based alternatives (e.g., a 15-barge tow can displace more than 1,000 trucks on the road, which reduces Scope-3 emissions and supports corporate carbon reporting benchmarks).

Carriers' participation in USMHP initiatives enhance operational resilience, which adds commercial value for their shippers. However, the U.S. inland waterway system is structurally and environmentally challenged, which presents certain barriers to entry, including:

- **Aging Infrastructure:** Downtime and delays are a threat, so monitoring for USACE-scheduled maintenance should be considered when contracting to build in delay clauses and avoid performance disputes.
- **Environmental Compliance:** Carriers are increasingly subject to environmental regulations implemented by the Environmental Protection Agency (EPA), the Customs Border Patrol (CBP), and even state-level rules, such as ballast water treatment and fuel standards.
- **Competitive Modal Dynamics:** Barges dominate bulk movements such as grain, coal, petroleum, iron ore, etc., but competitive pricing and market pressures periodically shift volumes to rail carriers and motor carriers. Emerging services such as Container-on-Barge (COB) offer an opportunity to capture high-value time-sensitive cargo, but there are practical considerations and risks, such as terminal handoffs, liability thresholds, and container ownership, that demand a tailored service agreement for COB operations.

Conclusion

Navigating non-contiguous domestic trade demands an integrated legal and operational strategy that accounts for ocean, barge, and inland waterway transportation under overlapping regulatory regimes. Shippers and service providers that consider the use of waterborne transportation, in addition to surface, rail, and air transport, are best positioned to mitigate those risks that can arise when there are disruptions and downturns in the market or other issues impacting domestic supply chains. As the STB's regulatory landscape continues to evolve, proactive planning will be critical to ensure long-term resilience and commercial success in this underutilized segment of the U.S. supply chain.

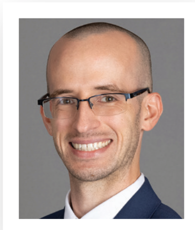
J. PHILIP NESTER is a senior managing associate in Benesch's Transportation & Logistics Practice Group and may be reached at 216.363.6240 or jpnester@beneschlaw.com.

Jonathan R. Todd Featured in Crain's Cleveland & Chicago on Tariffs & Global Trade

Jonathan R. Todd, Vice Chair of Benesch's Transportation & Logistics Practice Group and a national authority on global supply chain matters, shares insights in this Crain's Quick Take video on developing strategic supply chain risk management approaches. As tariffs and geopolitical factors increasingly affect industries from manufacturing to technology, Jonathan emphasizes the rising importance of geopolitics in corporate legal concerns. He outlines key considerations, including risk assessment, sourcing strategies, tariff mitigation, and navigating compliance risks such as forced labor and sanctions.

View the video here: https://bit.ly/crainsquicktake

Bonded Warehouses and FTZs as Tariff Management Tools



Jonathan R. Todd

Robert Naumoff

The threat of a looming trade war has left United States importers scrambling for tools to help ameliorate the impact of customs duties. In many ways we are entering a higher-cost operating environment. Some of the tools in the toolbox include confirming tariff classification codes, confirming countries of origin, negotiating volume and price with sellers and buyers, and seeking alternate markets for purchase or sale of goods.

Considering Bonded Warehouses and FTZs

All options must be on the table in this time of escalation. One time-tested tool in the toolbox that has received far less attention is the use of customs bonded warehouses and foreign trade zones (FTZs). These strategies help manage the timing of duty payments and as a result help manage cash flows. They can also eliminate the need to pay duties on goods that will ultimately be exported, which is particularly valuable since many of the proposed tariff actions eliminate the ability to use customs drawback to recover duties on subsequently exported goods. The net effect is more control over spend and the avoidance of unrecoverable spend in this period of off-and-on-again trade policy.

Common Advantages and Limitations

Bonded warehouses and FTZs are buildings or secured areas in which imported dutiable merchandise may be stored or manipulated or undergo manufacturing operations without the payment of duties for a period of time. The greatest legal distinction between bonded warehouses and FTZs is that products held in bonded warehouses are legally within the customs territory of the United States and subject to duties, while products held in FTZs are outside the customs territory despite their physical presence in the United States. The availability of favorable treatment in the application of United States duties is similar for each.

A key advantage of utilizing a bonded warehouse or FTZ is that merchandise can be manipulated therein. Product manipulation, including sorting and repackaging, is permitted in bonded warehouses without necessitating importation into the United States. However, bonded warehouses offer limited options for manufacturing operations and will generally require importation before any further manufacturing can take place. Conversely, FTZs permit product manipulation, as well as manufacturing and other substantial changes, without importation and the necessity for the payment of duties. The degree of manipulation or manufacturing is the single greatest factor in choosing between the two.

