

SUPPLY CHAIN LOGISTICS: NEW WAYS OF DOING OLD THINGS

► **As a trained logistician, Ron Leibman of McCarter & English cautions clients not to get caught up in supplier hype and puffing.**

CCBJ: You have been working in the supply chain management and logistics fields for a long time. Can you tell us about supply chain logistics law?

Ron Leibman: Most simply it is advising clients on the laws and industry practices affecting the purchase, transportation, warehousing, delivery and sale of products from origin to final destination. I act as strategic advisor to clients in regard to traditional domestic and international transportation and logistics issues like modal and warehousing contracts, government compliance, insurance and labor. I also guide clients in the acquisition and use of today's newly emerging technologies like crowdsourced, app-driven and demand-driven transportation and blockchain, big data and artificial intelligence information technology.

How do you see supply chain law growing and evolving as a practice area in the future?

The major growth in the field will follow industry's rush to technology and desire to be more data-driven. The acceptance of cryptocurrency and Uber-type transportation by the public, the promise of real time data analysis, the perceived efficiencies of automation and the effect of Amazon on customer delivery expectations all signal that industry is in a rush to technology. As this occurs, to be successful as attorneys and advisors, supply chain lawyers will need to be able to apply traditional legal constructs in a new and ever-changing environment.

How do the old constructs coexist with today's and tomorrow's technological advances?

In logistics, things often are not really new, but are just done in a new way. So, for example, the new app-based transportation providers are not really providing new service offerings. Instead, these tech-enabled entities use improved dispatch capabilities to provide users a more efficient means of locating and obtaining carrier capacity, real time freight visibility and operational data capture. This does not change the fact that, by legal definition, these new providers are motor carriers, freight brokers, freight forwarders or courier services, and are subject to the same statutes and regulations as their lower-tech brethren.

What issues do you most often caution clients on before they make technology decisions?

Avoid getting caught up in supplier hype and puffing, and make sure they obtain only what they really need so they avoid unnecessary liabilities. For example, a real time transportation management system may allow for real time shipment tracking and the ability to manage delays and to improve on time delivery. The question is, does this benefit outweigh any attendant risk? If this same real time system were to cause the user to become aware that a truck is speeding, would the user then have an obligation to act to stop the offense? What if that speeding truck gets into an accident and there is property damage and/or injuries – does any obligation accrue? Is there the possibility of negligence or vicarious liability claims against the user? If this liability exists, can it be indemnified against? None of these questions is fully answerable at this time, but the

point is that supply chain attorneys must be cognizant of potential liabilities. That enables the attorney to bring potential liabilities to the client's attention so the client can do a proper risk/reward analysis, and also to develop strategies to minimize any risk for systems that go operational.

There is much talk about how blockchain will impact the supply chain. Do you think it will become an industry norm?

I constantly get questions about what blockchain is and how it will be used. Often this happens because people have an interest in cryptocurrency. In my opinion, the supply chain is a perfect environment for blockchain. In the supply chain, there are constant movements of data – today, largely by paper and EDI – from origin to destination in almost a closed loop. If blockchain can fully systematize and largely automate the data input, transmission and output process in a secure transmission environment, it will certainly be a gateway to the future. Barriers exist though, as blockchain data transmission may not meet legal requirements, and where this may be the case, progress could be delayed until today's laws are changed.

It is often said that smart contracts are offshoots of the blockchain. Some pundits predict that these contracts will greatly reduce the need for attorneys and contract negotiation as they are self-executing.



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Do you agree?

No, at least not on an industry-wide basis. Smart contracts require consensus to standard terms and conditions between all parties. Even assuming that service providers could come to consensus with one another, it is unlikely that shippers will conform to carrier-friendly terms. If they could, I believe there would

not be the multitude of contracts out there today. Industry organizations have devised several forms of standard contracts over the years, only to see them fail to gain mass acceptance. It is unlikely that shippers and consignees will agree to automatic payment on delivery based on a contract's written terms, thus denying consignees offset and deduction rights. Smart contracts, like any contracts, will generate issues necessitating the use of attorneys. Some of these issues can't even be envisioned today.

Do you have any predictions of when we will see automated trucks on the road?

I have seen estimates ranging from three to 20 years, and I skew toward the latter as I believe there are several barriers to their use. I am not sure the public is ready for the idea of 80,000 pounds of truck running next to them without a driver. Though several states have legislation allowing their use, many more changes at the state and federal levels are needed to allow for widespread use of these vehicles. Finally, and perhaps most significantly, I believe that the insurance industry will have to come to terms with how to underwrite the risk. All this said, it is a certainty that these vehicles will be on the road at some point in the foreseeable future, likely on a long-haul basis first.

What would you tell general counsel who must assist their internal clients with supply chain technology use and acquisition?

Don't get caught up in the hyperbole surrounding the technology or take at face value what the suppliers are saying. If they are a service provider, they need to meet the legalities that attach to their services, and if they are a software provider, this is not a get out of jail free card from all liabilities. This can be tough to do as supply chain and IT executives often believe the PR surrounding the systems they seek and are in a rush to technology out of fear of being left behind by the competition. While you don't want to be the office of "no," I suggest being the investigative office. ■