

# The Transportation Brief®



## *The Transportation Brief*

A quarterly newsletter of legal news for the clients and friends of Scopelitis, Garvin, Light & Hanson.

### *Indianapolis Office:*

10 W. Market Street  
Suite 1500  
Indianapolis, IN 46204  
Phone (317) 637-1777  
Fax (317) 687-2414

### *Chicago Office:*

30 W. Monroe Street  
Suite 600  
Chicago, IL 60603  
Phone (312) 422-1200  
Fax (312) 422-1224

### *Washington, D.C. Office:*

1850 M Street, N.W.  
Suite 280  
Washington, DC 20036-5804  
Phone: (202) 783-9222  
Fax: (202) 783-9230

### *Los Angeles Office:*

2 North Lake Avenue  
Suite 460  
Pasadena, CA 91101  
Phone: (626) 795-4700  
Fax: (626) 795-4790

### *Kansas City Office:*

9393 West 110th Street  
51 Corporate Woods  
Suite 500  
Overland Park, KS 66210  
Phone: (816) 279-9835  
Fax: (816) 676-1427

### *Chattanooga Office:*

600 Republic Centre  
633 Chestnut Street  
Chattanooga, TN 37450  
Phone: (423) 266-2769  
Fax: (423) 266-6784

Please fax or e-mail address changes to:

*The Transportation Brief*  
fax (317) 687-2414  
tbrief@scopelitis.com

## *Homeland Security Steps Up Border-Crossing Regulations*

Carriers engaged in cross-border or other international movement of cargo must keep informed about increasing federal regulation in order to satisfy customer requirements for timely and seamless transportation of goods. The Department of Homeland Security, through the Bureau of Customs and Border Protection (CBP), is now at the forefront of governmental agencies impacting transportation companies.

### *CBP requires advance notification of inbound cargo*

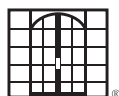
The key to CBP's control of U.S. borders is its implementation of regulations designed to provide advance notification of the cargo carried by inbound motor, rail, ocean and air carriers. At the heart of CBP's plan is the Automated Commercial Environment (ACE). Although ACE's primary purpose is to facilitate the exchange of information between CBP and importers, CBP has started to require advance reporting of inbound cargo by motor carriers through ACE's e-manifest system. Initially, CBP is mandating submission of cargo information through ACE ports of entry in Washington, Arizona, and multiple ports of entry in North Dakota. On the horizon are all ports of entry in Michigan, Texas, California, New Mexico and New York. Once enforcement is in full effect at a port of entry, penalties for non-compliance will include border-crossing denial and fines as high as \$10,000 per violation.

### *CBP intends to further bolster security in the coming months*

CBP also plans to develop a more detailed risk assessment program supplementing what is presently required by the 24-Hour Rule. The 24-Hour Rule requires advance information about inbound cargo, although in time frames that vary from 24 hours prior to dispatch depending on the mode of transport. Under CBP's proposal, which is geared toward inbound ocean transport, the new security filing would require submission of 10 key trade elements of information enabling CBP to target with even greater accuracy shipments of suspect origin. The security filing will be assessed in conjunction with the mandated submission of vessel stow plans and transmission of container status messages, allowing CBP to pinpoint the location of suspect cargo at any stage in the international transportation chain.

CBP is thus showing itself to be a key player in the regulation of all modes of carriage, and its enhanced security requirements will affect all participants in the transport of inbound intermodal cargo. Carriers in all modes are encouraged to pay close attention to CBP's continued involvement in the regulation of their operations.

*Christopher C. McNatt,  
Los Angeles*



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# Briefly...

## *Canada Adopts New Hours Of Service Rules*

The new Canadian federal hours of service rules took effect on January 1, 2007. The rules govern the operation of extra-provincial motor carriers – i.e., carriers that operate between two or more Canadian jurisdictions or between Canada and the U.S. Three Canadian provinces adopted the federal rules with the same effective date for intra-provincial transportation, and the remaining provinces and territories are expected to follow suit with effective dates that will vary. According to the Canadian Council of Motor Transport Administrators, a 6-month period of “soft” educational enforcement will apply until July 1, 2007.

In adopting its new hours of service rules, Canada followed the lead of the Federal Motor Carrier Safety Administration in generally reducing maximum daily driving and on-duty times permitted for drivers. Importantly, however, the Canadian rules are not the same as the U.S. rules, and Canada’s rules are applicable to U.S. drivers while operating within Canada. Carriers are therefore advised to use caution in monitoring the logs of drivers engaged in cross-border operations.