Another significant operational factor is the ease of withdrawal or removal of products. As a general rule, shipments entered into a bonded warehouse must be withdrawn from the warehouse *in their entirety* and corresponding duties paid. In contrast, removal of products from FTZs does not generally require parity with the product entered. This allows for a piecemeal approach if the then-current trade environment is unfavorable, because FTZs are legally outside the customs territory of the United States and the corresponding imports are viewed as any other import entered into the United States at the discretion of the importer.

Bonded Warehouse and FTZ Rules

U.S. Customs and Border Protection (CBP) oversees the establishment and operation of bonded warehouses. A shipper or its customs broker may enter its products into a bonded warehouse under an importer's bond. Product may be held in a bonded warehouse for a period up to five (5) years. Product manipulation is permitted in warehouses designated as a certain class upon application for a permit and approval by the Port Director. Permits may be granted on a blanket basis covering all warehouse entries for one (1) year, at the discretion of the Port Director, provided that the type of manipulation is identical for each of the covered entries. The shipper can then file an application to withdraw manipulated shipments from the bonded warehouse. Blanket permits to withdraw are granted only in limited circumstances.

The United States Foreign Trade Zones Board, which consists of the Secretary of Commerce and Secretary of Treasury or their designees, oversees the establishment and operation of FTZs in cooperation with CBP. A shipper or its customs broker may enter its products into an FTZ pursuant to Customs Form 214. Blanket permits for entry may be granted, limited to circumstances involving single transportation entries or for entries within a single business day. Product manipulation is permitted in any FTZ upon application for a permit, which may be granted for periods of up to one (1) year. Permits for removal from an FTZ may be granted on a weekly basis.

The transportation services required to move products from ports of entry in the United States, to the bonded warehouse or FTZ, and then to export, is the same under either scenario. A carrier will process an Immediate Transportation Entry for the initial leg and a Transportation and Exportation Entry for the final leg. The carrier will then haul the products under an in-bond manifest and bear liability to the United States under its custodial bond for any failure to deliver. These activities will be provided in compliance with the requirements of 19 CFR Part 18, with which carriers may be familiar if they have experience providing in-bond transportation within the United States.

New Bonded Warehouses and FTZs

Bonded warehouses are available from third parties, or new bonded warehouses may be established through an application and approval process that spans approximately six (6) months. Establishing a new bonded warehouse begins with filing a written application with the nearest Port Director. The application requires detailed information regarding the facility, including blueprints, the type of merchandise and its anticipated customs value, the existence of fire insurance coverage, financial statements, background information on company officers and relevant employees, and descriptions of inventory controls. The Port Director may grant or deny applications at his or her sole discretion following a physical survey of the facility for security compliance and a background investigation of the applicant and other parties involved. Upon approval, the applicant must post a bond on Customs Form 301 based on the estimated annual customs value of products held at the facility. Once a bonded warehouse is established, its proprietor is responsible for complying with all legal requirements, including supervision of the warehouse, safekeeping of the merchandise, inventory, and recordkeeping.

FTZs are available for use from public and private third-party entities, or new FTZs, including "sub-zones" within existing FTZs, may be established through an application and approval process of approximately three (3) to twelve (12) months. While private for-profit organizations are eligible to apply to establish FTZs, approval requires a special act of the state legislature specifically naming the organization and evidence that the entity was chartered for the purpose of establishing an FTZ. These stringent requirements are due to the role of FTZs as public utilities offered for economic development and advancement of United States trade policy.

Establishing an FTZ requires filing a written application with the Foreign Trade Zone Board. The application requires substantial and detailed information, including evidence of state enabling legislation, descriptions of the proposed site, analysis of the economic justification for the FTZ (including impact studies and an economic profile of the local community), and an explanation for how the FTZ will advance the trade-related goals and objectives of the United States. The nearest FTZ grantee receives notice of the application and an opportunity to object by demonstrating that public interest would not be served by approval. Details of the application are also published in the Federal Register for public comment and the possibility of a public hearing. If the application is approved by the Board, then the grantee must apply to the local Port Director to gain additional approval for activation of the FTZ. This final approval process may involve a background investigation and will be granted or denied with finality at the sole discretion of the Port Director.

"The net effect is more control over spend and the avoidance of unrecoverable spend in this period of off-and-on-again trade policy."

Once an FTZ is established, the grantee must conduct its operations as if it were a public utility. All rates and charges must be published, uniform, fair, and reasonable. If any member of the public believes that it did not receive fair treatment from the FTZ, then he or she may submit a complaint to the Executive Secretary of the Board for review and investigation. Additionally, grantees are subject to annual reporting as well as stringent security, storage, and handling requirements.

A Clear Choice Based on Domestic Activities

Choosing between bonded warehouses and FTZs depends on operational goals. Bonded warehouses are available for repositioning, consolidation and deconsolidation, and light manipulation, although they are not appropriate for most manufacturing activities. FTZs are available to satisfy manufacturing needs in addition to the many benefits offered by bonded warehouses, and offer ease of withdrawal, although they are subject to greater regulation. The regulatory burden for launching new bonded warehouse or FTZ operations is significantly, and sometimes prohibitively, greater for FTZs. As with all decisions for supply chain engineering, the advantages of favorable duties and on-shore operations balance against the cost of time, expense, and effective compliance.

