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 Law Offices of Countryman & McDaniel
THE CARGO LETTER [453]
 Air & Ocean Logistics - Customs Broker News
 30 April 2009
Part 1 of 1
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Good Thursday Evening from our Observation Deck.....overlooking the officially designated "Cargo City" area and..... Runway 25-Right, at **Los Angeles International Airport**, voted "**Best Cargo Airport in North America.**"

It was a month of **PIRACY** & continued **industry decline**. The **Countryman & McDaniel** law firm presented both new claims techniques at **Trinty House** in **London** & seamanship guidance at **Massachusetts Maritime Academy** along with the homecoming there for our maritime hero **Capt. Richard Phillips** of **M/V Maersk Alambama**. We are very proud to have been a part of that process. Still, we have the monthly news for you

Your Editor McD

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Contribute your knowledge, stories & company information.....by e-mail to **The Cargo Letter**. We strive to bring you useful information which is timely & topical. Be sure to visit our website.....<http://cargolaw.com>

Archive of **The Cargo Letter** www.cargolaw.com/cl-archives.php

Michael S. **McDaniel**, Editor, **Countryman & McDaniel**, forwarder/broker/hull & machinery attorneys at LAX

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OUR "A" Section: Trade, Financial & Inland News***

1. **Freight Forwarder Trade Briefs** _____

*****FedEx Ground Has No Employees - Major Ruling** as in a major ruling -- it's small-package delivery drivers may be classified as independent contractors and not company employees, a federal appeals court ruled April 21, Bloomberg reported. Because its FedEx Ground unit's drivers can operate multiple routes, hire extra drivers and sell their routes without company permission, they should not be classified the same as employees of traditional trucking companies, the U.S. Court of Appeals in Washington ruled, Bloomberg said. "We have considered all the common law factors, and, on balance, are compelled to conclude they favor

independent contractor status," the court wrote in its decision, vacating a previous National Labor Relations Board order. A Seattle jury ruled late last month that FedEx did not illegally deny overtime pay to 320 contract drivers who accused the company of considering them to be contractors while treating them like employees. FedEx Ground uses a contractor model for its ground deliveries in competing with UPS Inc. Contract drivers have sued the company, claiming they should be treated as full-time employees and receive regular benefits, Bloomberg reported. UPS drivers are employees of that company & are represented by the Teamsters union under a union contract.

*****U.S. Exports Rose While Imports Fell Sharply ...** said IHS Global Insight. The petroleum deficit narrowed, but was a minor contributor to the overall decline. The volume of goods exports rose 3.1% after 5 months of steep decline, observes Nigel Gault, chief U.S. economist for IHS Global Insight. The simple story behind February's trade figures is that exports stopped falling while imports continued to plunge, he said. Export volumes showed their first increase since July. Most major categories were up, though the biggest gains were in consumer goods (mainly pharmaceuticals), autos, and food & beverages. The U.S. recovery will not be export-led, said Gault. Import volumes dived again, with big declines in industrial materials, capital equipment and consumer goods. The lower import volumes reflect lower spending by U.S. businesses on capital equipment, lower consumer spending and a major inventory adjustment by U.S. purchasers. The import decline shows how the U.S. is passing on its demand weakness to the rest of the world. The U.S. trade deficits with major exporters like China, Germany, & Japan have fallen sharply over the past 12 months as U.S. import demand has weakened.

*****Panjiva Gives Mixed Reviews** as the information service that tracks the number of companies shipping goods to the U.S., reported a 10% drop in the number of manufacturers exporting to the U.S. in Feb., the most recent month for which it has data. It said about 118,000 companies sent at least one ocean shipment to the U.S. in Feb., down from 131,000 in Jan. 2009. While cargo volumes often fall around Chinese New Year, Josh Green, CEO of Panjiva, said the number of suppliers doesn't generally fall -- in 2008, the number of suppliers actually increased slightly from 147,000 in Jan. to 148,000 in Feb. Panjiva counts both full & less-than-containerload shippers.

******NAFTA Hits Record Low** as surface transportation trade fell 27.2%, year-over-year, in Jan., say the most current statistics. The decline is the largest percentage drop on record for trade between the U.S. and its North American Free Trade Agreement (NAFTA) partners, Canada & Mexico. Over the last 3 quarters of 2008, trade has been declining when compared to 2007. Oct. was down 2.1%, Nov. off 13.8% and Dec. declined 13.1%. The largest decline year-over-year, came in trade between the U.S. & Canada. Surface trade between the 2 countries was US\$29Bn, a decline of 31.1%. The value of imports moving by truck was 31.3% lower, exports were 27.2% lower. Year-over-year, trade between Mexico and the U.S. was down 20.0%, totaling US\$18.5Bn. Truck imports were 20.5% lower & the value of exports was down by 10.7%.

*****10+2 - Minus 70%** as U.S. importers and their agents are required to electronically file detailed data about cargo shipments 24 hours prior to vessel loading in a foreign port, but less than one-third of the documents submitted so far meet the deadline, according to the official in charge of the government security program. The news indicates that companies are still experiencing growing pains as they try to comply with the "10+2" rule that went into effect on Jan. 26. The top 5 "10+2" filers by volume are all C-TPAT Tier 3 importers, but even these elite trusted shippers are having trouble with the timeliness of their submissions. CBP received about 9,500 to 10,000 filings per day, up from 1,200 per day during the 1st week of the program. The on-time rate for those 5 elite companies ranged from 28% to 41.4%. Mere mortals fared far less well late about 70% of the time. The program needs some grace.

*****Grace For 10+2** as U.S. Customs plans to change the filing deadline for advance import data required under the "10+2" rule to make compliance easier for shippers. About 45% of Importer Security Filings are being submitted on time, but CBP believes that figure is low because

it has been measuring timeliness against the time the 1st bill of lading is filed by the carrier under the 24-hour advance manifest rule. Many bills of lading are filed more than two days prior to vessel lading, which makes it difficult for importers to compile and file the necessary cargo details on time. "We're going to change that, so the ISF filing date will be compared to the vessel departure date," said Customs & Border Protection's Steven Silvestri, during a presentation to the National Customs Brokers & Forwarders Assn. of America conference in Rancho Mirage, Ca. The ISF rule went into effect Jan. 26, requiring importers to submit 10 sets of data about the cargo's contents, who produced & shipped the cargo, and the consignee. Vessel operators are also providing CBP with 2 sets of data streams about the containers they transport.

*****Fraud Scheme On Dole Stopped** as a California judge on April 23 dismissed 2 lawsuits by purported Nicaraguan banana plantation workers against U.S. food giant Dole and other companies on grounds of fraud and attempted extortion. Los Angeles County Superior Court Judge Victoria Chaney ruled after hearing 3 days of testimony that detailed a scheme to recruit men who would claim they were rendered sterile by exposure to a pesticide in the 1970s. Witnesses and investigators told of being in fear for their lives for exposing the fraud. The judge denounced the lawyers who hatched the scheme and said there was a group of corrupt Nicaraguan judges "devouring bribes" to make judgments and aid the scheme. The lawsuits ended up in the California court seeking enforcement of extravagant damages determined by Nicaraguan judges. "What has occurred here is not just a fraud on the court, it is blatant extortion on the defendant," she said. "... The record is so outrageous and profound." Dole attorney Scott Edelman, said he was pleased with the outcome, but sad to see "blatant fraud." Dole's lawyers say there are 10,000 such claims currently in Nicaragua and 6,000 in other countries worth billions of dollars.

