

Member Spotlight

Our Member Spotlight this edition features two of our Outstanding Members.



Ana Cardona, CCP

I started my career with American Airlines in Puerto Rico in 1987. In 1993, I transferred to American Airlines HDQ in Fort Worth, TX. Due to the pandemic in early 2020, I was forced to retire from American Airlines, where I had dedicated most of my career to the AA Air Cargo side of the business. During my time at American Airlines, I spent 26 years working as a Cargo Claims Examiner, which allowed me to gain a lot of experience in the field. Fortunately, I got a new opportunity at XPO Logistics as a Cargo Claims Examiner in October 2020. It has been an exciting experience being able to bring my Air Cargo Claims experience into the LTL side of the cargo business. In my current role, I am responsible for handling claims for our 3PL partners within the LTL division, as well as offering support to the internal sales management team. I am grateful for this opportunity, and I am enjoying every moment of it.

In my free time, I enjoy cycling, playing volleyball and spending time with family and friends in our recently updated backyard oasis.



Mariah Finch, CCP

After moving to Dallas-Fort Worth from Rio de Janeiro in 2003, I began my career at Bear Transportation Services, where I learned the ins and outs of the transportation industry, honed my skills in risk mitigation and claim investigation and resolution while developing and implementing procedures and best practices throughout all departments within the brokerage. I soon obtained my CCP, and after 10+ years at Bear, I moved on to PepsiCo, where I further developed my expertise in handling claims and greatly minimized the company's exposure related to damaged and lost cargo.

I am thrilled to be a part of XPO, where I continue to use my skills to investigate and resolve claims with efficiency and fairness. I am passionate about our industry and providing the best possible service to our customers. In my free time, I enjoy exploring new places and trying new foods with my family and friends.





The “Practically Worthless” Test – Should We, or Shouldn’t We?

Submitted By Jessica Renner, CCP

Refusing freight due to damages has become quite controversial as it is now a common practice amongst consignees to refuse freight that was only partially damaged on their LTL and FTL shipments. In today’s shipping environment, an entire shipment can be refused even if only a small portion was damaged. Is this practice legal? Often, carriers accept these refusals and ship the freight back free astray, or “for free” on a non-revenue Pro number. Should they hold this responsibility? How far should it extend? There are many variables that need to be taken into consideration when determining acceptable practices for refusing freight amongst customers receiving shipments via motor carrier.

First, we need to consider the possibility of mitigation. Chapter 10. 9.1 in *Freight Claims in Plain English* states, “The law is clear that if a shipment is damaged and is “practically worthless” (considering the cost of repairs or salvaging), the consignee is justified in rejecting the entire shipment and holding the carrier for the full actual loss. Conversely, a consignee should always accept *partially* damaged shipments and mitigate the loss to the best of its ability.” When dealing with partially damaged shipments, the rule of thumb is that the consignee, often a distributor or trader in the commodities involved, is normally in a much better position than the carrier to salvage the damaged goods and mitigate damages, (*Freight Claims in Plain English, 4th Ed., at p. 237*). In fact, the manufacturer, commonly the shipper, may have an even higher capacity to be able to salvage the product and reduce the loss. Therefore, the argument could be made in some cases that the manufacturer/ shipper should be responsible for the mitigation and salvaging of damaged product.

There are other instances in which a shipper may need to hold more responsibility for damaged freight. For instance, cargo that was improperly packaged or loaded and secured by the shipper without giving the driver an opportunity to inspect. What is the consignee’s responsibility if that was done improperly? Is the carrier’s responsibility still to return free astray, regardless of fault? If the shipment is returned to the manufacturer, more problems arise: returning refused freight requires additional handling, more stops, more transloading, and too often incurs additional loss or damage. I’ve witnessed product that could have been salvaged had it been accepted that became a complete loss due to additional damages occurring on the return transit to the shipper. Should we risk the extra loss by having the goods returned?

Continued on page 10

Hadley v. Baxendale: Claims for Delay, Consequential Damages, and an Old English Court Case

By Brent Wm. Primus, JD

The case of Hadley v. Baxendale was decided in 1854 by a court in England. Although decided nearly 170 years ago in a foreign jurisdiction, the principle announced in that case, based upon even earlier decisions, is very much alive and well today.

The plaintiffs in the case were “Hadley and another” who “were proprietors and occupiers of the City Steam-Mills.” They used a steam-engine to run the mills. The defendants were “common carriers of goods and chattels for hire.”