We must bear in mind that the landscape is changing every day. The current slate of Trump Administration tariffs provide that duties will be based upon the classification of the goods at the time of admittance into an FTZ such that importers may nonetheless bear responsibility for heightened duties if entered while tariffs are in effect, thereby negating some of the potential benefits of FTZs. Ultimately, importers must choose the import method that works best for them amid a constantly changing trade landscape.

JONATHAN R. TODD is Vice Chair of the Transportation & Logistics Practice Group at Benesch. His entire career has focused on supply chain management, transportation and logistics, and international trade. He brings unique perspective as a licensed customs broker with a graduate degree in Supply Chain Management, in addition to being an attorney. He knows the players in the game and mobilizes quickly for his clients. You may reach Jonathan at 216.363.4658 and jtodd@beneschlaw.com.

ROBERT NAUMOFF is Of Counsel with the Transportation & Logistics Practice. He is former in-house counsel in the industry, where he supported transportation, storage, and customs operations across the enterprise. You may reach Robert at 614.223.9305 and rnaumoff@beneschlaw.com.

INCOTERMS—More Relevant to Procurement and Sales Than Ever Before


Jonathan R. Todd


Kristopher J. Chandler


Ashley Corbin Rice

The INCOTERMS published by the International Chamber of Commerce (ICC) have long served the international community by offering a "shorthand" for communicating key shipping terms. The ICC most recently issued the 2020 version of INCOTERMS in September 2019. INCOTERMS are ubiquitous in international procurement that their use has been hardly remarkable—until now. The United States' unprecedented tariff activity, particularly the implementation of reciprocal tariffs, has brought INCOTERMS back into the conversation as parties discuss who will bear new additional import duties. Those three letters—the INCOTERM in question—in supply contracts and shipping documents are at this moment the fulcrum upon which many trading relationships pivot.

INCOTERMS and Trade War

One INCOTERM in particular, DDP, also identifies the party responsible for the payment of duties upon entry at the country of import. The Trump Administration has imposed significant universal and reciprocal tariffs on a growing list of countries. These actions against U.S. trading partners has caused participants in global supply chains to dust off their supply contracts in addition to their tariff classifications. Foreign manufacturers, domestic buyers, and domestic end users are all at this moment wrestling with internalization of a minimum for most countries, an additional 10% ad valorem increase in duties. Some contracts specifically identify the parties responsible for duties and taxes. For example, it is not uncommon for contracts to reference "shipping terms" generally, which would incorporate INCOTERMS, as indicative of the party responsible for duties.

INCOTERMS are performing in this era of lightning-fast tariff action as intended. They provide a tool for communicating party intent with respect to certain transaction costs. Use of the DDP INCOTERM indicates that the seller is responsible for costs and duties associated with entry of goods into the United States. However, the absence of a DDP term does not foreclose the possibility that a foreign supplier is responsible for duties. Many parties are finding (or at least arguing in favor of) different interpretations, absence of terms, or even ambiguity in their contracts as a means to position for more favorable price negotiations. As with all contract disputes, this is ultimately a question of party intent, and resolution may require looking to the rules of contract construction that attorneys are skilled in applying to determine meaning.

Every day across the United States, buyers and sellers are engaged in heated contract interpretations and negotiations over whether and how the parties intended to accommodate tariff action. These commercial disputes are at their essence matters of price. The key question, of course, is which party will bear duties and whether that burden will be shared. We are aware of recent instances where suppliers in China have approached domestic buyers in a less-than-forthright fashion on this very issue. Proposed changes from DDP terms to alternates, such as DAP (Destination), have been presented to domestic buyers as merely ministerial changes for administrative convenience. This is, of course, not a change without cause, and accepting it could result in bearing a 10% or higher increase in most cases.

Another risk in this environment is the occurrence of reckless shifts to use DDP. We are aware of some domestic U.S. buyers who have been approached by their foreign suppliers with offers to convert to DDP models. The sales pitch is that doing so can achieve close to the same sale price as before recent tariff actions. While this may be credible it does raise some flags that require exploration. It may be the case that the supplier is intending to evade duties by undervaluing goods. Doing so may not yield direct regulatory risk to the buyer since it is not importer of record, but there are other tangible risks. The buyer will lost visibility to inbound cargoes and to any questions raised by U.S. Customs and Border Protection. If there is a detention or seizure then the buyer will have no ability to recover the goods while it suffers from supply chain interruption due to their absence—which can lead to shuttering production lines or stock-outs for store shelves.