*****Softwood Lumber Arises Again**..... as U.S. Customs began to collect a 10% duty on Canadian softwood lumber imports, starting April 15. The duty is imposed on softwood lumber products as defined by the U.S.-Canada Softwood Lumber Agreement until the U.S. has collected US\$54.8M, CBP's Office of Int'l Trade said in a statement to the trade on April 9. The 10% ad valorem duty was directed by the Office of the U.S. Trade Representative under Section 301 of the Trade Act on imports of softwood lumber products from the Canadian provinces of Ontario, Quebec, Manitoba & Saskatchewan. FAQs:
www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/canada/faq_canada_agreement.xml

*****Thunderball** as for the 1st time, U.S. travelers flying overseas may avoid customs lines at a foreign airport by swiping a digital ID card. An agreement on April 23 between the Homeland Security Dept. & the Netherlands allows approved U.S. citizens to speed through customs checks at Amsterdam's Schiphol Airport. Dutch citizens clearing a Homeland Security background check can do the same arriving at some U.S. airports, including New York's JFK & LAX. The ID cards are embedded with an image of the traveler's eye that is used to verify identity. Participants get a card containing a digital image of their iris. When arriving from overseas, they will swipe the card at an airport kiosk. They then press their eye against a kiosk camera, which checks the camera image matches the image on the card. Yes, just like James Bond. The movie was 30 years ahead!

*****One Retail Voice** as the National Retail Federation & the Retail Industry Leaders Assn. said their executive committees have unanimously agreed in principle to a merger. They said a single trade association representing retail interests in the nation's capital would "help to ensure that the retail industry speaks with one voice to advance the industry and its more than 15 million workers." RILA has traditionally represented the largest retail chains in the nation. It has about 200 members, such as Wal-Mart, Best Buy & Abercrombie & Fitch. The NRF is the world's largest retail trade association, with member companies of all sizes comprising department, specialty, discount, catalog, Internet & independent.

www.nrf.com/
www.retail-leaders.org/

*****C.H. Robinson Takes Major Industry Legal Hit** as in a move that could have chilling repercussions for freight brokers & the 3rd-party logistics (3PL) industry, an Illinois jury has awarded US\$23.8M in damages against C.H. Robinson Worldwide, the nation's largest truck broker. In what is believed to be the largest injury verdict ever of its kind, a jury recently awarded US\$23.8M to three plaintiffs who sought compensation for two deaths & one serious injury that resulted from a 2004 vehicle accident near Plainfield, Ill. The case involved a multiple vehicle accident on Interstate 55 in 2004. DeAnn Henry, the driver of a tractor trailer, lost control of the truck & rear-ended multiple vehicles. Henry was an independent contractor for **Toad L. Dragonfly Express**, a Utah-based trucking company hired by C.H. Robinson, one of the largest 3PLs in the country with US\$8.6Bn in revenue last year that handles 7.3 million shipments a year through 228 branches with 8,000 employees. **The driver was later found to have been driving on a suspended license with falsified log books.** The jury found CHR to have "vicarious liability," which meant that Dragonfly Express was considered part of the brokerage company instead of an independent contractor. What other brokers & 3PLs fear is that this case could set a precedent to increase their liability & insurance premiums. CHR, which is planning an appeal, is insured through a US\$5M deductible. If the award holds, analysts estimate it would mean about a 2-cent per share hit on CHR's income per share.

*****Teamsters Loose Because Issue Is Dead** as on April 20 the San Francisco-based U.S. Court of Appeals for the 9th Circuit dismissed a lawsuit by the Teamsters union and other groups who had challenged a cross-border trucking program with Mexico, saying the suit was moot because the Obama administration & Congress ended the program. The court said the Federal Motor Carrier Safety Admin. terminated the program that had allowed some Mexican carriers access to U.S. roads beyond a designated border zone. Owner-Operator Independent Drivers Assn., in a statement expressed disappointment over the ruling, but said it was hopeful Congress "will continue to place a high priority on the safety and well-being of the American public." The group contends the program "had extended illegal, de facto exemptions to safety laws while allowing Mexico-based trucking companies and truck drivers to operate on highways throughout the U.S." **SPECIAL NOTE: The issue is not dead.**

*****UPS Freight Has Single North America Invoice** as the less-than-truckload unit of UPS Inc., said it will expand service to Mexico & include customs brokerage capabilities and a single invoicing for all services between the U.S., Canada & Mexico. The company also said its next-day service umbrella for freight moving to/from Toronto will expand to include Michigan, northern Ohio & northern Indiana. "We've combined UPS's global trade experience with local market expertise to deliver the fast, reliable service customers are demanding throughout North America," said Kevin Hartma, UPS Freight's VP of strategy. Freight moving to/from Mexico will be expedited by using 5 border crossings, including 3 in Texas and 1 each in California & Arizona. UPS Freight operates more than 200 service centers in the U.S. & Canada & will rely on more than 40 in Mexico.

www.ttl.upsfreight.com/

*****Some Light In The Tunnel?** as load volumes & revenues have been on the decline, but gross margin improved, said Robert Voltmann, president of the Transportation Intermediaries Assn., summarizing the experiences of his membership at the group's annual meeting in San Antonio last week. "Volume & revenue were down in the 3rd quarter of 2008 and got worse in the 4th quarter, but gross margin was up," Voltmann said. Gross margin refers to the proportion of gross revenue a broker keeps after paying trucking companies & other freight carriers.

www.tianet.org/AM/template.cfm?section=Home

*****Panalpina Expands In Vietnam** as the global forwarder & logistics company has opened a new office in Ho Chi Minh City. The company, which has operated in Vietnam for 20 years with local partner Vinatrans, saw ocean freight volumes in the country increase 14% while air freight volume increased 24% between 2007 & 2008. The company employs 70 people in Ho Chi Minh City & Hanoi.

*****Stinking Imported Walls** as new legislation offered in the Senate this month attempts to spur a recall & immediate import ban on Chinese drywall following reports by a Florida home builder and state officials that the product is emitting sulfide gas in homes in Florida & Louisiana. Since 2006, more than 550 million pounds of drywall have been imported to the U.S. from China, including 60 million pounds in Louisiana & 27 million pounds in Mississippi. Much of the drywall in those states was used to rebuild homes destroyed by Hurricane Katrina. An estimated 60,000 to 100,000 homes nationwide may contain Chinese-made drywall. A number of homeowners have filed lawsuits and homebuilders are suing the manufacturers of the drywall.