When the iron shaft of the steam engine broke, the plaintiffs arranged with the defendants to transport the broken shaft to a business in Greenwich that would make a new shaft. Both the plaintiff shippers and the defendant carriers contemplated that the broken shaft would be delivered on the second day, but, for reasons not specifically described in the decision, it was not delivered for seven days, resulting in a delay of five days. Litigation ensued.

The plaintiffs’ position was that “the completing of the said new shaft was delayed for five days, and the plaintiffs were *prevented from working their said steam-mills...* and from carrying on their said business... for the space of five days beyond the time that they otherwise would have been prevented from so doing, and *they thereby were unable to supply many of their customers...* during that period, and were obliged to buy flour to supply some of their other customers, and lost the means and opportunity of selling flour... and were *deprived of gains and profits...* which otherwise would have accrued to them, and were *unable to employ their workmen, to whom they were compelled to pay wages during that period, and were otherwise injured...*” (Italics added.)

Defense counsel argued that it is not fair to hold the carrier liable for the damages resulting from the closure of the mill simply because the carrier knew that the defendant wanted this shipment to be transported as fast as possible. As the court pointed out, “But how could the defendants here know that any such result would follow?”, i.e., that the mill was closed and could not reopen until the replacement shaft was received.

In reaching its decision, the court acknowledged that there will almost always be damages arising out of a breach of contract beyond what are sometimes called the actual or general damages, such as the replacement costs for cargo that was totally lost or the cost of repair to damaged cargo.

The court stated:

Where two parties have made a contract, which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it.

Put another way, one could only recover consequential damages if there was sufficient reason for the breaching party to have foreseen them. These are also referred to as incidental damages or special damages.

In 2022, this is still the rule used by courts: consequential damages can be awarded when foreseeable. However, since it would be very hard to determine exactly what the carrier foresaw or should have foreseen with respect to any given shipment, carriers or intermediaries almost always have tariff provisions or business terms stating: “In no event whatsoever shall any consequential damages be allowed, even if reasonably foreseeable.”

All for now!

Brent Wm. Primus, J.D., is the CEO of Primus Law Office, P.A. and the Senior Editor of [Transportlawtexts](http://Transportlawtexts.com), Inc. Previous columns, including those of William J. Augello, may be found in the “Content Library” on the PARCEL website (PARCELindustry.com). Your questions are welcome at brent@primuslawoffice.com.

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A Message from David Nordt, CCP & Chairman of the Board

Summer Greetings to our CCPAC family. Wishing the very best to you and yours.

Wow! Since the announcement of my new assignment as Executive Director of CCPAC, it has been a whirlwind of excitement for me and my board of directors. We have begun brainstorming so many fresh ideas for our CCPAC organization as we look forward to next year's CCPAC conference in Charleston, SC. The conference will kick off with a Primer Class on Sunday, March 17, 2024. This class will be offered to those who are interested in becoming Certified Claims Professionals. It will prepare these candidates for the certification exam that will be administered at the conclusion of the conference at noon on Wednesday, March 20, 2024. There is great pride in one's ability to scribe "CCP" behind their name. Each year CCPAC is gifted with an impressive group of graduates that can do just that. I am confident that next year will bring more of the same success. So, please mark your calendars as the annual conference will formally commence on Monday, March 18, 2024 at 5:15 PM.

There is no industry quite like our transportation industry. This truth was certainly underscored when Covid came to visit and our needs for goods and services intensified. Amazingly, over 70% of our cargo is moved with our 4 modes of transportation.

As I celebrate my 45th Anniversary in the transportation industry this October, I pause to reflect on the knowledge that I have acquired during this time. We truly are lifelong learners! And so I challenge you all to continue your education in our transportation industry, as every day is another opportunity to learn.

Let me leave you with some words of wisdom that so easily apply to the claims profession. As so perfectly stated by President Ronald Reagan, "Trust, but verify." I have been doing that for 45 years. If I can do it, you can too!



*A Message From CCPAC Council President
Carrie Frisbie, CCP*



Summer 2023 Greetings! This is a time of year of reflection for me, remembering all that 2022 brought. This was the year that I became President of this amazing organization! Ten years ago, I took the CCP exam just hoping to pass the first time. Ten years later, I am humbled, grateful and PROUD to be voted in as President! You have all worked so hard and should be incredibly proud of yourselves too! I challenge you to find as many things this year to be proud of yourselves for overcoming, the large and the small.

A few hopes for all of you in the coming year:

You wake with gratitude each morning and every day you have more to be grateful for to reflect on.

That you believe in yourselves and know that anything truly is possible.