INCOTERMS Are Shorthand, Not a Shortcut

We very often remind our clients that INCOTERMS are only shorthand. They should not be taken for granted. While simple, INCOTERMS convey the responsibilities, obligations, and risks of both seller and buyer from the point of origin, through transportation, to the point of delivery. Every supplier and importer must consider the totality of its deal terms before looking to memorialize those in contract language. Drafting in plain language, especially on complex issues such as responsibility for duties, is sometimes preferred if INCOTERMS convey different or conflicting meanings. Some domestic importers take this a step further by expressly stating that INCOTERMS are for convenience only and do not change the parties' intentions. Clearly drafting deal terms, and taking time to consider unintended consequences, can mean the difference between having the upper hand in price negotiations or accepting a 10% additional ad valorem increase in duties due to three simple letters.

An INCOTERMS Primer

The ICC publishes and maintains the INCOTERMS as a uniform set of rules to clarify any uncertainty in supply contract interpretation. A single three-character INCOTERM establishes the precise point at which key responsibilities transfer from seller to buyer. Thus, the INCOTERMS are a means of communicating the intent of the parties in a way that is both simple and useful to all participants in international trade, including the importers, exporters, transporters, lawyers, and insurers who rely upon those terms every day.

The first set of INCOTERMS was published in 1936, and that list has been subsequently amended and restated seven times, most recently in 2020. The INCOTERMS have withstood the test of time due to the ICC's great work in recognizing modernization of international transportation, such as the rise in non-maritime transportation, advances in air travel, proliferation of container traffic, increased use of electronic messages, and need to cooperate on information sharing. (See *INCOTERMS: Ground Zero for Negotiating Tariff Impact*) The ICC's next update to the INCOTERMS is scheduled for 2030.

Today, the ICC maintains 11 INCOTERMS:

CFR Cost and Freight: "Cost and Freight" means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

CIF Cost, Insurance and Freight: "Cost, Insurance and Freight" means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination. The seller also contracts for insurance coverage against the buyer's risk of loss of or damage to the goods during the carriage. The buyer should note that under CIF the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree to as much expressly with the seller or to make its own extra insurance arrangements.

CIP Carriage and Insurance Paid To: "Carriage and Insurance Paid To" means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination. The seller also contracts for insurance cover against the buyer's risk of loss of or damage to the goods during the carriage. The buyer should note that under CIP the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will either need to agree to as much expressly with the seller or to make its own extra insurance arrangements.

CPT Carriage Paid To: "Carriage Paid To" means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination.

EXW Ex Works: "Ex Works" means that the seller delivers when it places the goods at the disposal of the buyer at the seller's premises or at another named place (i.e., works, factory, warehouse, etc.). The seller does not need to load the goods on any collecting vehicle, nor does it need to clear the goods for export, where such clearance is applicable.

FCA Free Carrier: "Free Carrier" means that the seller delivers the goods to the carrier or another person nominated by the buyer at the seller's premises or another named place. The parties are well advised to specify as clearly as possible the point within the named place of delivery, as the risk passes to the buyer at that point. The 2020 INCOTERM Update allows for the issuance of a Bill of Lading with an onboard notation.

DAP Delivered At Place: "Delivered at Place" means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place.

continued on page 21

Benesch's Martha Payne Wins 2025 Distinguished Woman in Logistics Award

Benesch is proud to announce that Transportation & Logistics attorney Martha Payne has been named the winner of the 2025 Distinguished Woman in Logistics Award (DWLA). Presented by The Women in Trucking Association (WIT), Truckstop, and the Transportation Intermediaries Association (TIA), this prestigious award recognizes one exceptional woman each year for her leadership, achievements, and mentorship in the logistics industry across North America.

Selected from among three finalists, Martha was recognized for her lasting contributions to the transportation and logistics sector, her commitment to excellence, and her influence as a mentor. She and her fellow finalists were honored at the TIA 2025 Capital Ideas Conference & Exhibition in San Antonio.

"I can't think of anyone more deserving of this award," said Benesch Transportation & Logistics Vice Chair Jonathan R. Todd. "Martha has made immense contributions to her field and is, without a doubt, a distinguished woman in logistics. We are so proud of her and pleased to see her recognized in such a prestigious way."

A trailblazer in transportation law with a career spanning more than four decades, Martha is a sought-after advisor to shippers, carriers, and logistics companies on cargo liability, risk management, contracting, and collections. She also has a deep understanding of international transportation and logistics policy. Her career has spanned claims examination, in-house roles, and private practice at Benesch, giving her an unparalleled perspective on the industry—across motor, air freight, intermodal, and ocean cargo.

Martha may be reached at mpayne@beneschlaw.com or 541.961.7802.

Supply & Demand Chain Executive Names J. Philip Nester as Recipient of 2025 Pros to Know Award

Benesch is pleased to announce that J. Philip Nester, a senior managing associate in the firm's Transportation & Logistics and Litigation Practice Groups, has been named a recipient of the 2025 Pros to Know Award in the Top Transportation Innovators category by *Food Logistics and Supply & Demand Chain Executive*. This prestigious award recognizes outstanding professionals whose accomplishments offer a roadmap for other leaders looking to leverage supply chain for competitive advantage.