*****Transport Me To Court** as a 28-year-old Milton, Ga. woman allegedly showed up in court to answer a charge of driving under the influence with alcohol on her breath. The woman drew a 2-day sentence from Municipal Court Judge Barry Zimmerman for contempt of court. She showed up on time at 10 a.m. April 8, but during a routine check for weapons at the door, Bailiff George Gordon detected a whiff of alcohol. Police charged her with DUI Sept. 12 when officers found her parked in the middle of the road & she couldn't figure how to open her car door. Her blood-alcohol level was .34, well above the legal limit for driving of .08 -- legally embalmed in many states. Her DUI case was continued to a court date in June.

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2. **The Cargo Letter** Financial Page _____

****Canadian National Railroad. UP** with 1st quarter profit of C\$424M, 36% more than the CAN\$311M for same 2008 period.

****Canadian Pacific. DOWN** as 1st-quarter net income fell 31.1% to C\$62.5M, or 39 cents a share, from C\$90.7M, or 59 cents a share a year earlier.

****C.H. Robinson Worldwide. DOWN** as 1st quarter profit dipped slightly to US\$85.4M, or 50 cents a share, from US\$86.3M, or 50 cents, a year ago.

****Con-way Inc. DOWN** with a 1st quarter net loss of US\$154M, compared to profit of US\$22.5M in the same 2008 period.

****COSCO Holdings Co. Ltd. DOWN** with profit of \$1.7Bn, about 40.4% less than in 2007.

****CSAV Line. DOWN** with losses of US\$265M for 1st quarter 2009. Credit rating agency Standard & Poor's has buffeted the Chilean liner carrier -- down from a B- to a BB- rating & continuing on its "negative" watch.

****CSX Corp. DOWN** with 1st quarter net profit of US\$246M, 30% less than the US\$351M it earned in the comparable 2008 period.

****Delta Airlines. DOWN** with a loss of US\$693M in 1st quarter 2009.

****El Al Israel Airlines. DOWN** with a 2008 net loss of US\$38.8M, reversed from a US\$44.8M profit in 2007.

****Forward Air Corp. DOWN** with a 1st quarter loss of US\$3.1M, or 11 cents per share, compared with a profit of US\$10M, or 35 cents, a year ago.

****Hub Group Inc. DOWN** with 1st quarter profit of US\$6.2M, 53% less than the US\$13.1M it earned in the same 2008 period.

****J.B. Hunt. DOWN** as 1st quarter operating profit was US\$57M, a 21% drop from US\$72M in the same 2008 period, as revenue fell 18% to US\$723M.

****Kuehne + Nagel. DOWN** as net profit dropped 16% from US\$131M in the 1st quarter of 2008, to US\$109M in the 1st quarter this year.

****Landstar System. DOWN** as 1st-quarter net income fell to US\$13.9M, or 27 cents a share, from US\$23.7M, or 45 cents, a year ago.

****Norfolk Southern Corp. DOWN** with 1st quarter net profit of US\$177M, 39% less than the US\$291M it earned in the same 2008 period.

****Old Dominion Freight Line. DOWN** as 1st-quarter profit declined to US\$4M, or 11 cents per share, from US\$10.4M, or 28 cents, a year ago.

****Southwest Airlines. DOWN** with 1st quarter overall loss of US\$91M that included a fuel hedge charge of US\$71M. Cargo revenue for Q1 was a net US\$30M - down 11.8% from same period in 2008.

****Union Pacific Corp. DOWN** with 1st quarter profit of US\$362M, 18% less than the US\$443M

it earned in the same 2008 period.

****UPS. DOWN** as 1st quarter operating profit was off 52% to US\$718M. The Supply Chain and Freight unit reported a US\$40M operating profit compared to US\$113M a year ago.

****US Airways. DOWN** with a net loss of US\$103M, or (US\$0.90) per share. This compares to a net loss of US\$237M, or (US\$2.58) per share for the same period last year.

****Wilh. Wilhelmsen Group. UP** as operating profit increased 32.3% in 2008 to US\$352M.

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OUR "B" Section: FF World Air News***

3. Freight Forwarder World Air Briefs _____

*****Major Criminal Air Cargo Price Fixing Fines Paid** as Cargolux, with headquarters in Luxembourg, Japan's Nippon Cargo Airlines (NCA) and Korea's Asiana have agreed to plead guilty to charges brought by the U.S. Dept. of Justice and pay the fines. In addition, Asiana is charged with fixing passenger fares on flights from the U.S. to Korea. The criminal fines for fixing cargo prices to be paid are US\$119M by Cargolux, US\$45M by NCA & US\$50M by Asiana. Specific wording of charges levied against the carriers indicate they participated, "in meetings, conversations and communications in the U.S. and elsewhere to discuss the cargo rates to be charged on certain routes to & from the U.S." Further they agreed, "during those meetings, conversations & communications, on certain components of the air cargo rates to charge for shipments on certain routes to & from the U.S." That they subsequently engaged, "in meetings, conversations and communications in the U.S. and elsewhere for the purpose of monitoring & enforcing adherence to the agreed-upon cargo rates."

*****U.S. Air Cargo Crash** as the U.S. Air Transport Assn. reports a 21.2% drop in overall cargo traffic for Feb. 2009 compared to the same month last year. U.S. domestic revenue ton-miles (RTMs) were down 18.4%; North Atlantic was off 20.9% and traffic on Asia routes declined 25.7% during Feb. Overall int'l traffic for U.S. reporting carriers dropped 23.6% for the month. FedEx RTMs declined 16.7% domestically & 18.4% internationally. UPS reported a decline of 15% domestically & 13% internationally during the month. The major U.S. combination carriers experienced even greater setbacks. Southwest Air domestic RTMs dropped 21.7%; Northwest - 48.1%; Delta, -31.0%; Continental -31.3%; United -14.4%; & American -36.6%. Int'l traffic showed similar declines with Northwest reporting -44.3%; Continental -22.8%; United -38.6%; US Airways -39.4% & American -27.7%. OMG! This is a disaster.

*****EU - Worst On Record** as the Assn. of European Airlines says, "the air freight market has all but collapsed." Reporting for Jan. & Feb. 2009, the airline trade association says overall freight ton-kilometers volumes were down 21.0% - the worst figures on record. Europe/Far East traffic for both months averaged a drop of 27.4% - equaling a decline in Europe/South Atlantic results. North Atlantic FTKs dropped 16.5% & Europe/Middle East fell 9.3%. The only positive note recorded by the AEA for the 1st 2 months of 2009 was Europe/North Africa FTKs that rose 19.8%. Some of the biggest losers for the period were Lufthansa Cargo, with an average drop of 27.3%; Virgin Atlantic fell 23.4%; the combined Air France-KLM group declined 22% and not far behind was British Airways with a fall of 18.6%. The only AEA member airline to record positive traffic figures in both months was Kiev-based Ukraine Int'l Airlines with an average 30.3% increase in FTKs. Last year the 34 members of the AEA generated US\$104.7Bn in cargo & passenger revenue.

*****Big 4 Seek Clout** as the 4 global express delivery companies -- UPS, FedEx, TNT & DHL -- have formed a new organization to represent their interests in Washington and named former Customs & Border Protection official Michael Mullen to lead it. The Express Assn. of America said it would seek to influence policy in the areas of security, trade, customs & postal regulation. The same 4 int'l package carriers, along with some regional trade associations, already are represented by the Brussels, Belgium-based Global Express Assn. on transportation, trade & environmental issues before the World Customs Organization, World Trade Organization,

Universal Postal Union & European Union.