*Timothy W. Wiseman  
Nathaniel G. Saylor,  
Indianapolis*

## *Transportation Service Providers Beware Of Multi-Modal Liability Limitations*

Entities transporting or arranging for the transportation of goods and accepting responsibility for cargo across

multiple modes of transportation, including rail, air, and ocean, should use caution not to increase their own potential cargo liability due to differences in underlying liability limitations. For example, motor carrier limitations are sometimes stated in terms of maximum liability (e.g., \$100,000 per trailer load), whereas international ocean carriers or non-vessel ocean common carriers limit their liability to \$500 per package. Concurrently, international air carriers usually limit their liability to roughly \$9-\$11 per pound, and rail carrier limitations vary across companies.

Under such circumstances and depending upon the shipping arrangements, higher limits set by one service provider may apply to other modes of carriage and drastically increase another provider’s liability. For example, the \$500 per package limitation on an ocean through bill of lading may apply to cargo damage by motor or rail carrier on a land leg of the transportation. Thus, it is important that service providers understand the different limitations of liability in play to effectively protect both their shipping customers and themselves from unexpected cargo liability. Otherwise, the shipper may look to “its” service provider for the difference between its limitation of liability and that of an underlying carrier.

Transportation companies can protect themselves by drafting contracts or tariffs and bills of lading that properly limit liability across modes. Companies (like motor carriers) that operate in a deregulated environment in which filed tariffs are no longer required may rely on tariffs as opposed to contracts to limit liability but must be careful to provide customers sufficient notice and access to tariffs to defend an

allegation that the shipper was not aware of applicable liability limitations.

*Richard A. Clark  
Craig J. Helmreich  
Nathaniel G. Saylor,  
Indianapolis*

## *Cross-Border Insurance: Proposed FMCSA Rulemaking*

On December 15, 2006, the Federal Motor Carrier Safety Administration initiated proposed rulemaking in response to requests for an amendment to the current MCS-90 endorsement and its passenger counterpart, the MCS-90B, and a change to cross-border insurance requirements for Canadian carriers.

In light of a federal court case interpreting the MCS-90B to include coverage for an accident occurring in Mexico, an insurance association has proposed an amendment to expressly limit coverage under the MCS-90 and MCS-90B to “the United States of America, its territories, possessions, Puerto Rico, and Canada.” Also, Canada has requested a change to FMCSA regulations that would permit Canadian motor carriers to meet U.S. financial responsibility requirements by obtaining coverage through Canadian-licensed insurers. Currently, Canadian carriers must obtain separate liability coverage for U.S. operations from a U.S. insurer or a Canadian insurer with a fronting arrangement through a U.S. insurer.

*Jeffrey S. Toole,  
Indianapolis*

# Mileposts

## *SGL&H Ponders Presence in China*

This issue of *The Transportation Brief* focuses on international issues in transportation law. It is no coincidence that we are seeking client input as the Scopelitis firm considers a significant next step in the expansion of its services:

Would a Scopelitis office in China serve any of your current or future business needs?

This is our lead question in the enclosed survey that we hope you will complete and return. We have retained a consultant who is assisting us in understanding the many challenges and regulatory hurdles that a foreign law firm faces when applying for a law firm license in China. Ultimately, if we decide that a presence in China makes good business sense, the establishment of an office there could be another year in the making. In the meantime, the firm is looking to its clients for input on the decision.

China seems to be a logical step in the Scopelitis firm's long-term strategy. In the late 90s, the firm began taking major steps to better serve its national transportation clients. Its offices in Chicago, Washington D.C., Kansas City, Los Angeles, and, most recently, Chattanooga, are the result. Also, our establishment of the Los Angeles office was largely driven by our growing international/intermodal practice, and our client's increasing needs for services involving Eastern Asia have us considering an office in China.

No longer the "sleeping giant" in the world economy, China and its three major trade hubs – Hong Kong, Shanghai, and Beijing – are gateways to the East. China represents the world's fourth-largest economy and its second-largest purchasing power. Hong Kong is the world's busiest port. Shanghai is the world's largest cargo port. Beijing, the capital, is an international commerce center with a growing U.S. business presence.