"Phil is extremely deserving of this recognition due to his insightful work for our clients," said Benesch Transportation & Logistics Vice Chair Jonathan R. Todd. "He truly demonstrates excellence in leveraging supply chain expertise to drive business success."

Phil's work focuses on transactional and regulatory issues across the transportation services and supply chain management continuum, where he represents users and providers, including manufacturers, distributors, retailers, carriers, brokers, intermediaries, forwarders, and managed transportation service providers in connection with general business consultation, regulatory compliance, drafting and negotiation of contracts, litigation, dispute resolution, enforcement defense, investigations, and audits. His clients span the spectrum of market participants, and he works closely with clients' in-house counsel, business teams, and supply chain management colleagues to advise on the legal and regulatory impact of commercial, operational, and enterprise risks.

Phil may be reached at jpnester@beneschlaw.com or 216.363.6240.

INCOTERMS—More Relevant to Procurement and Sales Than Ever Before

continued from page 19

DDP Delivered Duty Paid: "Delivered Duty Paid" means that the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

DPU Delivered at Place Unloaded: "Delivered at Place Unloaded" means that the seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the disposal of the buyer at a named terminal at the named port or place of destination. "Terminal" includes a place, whether covered or not, such as a quay, warehouse, container yard or road, and rail or air cargo terminal. The seller bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or place of destination. The 2020 INCOTERM Update replaced the former Incoterm DAT Delivered At Terminal with DPU.

FAS Free Alongside Ship: "Free Alongside Ship" means that the seller delivers when the goods are placed alongside the vessel (e.g., on a quay or a barge) nominated by the buyer at the named port of shipment. The risk of loss of or damage to the goods passes when the goods are alongside the ship, and the buyer bears all costs from that moment onwards.

FOB Free On Board: "Free On Board" means that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards.

Click here for a visual representation of INCOTERMS and their practical implications for each party to the purchasing agreement.

JONATHAN R. TODD is Vice Chair of Benesch's Transportation & Logistics Practice Group. He may be reached 216.363.4658 and jtodd@beneschlaw.com.

KRISTOPHER J. CHANDLER is a senior managing associate at Benesch. He may be reached at 614.223.9377 and kchandler@beneschlaw.com.

ASHLEY CORBIN RICE is an associate in Benesch's Transportation & Logistics Practice Group. She may be reached at 216.363.4528 and arice@beneschlaw.com.

Marc S. Blubaugh Elected to Board of Directors of the American Logistics Aid Network

MARC S. BLUBAUGH
Partner
T. 614.223.9382
mblubaugh@beneschlaw.com

Benesch is pleased to announce that Marc S. Blubaugh, Co-Chair of the firm's Transportation & Logistics Industry Group and a Vice Chair of the Litigation Practice Group, has been elected to the Board of Directors of the American Logistics Aid Network (ALAN) for 2025. In this role, Marc will help guide the organization's strategy, advocacy, and planning efforts.

The American Logistics Aid Network (ALAN) is an industry-wide nonprofit that provides supply chain assistance to humanitarian organizations during times of disaster. ALAN operates with the support of logistics professionals who volunteer essential resources—including transportation, warehousing, material handling equipment, and expertise—to help communities in need.

Marc is a seasoned attorney who regularly advises clients on contracting practices, operating procedures, and regulatory compliance. He assists clients in navigating complex investigations, handling high-stakes litigation, implementing best supply chain practices, and developing strategies that not only minimize liability but also support sustainable business growth.

Recent Events

2025 AirCargo Conference
Christopher D. Hopkins participated in the "Merger & Acquisition" panel. **Jonathan R. Todd** participated in the "Transportation Compliance" panel. **Christopher C. Razek** attended.
March 2–4, 2025 | Arlington, TX

Transpacific Maritime Conference (TPM) Annual Conference
J. Philip Nester attended.
March 2–5, 2025 | Long Beach, CA

International Association of Defense Counsel (IADC) Webinar
Kelly E. Mulrane presented *Carmack Liability*.
March 3, 2025 | Virtual

American Trucking Association's (ATA's) Moving & Storage Conference
Jonathan R. Todd and **Peter K. Shelton** presented *Thinking About Selling Your Company? How to Prepare and What to Expect*. **Jonathan R. Todd** presented *Contracts Education Session*.
March 9–11, 2025 | Nashville, TN

21st Annual Reverse Logistics Association (RLA) Conference and Expo
Eric L. Zalud attended.
March 11–13, 2025 | Las Vegas, NV

Institute for Supply Management (Cleveland Chapter) Meeting
Christopher C. Razek and **Megan K. MacCallum** presented *Supply Chain Contracts – Best Practices in Legal and Risk Management*.
March 12, 2025 | Virtual