*****Boeing Drops Production - But Still Has Backlog** as it is reducing B777 production from 7 to 5 aircraft per month beginning in June 2010 as a result of customer-requested deferrals. "These are extremely difficult economic times for our customers," said Boeing Commercial Airplanes President & CEO, Scott Carson. "It's necessary to adjust our production plans to align supply with these tough market conditions." The company will also delay previous plans to increase B747-8 & B767 production. No B767, B747 or B777 orders have been cancelled this year. Boeing Commercial has a backlog of more than 3,500 airplanes.

*****FedEx Corp. Shrinks** as it will permanently remove 14 aircraft from service as part of an overall plan to reduce capacity & costs and will take a US\$180M charge, the Associated Press reported. FedEx said it will remove the jets, 10 Airbus A310s & 4 Boeing MD10s, along with some excess engines by May 31, AP said. The company said late last month it may cancel a US\$7.7Bn order for new jets. FedEx Corp. will also cut 1,000 jobs under a plan to save US\$1Bn in costs. FedEx, which has about 290,000 workers & contractors, cut 900 workers at its LTL FedEx Freight unit in Feb.

*****Delta Air Lines Drops Freighters** as it plans to ground its entire fleet of 14 747-200 freighters at the end of the year in the face of slumping global cargo demand. Delta acquired the freighter fleet as a result of its Oct. merger with Northwest Airlines. Combined cargo revenue plunged 44%, or US\$146M, to US\$185M in the 1st quarter of 2009, compared to the year-earlier period, the Atlanta-based airline reported. It also attributed less revenue to a drop in fuel surcharges, as fuel prices moderated and price-cutting. The 747-200s are no longer profitable to operate at today's volumes given their age & inefficiency, Delta said. Northwest used the freighters on the transpacific trade lane. It was the only major U.S. passenger airline to operate a dedicated freighter fleet. Delta will continue to offer cargo service using passenger aircraft. We miss the United Airlines freighters lined up under our windows. The industry has changed.

*****Cathay Pacific Drops 2 More Freighters** as drastic cost cutting continues with an 11% reduction in cargo capacity from this month. The airline says it will park 2 more B747-400 freighters – taking the total to 5. In addition to an 8% cut in passenger flights – and complementary bellyhold capacity – from May the airline is reducing its weekly freighter flights from a high of 124 last year to 84 with a reduction to Europe from 32 to 22; to North America from 31 to 26; to China from 23 to 15; flights to Japan and Taiwan are halved from 20; and to S.E. Asia from 9 to 3.

*****Cargoitalia -- Bad Timing?** as the Italian all-cargo airline being restarted under new ownership. The new Cargoitalia is the result of amalgamating the original Cargoitalia, which suspended operations in 2008, with the recently purchased Alitalia full cargo business. Cargoitalia is about to take delivery of its 1st MD-11 freighter, which will commence operations in late May, flying twice weekly in a route that includes Milan, New York, Toronto, Milan, Abu Dhabi & Milan. Two more MD-11 freighters are scheduled for delivery later this year.

www.cargoitalia.it/english/contact_us.htm
<http://en.wikipedia.org/wiki/Cargoitalia>

*****Was Hitchcock Right?** as airplane collisions with birds or other animals have destroyed 28 aircraft since 2000, with New York's Kennedy airport & Sacramento Int'l reporting the most incidents with serious damage, according to U.S. FAA data posted for the 1st time April 24. And the problem appears to be growing. The FAA list of wildlife strikes, published on the Internet, details more than 89,000 incidents since 1990, costing 11 people their lives. Most incidents were bird strikes, but deer & other animals have been hit on runways too. The situation seems to be getting worse: Airplane collisions with birds have more than doubled at 13 major U.S. airports since 2000, including New Orleans, Houston's Hobby, Kansas City, Orlando & Salt Lake City. Wildlife experts say increasingly birds, particularly large ones like Canada geese, are finding food & living near cities and airports year round rather than migrating. All told, pilots reported striking at

least 59,776 birds since 2000. The most common strikes involved mourning doves; pilots reported hitting 2,291 between 2000 & 2008. Other airborne victims included gulls (2,186), European starlings (1,427) & American kestrels (1,422).

http://wildlife-mitigation.tc.faa.gov/public_html/index.html

*****Volumes >>> British Airways** reports a -7.8% drop in revenue tonne-kilometers (FTKs) for March '09 over the same month last year. >>> **Hong Kong Air Cargo Terminals** reports March tonnage declined 21.1 % compared to March 2009. Cumulative tonnage for the 1st 3 months of 2009 was 463,014 tons, down 24.7% compared to the 2008. >>> The **Latin American & Caribbean Air Transport Assn.** (ALTA) reports an overall -22.4% drop in freight ton-kilometers (FTKs) for February 2009 compared to the same month last year.

*****Wore Aluminum On His Head?** as a man in a pickup truck crashed through a fence gate at the Fort Smith airport, drove 100 yards & attempted to reach a parked airplane. The man, 28, would not have gotten anywhere after reaching the tarmac April 15 morning - the plane was missing its propellers. Witnesses told police that the man said he needed to "get to Israel" and that he had "all the answers." The man was arrested and taken to county jail. He faces charges of felony criminal mischief & misdemeanor criminal trespass. Police said the front gate and about 20 feet of fence were damaged.

*****Pilot Fights Head-wind** as a judge says a commercial helicopter pilot videotaped in a sex act while flying over San Diego committed gross negligence & cannot have his license back. National Transportation Safety Board administrative law Judge William R. Mullins upheld a Federal Aviation Administration order revoking the license of David Martz after a hearing April 7. Martz had no comment after the ruling. A passenger was videotaping when Martz let an adult film actress perform a sex act on him during the 2005 flight, and an edited version eventually became public. The judge watched the unedited tape in chambers & took testimony before his decision. Martz testified that his actions were unwise and he's much more responsible now.

*****JetBlue Cargo Snooze** as it's employee says he took a free flight from New York to Boston — after falling asleep in a plane's cargo hold. The man was discovered on March 30 by baggage handlers at Logan Int'l Airport after the plane landed there March 28. He told police he'd been accidentally locked inside the pressurized luggage compartment while taking a nap. The 21-year-old man says he called JetBlue Airways officials when he realized he was no longer on the ground. A state police spokesman says the man wasn't charged with any crime & was returned to New York when it was determined he wasn't dangerous. JetBlue Airways Corp. says it's investigating.

