

Key Issues for Logistics and Transportation Companies in 2015

The attorneys on Arnall Golden Gregory LLP's Global Logistics and Transportation team understand how legal challenges impact daily business operations. The following is a list of current legal issues, which in our team's experience, are affecting transportation and logistics companies in 2015 and beyond.

1 Foreign Corrupt Practices Act and Anti-corruption Laws Worldwide

The United States Foreign Corrupt Practices Act and the United Kingdom's Bribery Act can present challenges for global companies, especially those that rely on agents and other third parties throughout the world. Transportation and logistics companies must possess an in-depth understanding of how the changing scope of their services intersects with those laws. Companies should institute comprehensive compliance policies and train workers on their procedures.

2 Data Security

As customers' expectations increase regarding the ability to track shipments in real time across multiple carriers and modes of transportation, companies must improve their ability to share data electronically. This increased need for accessible data creates greater exposure to potential data breaches.

3 Risk Allocation

Prior to doing business with each other, all parties involved in the transportation of goods should have a clear understanding of how risk is to be allocated. Contracts should accurately reflect agreed-upon retentions of liability and should be purged of inconsistent and outdated provisions that undermine the parties' intentions. Protocols should be implemented to ensure that all parties involved are solvent, fully insured and reputable.

4 Expansion and Risk Management Planning

Historically, carrier liability has been tied, in part, to the mode of transport. As both asset-based and non-asset based logistics providers expand their services, they may be subject to unanticipated duties and liabilities, including wrongful death, spillage of contaminants, and environmental hazards.

5 The Single Window

Effective December 2016, the United States import-export regulatory process will be modernized through the Automated Commercial Environment (ACE) system, which will allow businesses to submit the data required by U.S. Customs and Border Protection and its partner government agencies through an internet-based "Single Window." The transition for companies and government agencies to the new ACE system may cause inefficiency in the regulatory process. Additionally, ACE may present challenges to companies as the sharing of information among various agencies might lead to expanded agency oversight.

6 The Compliance, Safety, Accountability Program

Compliance, Safety, Accountability (CSA), the truck monitoring program overseen by the Federal Motor Carrier Safety Administration intended to reduce commercial motor-vehicle related accidents, collects safety data on motor carriers and drivers. Although not intended as a new safety-rating system, many shippers use the CSA scores as another method of vetting carriers. Therefore, carriers must understand the components, technologies and methodologies of CSA to ensure driver, fleet and load compliance.

7 International Arbitration

The parties to cross-border transactions are finding that arbitration is a less expensive and faster method of dispute resolution than traditional litigation. Arbitration awards are generally not subject to appeal. Additionally, arbitration awards are generally easier to enforce in foreign jurisdictions than court awards. Companies should consider a mandatory arbitration provision in their standard contract forms.

8 United States Health Care Reform

The Affordable Care Act includes a groundbreaking employer health care “pay or play” mandate that becomes effective January 1, 2015, and requires large employers to offer full-time employees health insurance coverage that satisfies certain requirements or pay applicable penalties. Logistics and transportation companies should understand and take into account these new requirements in their staffing and employee benefits decisions and make appropriate adjustments.

9 Worker Classification

Transportation and logistics companies are, more than ever, utilizing a contingent workforce rather than workers with a traditional employment relationship, and government agencies are taking notice. By way of example, in the past several years, the IRS and the Department of Labor have engaged in a joint initiative to seek out and correct employers’ misclassification of employees as independent contractors. Notably, both agencies have increased the level of funding and manpower devoted to this initiative, which the government is estimating can bring in over \$7 billion. With the implementation of the employer mandate of the Affordable Care Act, it is expected that these arrangements will receive heightened scrutiny. Additionally, many states have their own employment classifications for various purposes, such as unemployment benefits, and their definitions often differ from the federal test. Given the far-reaching implications of misclassification (including, without limitation, liability for back payroll taxes and penalties, wage and hour concerns, coverage under the federal discrimination statutes, liability for unpaid benefits, and civil penalties under state law), businesses should take time now to ensure that their workers are properly classified.

10 Compliance with U.S. Export Controls

Federal law controls both *what* can be exported from the U.S., and on what terms, and *with whom* a U.S. party may conduct business. These controls are implemented for a variety of reasons, including for national security and foreign policy objectives. Logistics companies often are on the front lines of U.S. export control enforcement, for their own account and as agents for their customers. The need for compliance in this complex, and fast-changing area, is more significant than ever.

11 Transaction Activity

Studies by independent experts predict increased merger and acquisition activity through 2017, in part, due to the retirement of an estimated 40 percent of baby boomers who own businesses. Additionally, if recent history is any guide, the uptick in transaction activity will likely involve large national and international logistics and transportation companies buying local and regional operators. Potential sellers should conduct due diligence on themselves before going on the market to improve their likelihood of their companies being chosen over their peers for a sale transaction. Potential buyers should analyze whether one or more strategic acquisitions could improve their strength in the marketplace.

About Arnall Golden Gregory

A past recipient of *The National Law Journal’s* prestigious 2013 “Midsize Hot List” for helping clients adapt to increasing globalization and regulatory complexity, Arnall Golden Gregory has more than 160 attorneys in Atlanta and Washington, DC who offer big-firm services to growing companies without big-firm costs and bureaucracy.