Preliminarily, the Scopelitis firm envisions the potential for a presence in one of these three cities, providing the service of a single transportation law firm for its U.S.-based transportation clients looking to do business in or with China. By developing a knowledge base of Chinese transportation agencies, authorities and rules — and by creating a network of professionals with experience in Chinese shipping, transportation and general business regulations — the Scopelitis firm anticipates becoming a key point of contact there, with support provided from its various U.S. offices.

Scopelitis clients that may benefit from these and other services in China are encouraged to provide input by way of the enclosed survey, or by contacting Allison Smith, the firm's Director of Business Development.

## *For the Record*

We are pleased to announce that **Don Devitt** has been named a shareholder in the firm. Don will continue his litigation practice in the Chicago office.

**James L. Golden** has joined the firm as negotiation counsel. James will practice from the recently-opened Scopelitis, Garvin, Light & Hanson office in Chattanooga.

## *On the Road*

James Golden will participate in the American Bar Association's Transportation Mega Conference VIII, March 3-9, in **New Orleans**. James will speak on his role as negotiation counsel in catastrophic truck accident cases.

Greg Feary and Dan Barney will attend the Truckload Carrier Association's Annual Convention, March 11-14, in **Las Vegas**. Dan will lead two owner-operator legal update roundtables.

Dan Barney and Chris McNatt will attend the AirCargo 2007 Annual Convention, March 11-13, in **Phoenix**.

Dan Barney will attend the Truck Renting and Leasing Association's Annual Meeting, March 20-22, in **Palm Springs**.

Don Vogel will speak on labor and employment issues and Chris McNatt will offer a presentation on customs law, March 26 and April 9 respectively, at the **University of Denver Strum College of Law**.

Chris McNatt will attend the National Customs Brokers & Forwarders Association of America's Annual Conference, April 15-19, in **Phoenix**.

Tim Wiseman will conduct a mock DOT audit presentation and Rich Clark will participate in a panel on border crossing issues at the National Private Truck Council Annual Conference and Exhibition, May 1, in **Indianapolis**.

Kathleen Jefferies will moderate a panel on the "The Use of Demonstrative Evidence in Litigation" at the 2007 Transportation Lawyers Association's Annual Conference and CTLA Mid-Year Meeting, May 2-5, in **San Antonio**. Norm Garvin, Kim Mann, Leonard Kofkin, Don Vogel and Chris McNatt also will attend.

Norm Garvin will attend the National Tank Truck Carrier's 59th Annual Conference, May 7-9, in **Las Vegas**.

Steve Pletcher will present "An Update of Employee Case Law" at the National Association of Professional Employer Organizations' Legal & Legislative Conference, May 22-23, in **Washington, D.C.**



SCOPELITIS, GARVIN, LIGHT & HANSON

Lynne D. Lidke, Editor  
10 West Market St., Suite 1500  
Indianapolis, IN 46204

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## Dispatches



SCOPELITIS, GARVIN, LIGHT & HANSON

According to Dan Barney, the U.S. House of Representatives passed a bill in its first 100 hours **mandating security screening of 100% of cargo destined for passenger aircraft.** The Administration opposes the requirement, and chances of passage in the Senate are less certain.

In February, the Department of Transportation announced implementation of a cross-border trucking pilot program that will allow up to 100 **Mexican trucking companies to make international deliveries to U.S. destinations** beyond the U.S. commercial zones currently in place within 20-25 miles of the Mexican border. Tim Wiseman reports that the program does not apply to deliveries between points in the U.S. or to hazmat shipments, but does require compliance by Mexican motor carriers with U.S. safety and hours of service regulations. The program also allows U.S. motor carriers the make international deliveries into Mexico.



The Transportation Brief® is intended as a report to our clients and friends on legal developments affecting the transportation industry. The published material does not constitute an exhaustive legal study and should not be regarded or relied upon as individual legal advice or opinion. Scopelitis, Garvin, Light & Hanson would be pleased to provide more specific information or individual advice on matters of interest to our readers.

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# Please Complete the Survey

*All fields must be completed*

Your Name:

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Your Company Name:

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Do you have an interest in Scopelitis, Garvin, Light & Hanson opening an office in China?

Yes     No

If Yes Please Explain:

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Which city would most directly serve your current or expected needs?

Shanghai     Beijing     Hong Kong

List one or more topics on which you anticipate a need for Scopelitis, Garvin, Light & Hanson service in China:

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Indianapolis, IN 46204