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OUR "C" Section: FF World Ocean News***

4. FF World Ocean Briefs

*****The Cargo Letter** Reaches Out For Piracy as Geoff Gill, Esq. of the **Countryman & McDaniel** law firm was featured at the **Maritime Education Summit** held at the **Massachusetts Maritime Academy** this month, speaking on the subject of "**Psychological Aspects of Safe Watchkeeping**". The presentation coincided with homecoming for **Capt. Richard Phillips**, a **Mass. Maritime Academy** graduate & master of **M/V Maersk Alabama** -- back from her clash with **Somali Pirates**. We are proud to have been part of this historic process. Must see our feature on the ordeal of **M/V Maersk Alabama**:

www.cargolaw.com/2009nightmare_maersk.alaba.html

*****Daily Pirate News** as the current crisis is too lengthy for **The Cargo Letter** -- see all the news as it happens on our **Daily Vessel Casualties** feature:

www.cargolaw.com/presentations_casualties.php

*****Nearing The End of Tariff Days?** as speaking at the National Customs Brokers and Forwarders Assn. of America (NCBFAA) annual meeting this month, FMC Commissioner Rebecca Dye offered only limited comments on the NCBFAA's own petition to the FMC that the agency exempt non-vessel-operating common carriers from the provisions of the Shipping Act of 1984 requiring NVOs to publish and adhere to rate tariffs in those instances where an NVO has individually negotiated rates with its shipping customers. "Our staff is currently examining the comments received on the petition & will come to the commission shortly with a recommendation for action," she said. "Since this petition is currently pending before the commission, I must limit my comments." But she added, "As I have stated a number of times in recent years, given what appears to be the lack of practical usefulness of the current tariff system, I believe it is time to revisit the traditional notion of tariff filing and enforcement. Over 90%, and in some trades 95%, of freight carried to & from the U.S. is currently under contract." Dye also updated members of the FMC on the widening use of NVO Service Agreements, which are similar to service contracts that steamship lines sign with shippers. Since the FMC's decision to exempt NVOs offering NSAs from the tariff publication requirements of the Shipping Act, 724 NVOs have now registered with the commission to offer NSAs. As of March 31, the FMC has received 2,874 NSAs & 3,952 amendments filed by 124 NVOs to take advantage of the new contracting option, she said. **Filed Tariffs** -- a practical waste of time, as we all know.

*****Import Cargo Hits Rock Bottom** as volume at the nation's major retail container ports hit its lowest level in 7 years in Feb., according to the monthly Port Tracker report released this month by the National Retail Federation & IHS Global Insight. The report said monthly container volumes at ports the report tracks dropped below the 1 million mark for the 1st time in 5 years. Numbers began climbing again in March & April, but the 1 million mark won't be seen again before May, and imports will continue to see significant declines compared with last year at least through the summer. U.S. ports surveyed handled only 847,832 TEUs in Feb., the most recent month for which numbers are available. That was down 20.6% from January's 1.07 million TEUs & 31.3% from Feb. 2008's 1.23 million TEUs.

*****Hope Puts Ships Back Underway** as for the 1st time since Sept. the amount of the idle global containership capacity has fallen, according to maritime news service AXS-Alphaliner. Idle capacity fell from 1.42 million TEUs to 1.31 million TEUs 2 weeks ago. Also, the number of very large containerships (VLCS) out of service fell from 23 at the beginning of April to 10 as of April 13, as carriers start redeploying ships in the belief that demand will pick up over the summer. The containership fleet was forecast to grow more than 10% this year, though it's unclear what impact delays and cancellations of vessel orders could have on that number. The report also stated that 4 carriers (APL, Zim, "K" Line & MISC) have idled more than 20% of their fleet capacity, with APL (the 7th-largest carrier) idling nearly a quarter of its fleet. For comparison, Maersk Line, MSC, CMA CGM & Evergreen (the top 4 lines) have idled 8%, 1%, 2% & 0%, respectively.

*****They Picked The Wrong Flag** as the lone Somalian pirate who survived an attempt to hijack the U.S. containership [M/V Maersk Alabama](#) now faces a mandatory life sentence in prison. Abduwali Abdukhadir Muse was charged in U.S. Magistrate Court in New York & ordered detained. He was charged with piracy under the law of nations, which carries a mandatory term of life imprisonment, as well as 3 other crimes that carry potential life terms: discharging a firearm and aiding & abetting the discharge of a firearm, during and in relation to the conspiracy to seize a ship by force; conspiracy to commit hostage taking; and brandishing a firearm, and aiding & abetting the brandishing of a firearm, during and in relation to the conspiracy to commit hostage taking. Follow the entire story and read the indictment against Abduwali Abdukhadir Muse in our **Cargo Law** feature:

www.cargolaw.com/2009nightmare_maersk.alaba.html

*****World Piracy Recap** as the Int'l Chamber of Commerce's Int'l Maritime Bureau (IMB) said even though its tally of piracy attacks showed the number of such incidents almost doubled

in the 1st quarter of 2009 compared to the same period in 2008, such attacks are believed to be undercounted. A total of 102 incidents were reported to the IMB Piracy Reporting Center (PRC) in the 1st 3 months of 2009 compared to 53 incidents in the 1st quarter of 2008. The quarterly report also said attacks increased by almost 20% over the last quarter of 2008. The 1st quarter spike was due almost entirely to increased Somali pirate activity off the Gulf of Aden & the East Coast of Somalia. The 2 areas accounted for 61 of the 102 attacks during the 1st quarter compared to 6 incidents for the same period in 2008. IMB reported that worldwide a total of 34 vessels were boarded, 29 vessels fired upon & 9 vessels hijacked. A total of 178 crewmembers were taken hostage, 9 were injured, 5 kidnapped & 2 killed. In the majority of incidents, the attackers were heavily armed with guns or knives. In addition, violence against crew continued to increase. In addition to Somalia, Nigeria continues to be a high-risk area. In the 1st quarter of 2009, IMB received reports of only 7 incidents, although unconfirmed reports would suggest that at least a further 13 attacks had occurred in the same period. Nearly all incidents have taken place on vessels supporting & connected to the oil industry. Peru has seen an increased level of incidents in its waters, with 7 attacks reported to the PRC, all of them successful. The 4th quarter of 2008 saw 4 incidents reported.

www.icc-ccs.org/

*****Admiral Howard -- In Pirate Command** as CoExpeditionary Strike Group (ESG) 2 held a change of command ceremony aboard [USS Boxer](#) (LHD 4) April 5. Rear Adm. Michelle Howard relieved Rear Adm. Terence McKnight, ESG 2's commander since Nov. 2007. In addition to relieving McKnight as the ESG 2 commander, Howard assumed command of several U.S. 5th Fleet task forces, including Combined Task Force (CTF) 51 & 59, as well as CTF 151, an int'l maritime coalition created to disrupt, deter & thwart piracy. CTF 151 is a multinational task force established to conduct counterpiracy operations under a mission-based mandate throughout the Combined Maritime Forces Area of Responsibility to actively deter, disrupt & suppress piracy in order to protect global maritime security & secure freedom of navigation for the benefit of all nations. **Admiral Howard** is the **1st African-American woman to command a U.S. Navy ship**. Go - Admiral Howard -- get the bastards!

www.navy.mil/local/CTF-151/

*****Pirate Threat In Context Not As Great?** as the renewed urgency of governments to find ways to confront piracy off the coast of Somalia after a recent spate of attacks must be balanced against the fact that only a tiny percentage of merchant ships are ever captured, according to an analyst on the matter. The problem should be viewed in the context that 111 vessels were attacked in and around the Gulf of Aden out of 20,000 vessels that transited the area in 2008, and, of those, only 42 (or 38%) were actually captured, said Stefan H. Leader, a senior intelligence analyst at The Analysis Corp. in McLean, Va. So far this year, pirates have only taken about 25% of the ships they have attacked because of heavy seas in the early months, more navy patrols and the use of evasion by ship captains, he said. A convoy "from a commercial point of view, is a terribly inefficient use of assets, especially when, relatively speaking, the risk is so low" for a potential attack.

