

BOOK REVIEW

William J. Augello, "Transportation, Logistics and the Law," edited by George C. Pezold, Huntington, NY: The Transportation Consumer Protection Council, Inc., 2001. ISBN 0-9715232-0-7.

'Transportation, Logistics and the Law'

by **Fritz R. Kahn**

This review of William J. Augello's new text, "Transportation, Logistics and the Law," cannot begin but on a personal note. The author and reviewer have known one another for 50 years, when they were freshly minted lawyers, Augello representing the National Fisheries Institute and I, the US Department of Agriculture. We were allied in trying to persuade the Interstate Commerce Commission that the Railway Express Agency was required to carry fresh fish in boxes of chipped ice and to do so at just and reasonable rates.

In the years since then, Augello gained a measure of fame and a somewhat modest fortune largely through his service as executive director and general counsel of the Transportation Claims and Prevention Council, Inc., now reconstituted as the Transportation Consumer Protection Council, Inc.

Augello never talked down to the persons served by the Council. Instead, he sought to address them in simple, layman's terms that they readily would understand. Hence his most well-known and successful treatise, "Freight Claims in Plain English."

About two years ago, he moved to Tucson, Arizona. He has continued to serve as executive director of the Council and, indeed, has taken on an additional undertaking as adjunct professor at the University of Arizona, James E. Rogers College of Law, teaching transportation law. "Transportation, Logistics and the Law" is the expanded and enhanced version of his course outline.

The subjects which he covers in his course and, hence, in his book, include rail, motor, air, and ocean transportation: the current state of their regulation, the antecedents which assist in understanding such regulation, and the proposals presently pending for its revision. The flyleaf of the book boasts, "This is the only textbook available on these subjects today." It is a statement that is unassailable, certainly if one were to refer to a single text covering all of these subjects.

Although not termed chapters, the book is arranged to treat with numerous subjects:

Government Jurisdiction, Regulation of the Railroad Industry, Regulation of the Motor Carrier Industry, Shippers and Carriers' Duties, Responsibilities & Exposure to Lawsuits, Regulation of the Airline Industry, Regulation of the Ocean Shipping Industry, Multimodal Arrangements, Regulation of Intermediaries, Terms of Sale for Domestic and International Contracts, and Proposed International and Domestic Law and Treaties. Under each of these headings, the author addresses the most salient aspects of the regulations to which the carriers are subject and their significance in tender of freight for transportation.

The author approaches the topics directly and unabashedly. In discussing the enactment of the regulatory statutes, for example, the importance of the pertinent congressional committee chairmen and ranking minority members and their staffs in the formulation of legislative proposals are very properly noted; and he correctly observes that it is much easier to have the enactment of offending provisions blocked than to achieve the passage of remedial legislation. In the chapter on motor carrier regulation, to cite another example, he advisedly faults the Federal Motor Carrier Safety Administration (FMCSA) for continuing to issue common carrier certificates and contract carrier permits, notwithstanding that the ICC Termination Act of 1995 sought to establish only a single category of motor carriers. FMCSA's failure to give effect to the statutory enactment, it is accurately explained, has serious and adverse consequences. For a shipper understandably may be reluctant to enter into a contract with a motor carrier which doesn't have a permit. Yet the shipper needs the protection of a contract at a time when tariffs no longer need be filed or otherwise are available for inspection, and when the rates and other terms and conditions governing the freight's transportation can be changed at the whim of the motor carrier.

In this book, the author is uncharacteristically modest in downplaying his role in having achieved the enactment of the Trucking Industry Regulatory Reform Act of 1994, which did away with tariff filings by motor carriers-and also the repeal of former sections 10761 and 10762 of Title 49 as part of the enactment of the ICC Termination Act of 1995, the statutory provisions which were the bases for the so-called filed rate doctrine. It was the filed rate doctrine which gave rise to the spate of undercharge claims brought by the estates of bankrupt truckers during the 1990s, a large percentage of which were successfully defeated by a shippers' defense group which Augello and his law firm managed.

Someone who is looking for a traditional Hornbook-type treatise on transportation law and logistics, however, is likely to be disappointed. The book is just too practical in its approach and too unpretentious in its presentation. Nevertheless, the work will prove to be a valuable reference even for the most seasoned transportation practitioner. Literally half of the book is devoted to appendices, including the text of the most important laws and regulations affecting various forms of transportation. Moreover, the subjects covered are well supported by citations to the relevant cases, and a complete table of cases and subject index provide a convenient means of accessing the referenced materials.

The book is not without its shortcomings. Some are of substance; others, almost trivial. Among the former is the long and protracted discussions of the Carmack Amendment and the other carrier liability regimes relating to in-transit freight loss and damage. This was to be expected, however, for the preponderance of Augello's career was devoted to counseling shippers on prosecuting loss and damage claims, and the text understandably reflects his background and experience. Similarly, parts of the book are repetitious. For example, in citing court cases relieving a shipper from paying a motor or water carrier the freight charges of which the shipper had already paid a broker or forwarder who subsequently absconded with the funds. Among the latter shortcomings is the unfortunate circumstance that the appendices, as useful as they may be, are not properly paginated, which requires flipping through the pages to find what one is looking for.

Today's fascination with web-based commerce, third-party logistics providers, electronic data interchange, global supply chain controls, and similar innovations in inventory management tends to overlook that, in the final analysis, it comes down to the entities which transport the freight, whether they are rail, motor, air, or ocean carriers. All of the modern wizardry can't overcome shipper discontent with the carriers' performance, whether it is the reasonableness of rates, reliability of service, or care in handling cargo. It was these matters that the transportation laws and regulations were intended to safeguard, and, although over the past two decades carriers have been largely deregulated, it behooves the shippers to know and understand what measures remain on the books for their protection. These are well articulated in "Transportation, Logistics and the Law," a book no one working in a shipper's traffic or transportation department should be without.

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