You find courage to do hard things in life and, if you fail, to know it is merely a lesson and you can try again.

To find ambition to aim to your highest abilities because you are unbelievably capable.

You find kindness for yourself, as well as others, and spread it everywhere.

That you find renewed hope, new opportunities, new adventures, and to enjoy life!

CCPAC and its members have become like a second family and I am so very grateful for it and for all of you! I look forward to seeing you all this coming year at the conference and all the exciting CCPAC news ahead! Welcome 2023!

Carrie Frisbie, CCP
CCPAC President





CCPAC NOW MORE THAN EVER!

Jacksonville, Florida.

We receive emails every week from employers looking for CCPAC Members and especially those that have earned the CCP designation to fill openings at their respective companies. CCPAC placement service is available to members only and on an individual confidential basis. Your name is never given out but rather we give you the employers contact information.

**SEE YOU IN CHARLESTON, SC
in March 2024**

THANK YOU KAREN MC CAULLEY, CCP



Karen McCaulley, CCP is leaving us after many years of service to the Council as Council Secretary and Region 6 Director for the Mid-South Region.

Karen was elected by the membership to the Board of Directors and serves as Regional Director for the Mid-South Region.

She is a Claims Analyst with Transplace/Uber Freight, Inc. in, Rogers, AR . She is a graduate of the University of Arkansas in Communications, Theater, Political Science. Later she attended NWACC Nursing, She is an avid Speech Writer, Teacher, Nursing Home Administration, Transportation, and is a Certified Claims Professional (CCP) in Cargo Claims administration..

Karen is a lifetime resident Bentonville, AR area. She has three Nieces eleven grandnieces and nephews.

We Wish You Nothing But The Best Karen!



Headquarters Update

**By John O'Dell,
CCP
Council Founding
Member, Past President,
Historian &
Advisory Consultant**

Certified Claims Professional Accreditation Council, Inc.

CCPAC was first officially incorporated in Washington, DC on January 7, 1981. As shippers and transportation companies expanded to meet the needs of a global economy individuals and corporations alike expressed more interest in Cargo Claim Certification and the desire to fill key cargo claim positions with Certified Claims Professionals (CCP). The need for claim professionals became more apparent.

Today many of the top companies have CCP's in key positions. Interest in CCPAC continues and in order to meet the growing needs of its members its headquarters were relocated from Port Washington, MD to Jacksonville, Florida in April, 2007.

The Certified Claims Professional Accreditation Council, **CCPAC**, is a not for profit organization that seeks to elevate the professional standards of individuals who specialize in the administration and negotiation of cargo claims for all modes of transportation worldwide. Specifically it seeks to give recognition to those who have acquired the necessary degree of experience, education and expertise in domestic and international cargo claims to warrant acknowledgement of their professional stature.

JOIN or RENEW Your Membership TODAY

If you are not yet a member of this progressive organization, I invite you to join now as an Associate Member and when you are ready to take your Certification Exam I urge you to consider also taking the CCP Primer Class as a pre-requisite. Those who have participated in CCP Primer classes in the past have highly recommended it to new CCP candidates.



Transportation Arbitration Board

**“ THANK YOU FOR YOUR HARD WORK AND DEDICATION. YOU ARE AN
IMPORTANT PART OF THE TEAM ”**

Thank you, Wally C. Dammann, CCP TAB Administrator

The Transportation Arbitration Board would like to thank the below listed cargo claim professionals for volunteering their time, talent and professionalism in handling numerous cargo claim arbitrations during the 2021 – 2022 arbitration request period:

Carla Bay Rumford, CCP - BM2 Freight Services
Wendy Meuse, CCP – Odyssey Logistics
Brian Brueggeman, CCP - HUB Group
David Nordt, CCP – Gilbert Company
Ana Cardona, CCP - XPO Logistics
Thomas Perrin, CCP – Sysco
Robyn F. Connelly, CCP- Syfan Corp.
Madison Rapp, CCP – Capitol Logistics
Jason Edgar, CCP – Uber Freight
Richard Rathbun, CCP – Allen Lund Company
Mariah Finch, CCP – XPO Logistics
Jessica Renner, CCP – Jarrett
Carrie Frisbie, CCP – Seko Logistics
Ingi Torfason, CCP – Clearlane Freight
Laura Garrison, CCP – Uber Freight
Amy Unger, CCP – Total Quality Logistics
Donnie Graevell, CCP – Odyssey Logistics
Mary Warrick, CCP – General Logistics Systems US
Christine Gramse, CCP – Land O Lakes
David Widger, CCP – BNSF Logistics
Ashley Grosch, CCP – Overdrive Logistics
Neal Willis, CCP – Kuehne + Nagel
Tamera Henry, CCP – Uber Freight
Benson Ye, CCP – MSMM (USA) Inc.
Tamara LaTorre, CCP – Transportation Compliance
Karen McCaulley – Uber Freight
Carrie Mercie – Int’l Crop Insurance
Tessy Merrick – Linq Transport



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CCP and CCPAC Branded Tee Shirts and Polo Shirts are now available on our website www.ccpac.com Currently available in Navy or Black color shirts.