*****Manila Cracks Down** as the government of the Philippines said April 18 its Dept. of Labor has issued a ban to its commercial ships against the travel to the Gulf of Aden or within 200 nautical miles or 300 kms from Somalia. The government is also advising ships carrying Filipino seafarers to follow the security cordon and travel with convoy formation and to abide by the advisories set forth by the North Atlantic Treaty Organization (NATO). But, on April 20, the government defended itself from criticism from the Manila-based seafarers' group, United Filipino Seafarers (UFS), which said the ban would result in "lost opportunities for many Filipino seafarers." More than 100 Filipinos are thought to be among the hostages on ships that have been hijacked by pirates off Somalia.

*****Fledgling "Government" Crys For Help**as piracy-ridden Somalia's foreign minister has urged the int'l community to help the war-torn state set up its own coast guard to patrol offshore waters, according to an Associated Press report. "We will be establishing a coast guard because

this is essential for the establishment of the rule of law, both along the coastline and in Somali waters," Foreign Minister Mohamed Omaar told AP. Omaar was in Europe this month for a conference aimed at drumming up donations for peacekeeping forces in Somalia. The European Union is pledging nearly US\$80M. Somalia President Sheik Sharif Sheik Ahmed said he wants a police force of 10,000 and a separate security force of 6,000 to bring order to the largely lawless eastern African nation. Lack of order and desperate economic conditions have been chiefly blamed for pushing Somalian youths into piracy.

*****More Mercs Enter Market** as a New Orleans-based firm best known for acting as "repo men" of the maritime world said it is launching a service to protect ships from pirates. Vessel Extractions, LLC, a worldwide ship recovery specialist, launched its **Shiprotek** service to protect ships from pirate attacks. VessEx protection teams, composed of former Special Forces personnel, ride with ships in high-risk waters to prevent pirates from boarding client vessels & harming the crews. A VessEx Shiprotek team will board vessels anywhere in the world, escort it through troubled areas and disembark in its next safe port. During the voyage, the team assesses the ship's security situation, trains the crew in anti-piracy techniques, implements procedures to minimize risk and assists the crew in maintaining anti-piracy watch. When a threat is identified, the team implements its counter-piracy procedures.

www.vesselextractions.com/index2.html

*****3PLs Creep \$ Forward** as market share of top ocean freight forwarders is growing faster than the market share of the largest ship owners, the chairman of logistics and forwarding giant Schenker said in a recent speech. "Over the past 4 years, the market share of the top 4 container shipping companies has grown by 4.3%," said Thomas Lieb, chairman of the management board of Schenker AG, at the Containerization Int'l Global Liner Shipping conference in London last month. "During that same period, the market share of the top 4 ocean freight providers grew by 18.8%."

*****TSA Rates Up** as the Transpacific Stabilization Agreement recommended floor rates for 40-foot containers of US\$1,350 for boxes bound for West Coast ports and US\$2,500 for boxes to East Coast ports on all-water services beginning July 1. Rates for high-cube containers would be US\$100 higher and other size equipment have proportional minimums. The group also has recommendations for inland & mini-landbridge moves. "Establishing a floor on rates, in light of the recent flurry of reductions, will likely decide whether some lines continue to operate in the trade," the TSA said April 9 of the discussion agreement of 14 transpacific container carriers moving cargo from Asia to the U.S. TSA members are APL, China Shipping Container Lines, CMA CGM, COSCO, Evergreen Line, Hanjin Shipping, Hapag-Lloyd, Hyundai, "K" Line, MSC, NYK Line, OOCL, Yangming Marine & Zim Line.

*****FMC Fails To Stop So. California Drayage Plan** as a District Court judge in Washington, D.C. on April 15 denied a Federal Maritime Commission request for a preliminary injunction against portions of the clean truck programs of the ports of Los Angeles & Long Beach. In Oct., a divided FMC determined by 2-1 vote that implementation of certain portions of the Los Angeles-Long Beach clean truck programs (CTPs) would likely reduce competition and produce an unreasonable increase in transportation cost or unreasonable reduction in service, thereby violating the Shipping Act of 1984 that it is responsible for enforcing. They authorized their staff to seek an injunction under section 6(h) of the Shipping Act. Commissioners Harold J. Creel Jr. & Rebecca F. Dye supported seeking the injunction while Commissioner Joseph E. Brennan called it a "colossal mistake ... to try to block a program of environmental protection & economic expansion." Judge Richard J. Leon agreed the plans at the nation's two largest ports may cause some trucking companies to change their business practices, raise rates, exit the market and force some drivers to cease operating as independent owner operators because of mandate in Los Angeles that concession holders use employees. But he said, "The FMC has not established the drayage market will suffer a reduction in competition." He cited testimony from an FMC economist that as of mid-October 2008 almost 800 licensed motor carriers had signed up for Port of Los Angeles concession agreements. And the economist agreed barriers to market entry were

low so that other draymen could enter the business if the trucking business became concentrated and truckers raised prices while reducing services. The judge also noted that there were differences in the plans between the two ports, which he said was an indication that the 2 ports were competing with each other. He refused to grant the preliminary injunction, saying potential economic harms and changes to the drayage market "must be weighed against the harm to the ports and the greater San Pedro Bay region" if the portions of the clean truck plans that the FMC was challenging were enjoined preliminarily "pending a decision on the merits." Leon noted that this was the first time ever that the FMC has sought a preliminary injunction pursuant to Sections 6(g) and 6(h) of the Shipping Act. **Court opinion:**

https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2008cv1895-56

*****Maersk Line May Not Leave So. Cal.** as on April 15 it said a decision to adjust U.S. calls of several transpacific services is unlikely to result in any notable shift of the Danish carrier's cargo away from Southern California ports. "There is no real attempt to move cargo away from Los Angeles or a fundamental change," said Vincent Clerc, VP of transpacific service for Maersk Line. "We had an opportunity to rejig our network in a way that we could improve our product into the Pacific Northwest and by doing that we are swapping strings." The Wall Street Journal reported April 14 that Maersk's rotation changes were an example of how the Port of Los Angeles "is coming under pressure as volumes drop," and how regulations, such environmental restrictions, were making the port "vulnerable to losing market share." However, Dean Tracy, director of int'l transportation for Lowe's, said shippers won't accommodate the extra costs of using Los Angeles & Long Beach when their own bottom lines are under siege. He warned intermodal cargo destined for inland U.S. points will shift to other ports if the So. California ports don't reassess the growing number of fees charged to importers.