Transportation Megaconference XVII
Eric L. Zalud attended.
March 13–14, 2025 | New Orleans, LA

2025 Transportation Logistics Counsel Annual Conference
Marc S. Blubaugh participated in the "Transportation Attorneys Panel." **Eric L. Zalud** participated in the "Cargo Claims Update Panel". **Martha J. Payne** attended.
March 16–19, 2025 | Houston, TX

Truckload Carriers Association (TCA) Annual Convention
Jonathan R. Todd presented *AI and Its Use in the Trucking Industry Workshop*.
March 15–18, 2025 | Phoenix, AZ

American Trucking Association Webinar
Robert Pleines, Jr., Christopher C. Razek, and **Jonathan R. Todd** presented *Hauling for Uncle Sam – Government Contracting Primer and Hot Topics*.
March 25, 2025 | Virtual

Strafford Webinar
Jonathan R. Todd presented *In-Transit Inventory Financing: Key Issues for Shippers and Lenders*.
March 27, 2025 | Virtual

Trucking Industry Defense Association (TIDA) Cargo Skills & Liability Skills Seminar
Marc S. Blubaugh presented *Insurance-Related Issues in Cargo Claims*.
April 1–3, 2025 | Charlotte, NC

2025 Transportation Intermediaries Association (TIA) Capital Ideas Conference
Eric L. Zalud presented *Wrapped Up and Tied With a Bow – Packaging Your Logistics Company for the Marketplace (Navigating the M&A Process)*. **Vanessa I. Gomez** and **Megan K. MacCallum** presented *International Trade for Intermediaries – Current Events Edition!* **Kristopher J. Chandler** presented *The Rise of the Machines – Practical Legal Solutions for AI & Logistics*. **Marc S. Blubaugh** presented and participated in a panel on *Current Legal and Regulatory Issues Facing Freight Brokers*. **Martha J. Payne** attended.
April 9–11, 2025 | San Antonio, TX

Manufacturers Association for Plastics Processors Webinar
Jonathan R. Todd presented *Supply Chains Under Trump 47: Legal and Regulatory Trends for Tariffs and Trade*.
April 10, 2025 | Virtual

Jefferies 2025 Logistics & Transportation Conference
Marc S. Blubaugh, Eric L. Zalud, and **Peter K. Shelton** attended.
April 16–17, 2025 | Coral Gables, FL

National Retail Federation Webinar
Jonathan R. Todd, Stephanie A. Sheridan, and **Meegan Brooks** presented *Trump 47 Tariffs*.
April 17, 2025 | Virtual

National Home Delivery Association (NHDA) Member Call
Jonathan R. Todd, Megan K. MacCallum, and **Vanessa Gomez** presented *Trump Tariffs – Keys for Delivery Service Providers and Their Customers*.
April 29, 2025 | Virtual

2025 Transportation Lawyers Association (TLA) Annual Conference
Marc S. Blubaugh, Martha J. Payne, Eric L. Zalud, and **Richard A. Plewacki** attended.
April 30–May 3, 2025 | Rancho Mirage, CA

Columbus Logistics Conference
Marc S. Blubaugh presented *International and Domestic Transportation & Logistics Update*.
May 1, 2025 | Columbus, OH

USI Insurance Services Special Event
Jonathan R. Todd presented *Modern Risks to Today's Supply Chain*.
May 1, 2025 | Cleveland, OH

ATA Mid-Year Management Session
Robert Naumoff attended.
May 3–6, 2025 | Scottsdale, AZ

International Warehouse Logistics Association (IWLA) Annual Convention and Expo
Injune Park participated in the "Strength & Durability Circuit—3PL Mergers and Acquisitions" panel. **Christopher C. Razek** attended.
May 4–6, 2025 | Tucson, AZ

2025 Intermodal Association of North America (IANA) Business Meeting
Marc S. Blubaugh attended.
May 5–7, 2025 | Kansas City, MO

InvestMidwest Venture Capital Forum
Megan K. MacCallum participated in the "Supply Chain Investing Panel."
May 6, 2025 | St. Louis, MO

William Blair Transportation & Logistics Summit
Marc S. Blubaugh attended.
May 7–9, 2025 | Charleston, SC

TerraLex Global Meeting
Jonathan R. Todd presented *Supply Chains in Crisis: Navigating Geopolitical Risk, Trade Wars, and Sanctions*. **Michael J. Barrie** and **Eric L. Zalud** attended.
May 14–17, 2025 | Toronto, Ontario

Benesch Investing in the Performance Materials & Plastics Industry Conference
Jonathan R. Todd presented *North American Supply Chain: Opportunities and Risks*.
May 20, 2025 | Chicago, IL

ISM World 2025
Vanessa I. Gomez, Megan K. MacCallum, and **Jonathan R. Todd** presented *What To Do NOW About International Trade Compliance - 2025 News Headlines Edition!*
June 1, 2025 | Orlando, FL