The “Practically Worthless” Test – Should We, or Shouldn’t We? By Jessica Renner, CCP

Continued from page 3 In a perfect world, the shipper will package and secure their freight properly to withstand the rigors of shipping on a motor carrier, a carrier will handle the freight carefully and as requested, and in the event of damage, the consignee will accept the freight in and make the repairs themselves to mitigate the claim. Perhaps a first step to avoid the “should we or shouldn’t we?” question when considering a freight refusal would be for shippers and carriers to establish a written process for how freight should be packaged and handled before it ships. A contract might go a long way in ensuring fewer damages overall. For the time being, it appears that overlooking the “practically worthless” test will continue to be commonplace and freight will continue to be refused whether it is a complete loss or not.

Another aspect of this process that cannot be overlooked is when disposition for refused freight is not provided to the carrier in a timely manner. Because the carrier must store the freight while awaiting disposition, their liability changes to that of a warehouseman. In this case, the Uniform Commercial Code states that a carrier is no longer liable for damages that could not have been avoided by a reasonably careful person’s care. Additionally, Chapter 14.1 in Freight Claims in Plain English states, “In the absence of an agreement to the contrary, a warehouseman is not liable as an “insurer” of the goods. The owner must prove negligence or a failure to exercise reasonable care to establish liability.” Due to the warehouseman’s low liability established in a carrier’s tariff, the chances of the claimant’s loss being fully covered becomes much less likely. For further information on this, please see U.C.C. 7-204 (1). To prove that the warehouseman did not exercise reasonable care would be extremely complex and would likely have a less than desirable outcome for the shipper.

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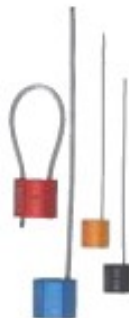


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CCPAC is operated by volunteer members—no salaries are paid to officers, staffers or board members

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★ CCPAC LOOKING FOR VOLUNTEERS ★

CCPAC urges you to consider sharing your talents with others who can benefit and learn from your experiences. We are seeking individuals who are interested in serving as a CCPAC Officer or Committee Chair.

Contact any CCPAC Officer or Director





CCPAC MEMBERSHIP AND RENEWAL APPLICATION FORM

- Place a check mark below to indicate the one membership type that you are selecting to join or renew membership as:
- CCP or HCCP** (NOTE: You must already be Certified "CCP" or "HCCP" as "HCCP" qualification enrollment is no longer open) both positions are Voting Members - \$125 membership dues annually.
- Associate Member** (basic membership, not yet certified) Non-Voting member - \$125 membership dues annually.
- Professional Member (Open only to attorneys-at-law practicing cargo & marine transportation law— as a Attorney Certified Claim Professional (ACCP) and is a non-voting member** - \$175 membership dues annually.
- Corporate Sponsor** Membership – A Corporate Sponsor is a company, law firm or professional firm whose employees, Agents or associates are engaged in the handling, administration, collections and/or settlement of cargo loss prevention, law, subrogation and/or cargo security or provides consultation or other professional services to Such firms engaged in same. Membership includes corporate logo link posted to the CCPAC website and covers the annual membership dues of the Company (\$625) and its members and agents performing or providing such related work or services whether the employee or agent is a CCP, HCCP or an Associate Member up to 6 members. Each member over ten will be assessed a reduced annual dues of \$62.50 each and will be added to the cost of the basic Corporate Membership rate. Only those members who are CCP's or HCCP's of the Corporate Sponsor are voting members, all others are non-voting - \$625 dues annually for basic membership (includes up to 6 members).
- Co-Sponsor Organization** – A Co-Sponsor Organization is an association, fraternal organization or educational institution that provides programs that contribute to or otherwise enhance the goals of CCPAC. Membership also includes your organizations logo link to the CCPAC website. Only CCP's & HCCP's of the Co-Sponsoring Organization are voting members, all others are non-voting) - \$395 membership dues annually.

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