*****NYK Line Downsizes** as the Japanese liner carrier will cut its fleet expansion plans by 10%, according to a Bloomberg report April 14. In an interview with the news agency, new NYK President Yasumi Kudo said the carrier will expand its fleet to 850 ships by March 2011, rather than the 940 it had planned earlier. However, he said no orders will be canceled; rather orders yet to be placed now will not be made. The line will cut 10% of its capacity this month through layoffs and scrapping, he added. NYK has idled 8 vessels and will likely shelve another 20.

*****And The Winner Is** as the Connie Award of the Containerization & Intermodal Institute (CII) has been presented to those who have significantly contributed to the containerization and intermodal industry since 1972, including those in rail, shipping, ports, importers and exporters, 3PLs, technology and the media. The group also presents scholarships to students studying transportation & logistics. The group said it will host an industry-wide Connie Award dinner on Oct. 1 in Long Beach, Calif in addition to the annual Connie Luncheon that will take place Dec. 7 in Newark, N.J. CII is seeking nominations for both the California & New York-New Jersey events. They should be submitted by May 8.

www.containerization.org/nominations.htm

*****"Sound" Back In Business** as American Technology Corp. (ATC) announced that its LRAD 1000X directed sound system was used by the Japanese Maritime Self-Defense Force to help prevent a pirate attack on a Singaporean tanker off the coast of Somalia on the weekend of April 4. Responding to a distress call from the tanker, a Japanese destroyer used LRAD's powerful voice commands to identify itself and warn the pirates away.

www.atcsd.com/site/content/view/15/30/

*****Lower Volume - Greater Speed** as tonnage passing through the Panama Canal fell 3.3% to 75.7 million tons from 78.4 million tons during the fiscal year 2nd quarter compared to the same period in 2008. The Panama Canal Authority said average vessel transit times improved during the quarter by 28% to 26.22 hours from 36.39 hours due to the decline in transits & improved productivity.

*****Throughput >>>** The **Port of Antwerp's** 1st quarter container volume dropped 16.3% to 1.7 million TEUs, in the 1st quarter of 2009. >>> Container volume at India's busiest port, the state-owned **Jawaharlal Nehru Port** complex near Mumbai fell 11% to 3.95 million TEUs in the last 12 months in the financial year ending March 31.

*****This Month In U.S. Navy History**

1776 - Continental brig [Lexington](#) captures British [Edward](#)
1778 - The Continental Navy sloop [Ranger](#) captures [HMS Drake](#).
1778 - Capt. John Paul Jones of [Ranger](#) led landing party raid on Whitehaven, England
1862 - Battle of New Orleans; Union Navy under David Farragut runs past forts into Mississippi River.
1884 - [USS Thetis](#), [Bear](#) and [Alert](#) sailed from New York to search for Greeley expedition lost in Arctic.
1906- Ceremonies at Naval Academy commemorate John Paul Jones; President Theodore Roosevelt delivers speech.
1918 - [USS Stewart](#) (DD 13) destroys German submarine off France.
1934 - In the first Navy movement through the Panama Canal, more than 100 ships transited.
1943 - Re-establishment of Commodore rank
1959 - The Organization of American States asks the U.S. to establish naval patrols off the east coast of Panama to prevent invasion of Cuban forces.

*****Castaway** as a pet dog swept off a sailboat in choppy seas off Australia was found alive 4 months later on a remote island & returned to her family, who'd thought she was dead. The 4-year-old blue heeler, named Sophie Tucker, was captured by rangers April 3, on St. Bees Island in northern Queensland state, nearly 6 miles (10 kms) from where she was washed off the sailboat in November, owner Jan Griffith said. Rangers initially thought they'd captured a wild dog, but friends who heard about the canine contacted Griffith and suggested it might be Sophie. Sophie appeared to have survived by eating goats, as rangers found several baby goat carcasses around the island -- but is now back to her usual diet of ground meat & dog biscuits.

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5. [The Cargo Letter](#) Cargo Damage Dispatches
****Back By Popular Demand****

We're sorry, but there were so many sinkings, explosions, pirate attacks, fires, cargo mishaps, battles on the water & other disasters at sea that we do not have room to print even the highlights this month. **Many people lost their lives at sea this month!!**

But you can read all this month's disaster news at our special Internet web feature which provides full details of each event -- our **Vessel Casualties & Pirate Activity Database**. Bookmark the site and visit every day! Updated twice daily.

www.cargolaw.com/presentations_casualties.html

SPECIAL NOTE: Please view the dramatic new pictures at our special "**Gallery of Cargo Loss**" website feature.

www.cargolaw.com/gallery.html

See our new feature for April 2009: "**The Retaking of M/V Maersk Alabama**"

www.cargolaw.com/2009nightmare_maersk.alaba.html

See our newest photo feature "**Singles Only**" - Transportation Disasters Told In A Single Photo!

www.cargolaw.com/2000nightmare_singles.only.html

NOTE: The historic dangers of carriage by sea continue to be quite real. **Shippers must be encouraged** to purchase high quality marine cargo insurance from their [freight forwarder](#) or [customs broker](#). It's dangerous out there.

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OUR "D" Section: FF in Cyberspace***

6. The Cargo Letter "Cyber Ports Of Call"

Here are our suggested world wide web sites of the week for your business, your information and your amusement.....

Cargo & Trade>>>>>

Acting Customs & Border Protection (CBP) Commissioner Jayson Ahern Statement To Congress On Cargo & Container Security

www.dhs.gov/ynews/testimony/testimony_1238603858577.shtm

European Airlines Offering In-Flight Use of Mobile Phones - New EU-Wide Rules

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/526&type=HTML&aged=0&language=EN&guiLanguage=en>

Exploratory Design For NYK Super Eco Container Ship 2030

www.joc.com/node/410935

Foghorn Magazine

www.foghornmagazine.com/

Indonesia National Agency for Export Development

www.nafed.go.id/

Int'l Union of Commercial Agents & Brokers professional providers of field sales & marketing services

www.iucab.nl

Los Angeles & Long Beach Marine Terminals Revised Hours of Operation

www.pierpass-tmf.org/Documents/MTOOffPeakSchedule04.09.09.pdf

Passenger Vessel Assn.

www.passengervessel.com/

Protect Merchant Mariners from Piracynew efforts to increase awareness of effects of piracy on mariner victims

www.gopetition.com/online/26978.html

U.S Customs Importer Security Filing (ISF, "10 + 2") Outreach Events

http://cbp.gov/xp/cgov/trade/trade_outreach/09_outreach_schl.xml

U.S. Economic Recovery Timeline - Milestones at a Glance valuable data & graphics

www.recovery.gov/

U.S. Food & Drug Administration - Prior Notice of Imported Food Shipments - Fact Sheet

www.cfsan.fda.gov/~dms/fsbtac29.html

U.S. Senator Jim Webb, D-Va. calls for hearings to examine more forceful responses to piracy, including whether armed guards should be used aboard U.S.-flag ships.