ATA 2025 National Accounting & Finance Council (NAFC) Annual Conference
Eric L. Zalud attended.
June 2–4, 2025 | Tampa, FL

Conference of Freight Council (CFC) 2025 Summer Meeting
Eric L. Zalud attended.
June 7–9, 2025 | Boston, MA

Association for Supply Chain Management (Akron Chapter)
Jonathan R. Todd, Megan K. MacCallum, Vanessa I. Gomez, and **Ashley Corbin Rice** presented *Managing Tariff Chaos in 2025*.
June 10, 2025 | Akron, OH

What's Trending

Friend us on Facebook:
www.facebook.com/Benesch.Law

Subscribe to our YouTube Channel:
www.youtube.com/user/BeneschVideos

Follow us on X (formerly Twitter):
www.twitter.com/BeneschLaw

Follow us on LinkedIn:
http://www.linkedin.com/company/benesch-friedlander-coplan-&-aronoff/

On the Horizon

International Warehouse Logistics Association (IWLA) Webinar
Jonathan R. Todd, Christopher C. Razek, and **Ashley Corbin Rice** are presenting *Tariff Mitigation Toolbox: Understanding Customs Bonded Warehousing*.
June 12, 2025 | Virtual

8th Annual Modernization of Cross Border Trade Conference
Vanessa I. Gomez is attending.
June 17, 2025 | Laredo, TX

National Home Delivery Association Webinar
Jonathan R. Todd, Megan K. MacCallum, and **Vanessa I. Gomez** are presenting *Navigating Trump Tariffs*.
June 20, 2025 | Virtual

Association of Transportation Law Professionals (ATLP) 96th Annual Meeting
Eric L. Zalud is attending.
June 22–24, 2025 | Chicago, IL

American Logistics Aid Network's Biweekly Partners' Meeting
Marc S. Blubaugh is presenting *Supply Chain Legal Update*.
July 8, 20254 | Virtual

Chicago Vice – Navigating Risk in Transit: Legal Insights on the Storage and Transport of Cannabis, Hemp, Alcohol, Hazmats and Munitions (Including Tariff Implications)
Marc S. Blubaugh, Vanessa I Gomez, Alissa "Ali" Jubelirer, Megan K. MacCallum, Robert Pleines, Jr., Christopher C. Razek, Jonathan R. Todd, and **Eric L. Zalud** are presenting.
July 15, 2025 | Benesch Office Chicago, IL

Truckload Carriers Association (TCA) Refrigerated Meeting
Eric L. Zalud is attending.
July 16–18, 2025 | Colorado Spring, CO

Transportation Lawyers Association (TLA) Summer Executive Committee Meeting
Eric L. Zalud is attending.
July 18–20, 2025 | Montreal, Quebec

National Home Delivery Association 2025 Annual Forum
Jonathan R. Todd is participating in the "Risk Management Roundtable - Emerging policy impacts to final mile operations from tariffs, immigration, and labor regulations."
July 20–23, 2025 | Washington, D.C.

American Trucking Association Legal Forum 2025
Marc S. Blubaugh, Reed W. Sirak, and **Jonathan R. Todd** are presenting *Clean Air, Don't Despair: Breezing Through Emissions Compliance Challenges!* **Eric L. Zalud** is attending.
July 27–29, 2025 | Denver, CO

Intermodal Association of North America (IANA) EXPO
Marc S. Blubaugh is attending.
September 15–17, 2025 | Long Beach, CA

TIA Policy Forum
Marc S. Blubaugh is attending.
September 15–17, 2025 | Washington, D.C.

Logisyn Advisors Logistics M&A Club Conference
Marc S. Blubaugh and **Eric L. Zalud** are attending.
September 17–18, 2025 | Chicago, IL

Canadian Transportation Lawyers' Association (CTLA) 2025 Educational Conference and Annual General Meeting
Jonathan R. Todd is presenting on M&A Competition and Regulatory Approvals. **Martha J. Payne** is attending.
September 18–20, 2025 | Victoria, BC

Trucking Defense Advocacy Council (TDAC) Arkansas Conference
Eric L. Zalud is attending.
September 24–25, 2025 | Fayetteville, AK

Trucking Industry Defense Association (TIDA) 33rd Annual Seminar
Eric L. Zalud is attending.
October 15–17, 2025 | San Antonio, TX

Harris Williams Conference
Marc S. Blubaugh and **Eric L. Zalud** are attending.
October 20–22, 2025 | Nashville, TN

Transportation Law Institute
Eric L. Zalud is presenting *The Rapid-Fire Multimodal Lightning Round; Rail, Sea, Air…and Beyond!* **Marc S. Blubaugh, Martha J. Payne,** and **Jonathan R. Todd** are attending.
October 23–24, 2025 | Detroit, MI