<http://webb.senate.gov/newsroom/record.cfm?id=311888&>

U.S. Surface Transportation Board Oversight & Monitoring Web Site new

www.stbfinancedocket35087.com/

PRODUCTS>>>>>>>>>>

Internet Truckstop database of available loads & trucks

www.truckstop.com/

Leveraging Transportation Procurement & Payment - a new Aberdeen Report

<http://email.purchasing.com/cgi-bin2/DM/y/hBE4x0PENlo0WGg0Dusm0Ed>

Return of The Pirates - 2 Hr. Video featuring Michael McDaniel of **The Cargo Letter**

<http://shop.history.com/detail.php?a=76305#details>

EVENTS>>>>>>>>>>

Transport Events

www.transportevents.com/

Trade Shows, Exhibitions, Conferences & Business Events Worldwide

www.eventseye.com/

World Trade Organization Events

www.wto.org/english/news_e/meets.pdf

7th 3PL Summit June 22-24, 2009, Atlanta

<http://events.eft.com/3pl/>

Council of Supply Chain Management Professional's 2009 Annual Global ConferenceSept. 20-23, Chicago

<http://cscmp.org/>

e-Navigation Conference 2009 Nov. 17-18, Bell Harbor, Seattle, WA

www.enavigation.org/

IANA'S Intermodal Expo Nov. 15 - 17, 2009, Anaheim Convention Center, Anaheim, CA

www.intermodal.org/events_files/expo_files/index.html

Int'l Freight Week 18-20 Oct. 2009, Abu Dhabi National Exhibition Center

www.internationalfreightweek.com/

Intermodal 2009 3-5 Nov. 2009, Feria Valencia Spain

www.intermodal-events.com/

MARAD Approved Maritime Security Awareness Classes

<http://71.14.2.130/moodle/>

SNAME 2009 Annual Meeting & ExpoOct. 21-23, 2009, Providence, Rhode Island

www.snameexpo.com

TranSec World Expo 2009 Maritime & Supply Chain Security Conference3 & 4 June 2009, Amsterdam

www.transec.com/page.cfm/

TOC Europe 2009 16-18 June 2009, Bremen Exhibition & Conference Center, Bremen, Germany

www.tocevents-europe.com/

U.S. Customs "10 + 2" Outreach Events Scheduled in 2009
http://cbp.gov/xp/cgov/trade/trade_outreach/09_outreach_schl.xml

U.S. Office of Foreign Assets Control Int'l Trade Symposium May 15, Washington, DC
(free)
www.treas.gov/offices/enforcement/ofac/events/symp_flyer_040109.pdf

Washington Union Station's Centennial Celebration
<http://newsroom.dc.gov/show.aspx/agency/ddot/section/2/release/15040>

World Airports Conference May 17-19, 2009, Ciudad Real, Spain
www.worldairportslawyers.org/CiudadReal2009/Portada.asp

On Video>>>>>>>>>>

Modern Day Pirates Attack Cruise Ship from The History Channel
<http://link.history.com/services/link/bcpid1681694250/bclid1672160798/bctid1659814582?src=mrss>

Truck Vs. Bridge Flip
www.youtube.com/watch?v=Fm12KUoV1zI

U.S. Coast Guard Airlifts Injured Fisherman April 22, 2009
http://cgvi.uscg.mil/media/main.php?g2_itemId=529699

World's Largest Train Set Becomes Tourist Draw
www.youtube.com/watch?v=bfngWhcrLvY
www.youtube.com/watch?v=PN_oDdGmKyA

General Interest>>>>>>>>>>

eMarketer research & analysis on digital marketing
www.emarketer.com

Environment California
www.environmentcalifornia.org/

Human Swine Influenza Investigation Data Center tracking swine flu
www.cdc.gov/swineflu/investigation.htm?s_cid=swineFlu_outbreak_002

JetBirdthe Pan-European private jet airline
www.flyjetbird.com/en/Homepage.aspx

Ocean Express cruise the coast while packing colorful cargo perfectly! Great game.
www.wugnet.com/affiliates/default.asp?pageid=1393

Tear Drop Monument dedicated to those lost on 9/11 -- donated to the U.S. by Russia.
Who knew?
www.snopes.com/rumors/tributes/teardrop.asp

Yodeling Pickle Yodeling
www.youtube.com/watch?v=52dBhbPLm3c

Zip Car wheels when you want them
www.zipcar.com/

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OUR "E" Section: The Forwarder/Broker World***

7. New U.S. Transport Related Legal Cases _____

Werner Enterprises, Inc. v. Westwind Maritime Int'l, Inc.

554 F.3d 1319 (C.A. 11, Jan. 12, 2009)

Intermediary Carrier's Liability Limited -- Contract Permitted Downstream Limitations >>

Comunicaciones Nextel de Mexico, S.A. de C.V. ("Nextel") hired Westwind Maritime International, Inc. to arrange for shipments of cell phones from a Motorola plant in Florida to a customs broker in Texas. Westwind arranged to have carrier Werner Enterprises perform some of the transportation services, and a shipment of cell phones was stolen while in transit. Nextel insured the value of the US\$1,251,673 cell phone shipment with Ace Seguros, S.A. After the cell phones were stolen, Ace paid Nextel for the loss & sued Werner on a subrogation claim under the Carmack Amendment. The only contract between Nextel and Westwind was in the invoice for Westwind's services, which indicated that 3rd party carriers could limit their liability for loss and that Nextel could seek additional coverage. In its dealings with Westwind, Nextel received approximately 250 of these invoices with that provision. Werner contended that its liability was limited to US\$200,000. The District Court (S.D. Fla.) sustained Werner's limit of liability and Ace appealed.

The issue for the Court of Appeals was whether Werner's liability limitation was valid, a question turning on whether Norfolk Southern Railway Co. v. Kirby, 543 U.S. 14 (2004) was distinguishable or not. That case stands for the rule that, when an intermediary contracts with a carrier to transport goods, the carrier is limited in its liability to the cargo owner by whatever liability limitation the intermediary and the carrier agreed to. The contracts in Kirby were governed by maritime law, which was not so in the case at hand.

The Court of Appeals held that Kirby was indistinguishable from the present case and thus Werner's liability limitation was valid. First, Kirby was not limited to maritime law and the principals had been applied to non-maritime cases in other instances. Further, the failure of Westwind to negotiate a liability limitation with Transpro did not make Kirby inapplicable as Kirby did not require that each intermediary make a negotiation.

Under the Carmack Amendment, the carrier must give the cargo owner (or its intermediary) a reasonable opportunity to choose between two levels of liability. In this case, that requirement was satisfied when Werner gave the BTA to Transpro (which gave Transpro the option of selecting a higher liability), thus giving the shipper, an intermediary, the opportunity to select a level of liability as required by Carmack.

Last, the lower court did not abuse its discretion in awarding prejudgment interest. The 5th Circuit affirmed the District Court judgment, sustaining Werner's US\$200,000 limit on liability.

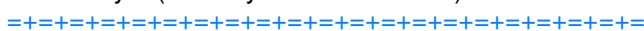
Written from wire stories, the Associated Press, Reuters, Hong Kong Shipping News Lloyds & other world sources.

The Cargo Letter Correspondents:

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Christoph Wahner, Esq. (Countryman & McDaniel) Daily Vessel Casualties

Maria Payne(Countryman & McDaniel)



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Michael S. McDaniel, Editor.

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>>>>>www.cargolaw.com/cl-archives.php<<<<<<<

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