ATA Management Conference & Exhibition
Marc S. Blubaugh, Robert Pleines, Jr., and **Robert Naumoff** are attending.
October 25–28, 2025 | San Diego, CA

2025 CIFFA Conference
Marc S. Blubaugh is participating in the "Legal Panel."
October 29–30, 2025 | Toronto, Ontario

Transportation Intermediaries Association (TIA) 2025 Technoventions Conference
Eric L. Zalud is attending.
November 5–7, 2025 | Phoenix, AZ

Women in Trucking Accelerate! Conference & Expo
Martha J. Payne is attending.
November 9–12, 2025 | Dallas, TX

TerraLex Global Meeting
Eric L. Zalud is attending.
November 19–22, 2025 | Bangkok, Thailand

For further information and registration, please contact **MEGAN THOMAS**, Director of Client Services, at mthomas@beneschlaw.com or 216.363.4639.

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

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

ERIC L. ZALUD, Co-Chair | 216.363.4178
ezalud@beneschlaw.com

MARC S. BLUBAUGH, Co-Chair | 614.223.9382
mblubaugh@beneschlaw.com

JONATHAN R. TODD, Vice Chair | 216.363.4658
jtodd@beneschlaw.com

MICHAEL J. BARRIE | 302.442.7068
mbarrie@beneschlaw.com

ALLYSON CADY | 216.363.6214
acady@beneschlaw.com

KEVIN M. CAPUZZI | 302.442.7063
kcapuzzi@beneschlaw.com

KRISTOPHER J. CHANDLER | 614.223.9377
kchandler@beneschlaw.com

NORA COOK | 216.363.4418
ncook@beneschlaw.com

BRIAN CULLEN | 312.488.3297
bcullen@beneschlaw.com

JOHN N. DAGON | 216.363.6124
jdagon@beneschlaw.com

WILLIAM E. DORAN | 312.212.4970
wdoran@beneschlaw.com

JOHN C. GENTILE | 302.442.7071
jgentile@beneschlaw.com

VANESSA I. GOMEZ | 216.363.4482
vgomez@beneschlaw.com

JOSEPH N. GROSS | 216.363.4163
jgross@beneschlaw.com

JENNIFER R. HOOVER | 302.442.7006
jhoover@beneschlaw.com

CHRISTOPHER D. HOPKINS | 614.223.9365
chopkins@beneschlaw.com

TREVOR J. ILLES | 312.212.4945
tilles@beneschlaw.com

PETER N. KIRSANOW | 216.363.4481
pkirsanow@beneschlaw.com

DAVID M. KRUEGER | 216.363.4683
dkrueger@beneschlaw.com

NICOLAS P. LACEY | 614.223.9384
nlacey@beneschlaw.com

STEVEN D. LESSER | 614.223.9368
slesser@beneschlaw.com

CHARLES B. LEUIN | 312.624.6344
cleuin@beneschlaw.com

MEGAN K. MACCALLUM | 216.363.4185
mmaccallum@beneschlaw.com

MICHAEL J. MOZES | 614.223.9376
mmozes@beneschlaw.com

KELLY E. MULRANE | 614.223.9318
kmulrane@beneschlaw.com

ROBERT NAUMOFF | 614.223.9305
rnaumoff@beneschlaw.com

J. PHILIP NESTER | 216.363.6240
jpnester@benecshlaw.com

MARGO WOLF O'DONNELL | 312.212.4982
modonnell@beneschlaw.com

THOMAS O'DONNELL | 302.442.7007
todonnell@beneschlaw.com

LIANZHONG PAN | 011.8621.3222.0388
lpan@beneschlaw.com

MARTHA J. PAYNE | 541.961.7802
mpayne@beneschlaw.com

JOEL R. PENTZ | 216.363.4618
jpentz@beneschlaw.com

ROBERT PLEINES, JR. | 216.363.4491
rpleines@beneschlaw.com

RICHARD A. PLEWACKI | 216.363.4159
rplewacki@beneschlaw.com

JULIE M. PRICE | 216.363.4689
jprice@beneschlaw.com

DAVID A. RAMMELT | 312.212.4958
drammelt@beneschlaw.com

CHRISTOPHER C. RAZEK | 216.363.4413
crazek@beneschlaw.com

ABBY RIFFEE | 614.223.9387
ariffee@beneschlaw.com

LAURYN T. ROBINSON | 216.363.6110
lrobinson@beneschlaw.com

PETER K. SHELTON | 216.363.4169
pshelton@beneschlaw.com

REED W. SIRAK | 216.363.6256
rsirak@beneschlaw.com

DEANA S. STEIN | 216.363.6170
dstein@beneschlaw.com

CLARE TAFT | 216.363.4435
ctaft@beneschlaw.com

If you are interested in receiving our transportation industry client alerts and our quarterly *InterConnect* newsletter, please sign up here:
https://bit.ly/beneschtransportationalerts

www.beneschlaw.com