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Transport Cos. Brace For Post-Ida Supply Chain Woes

By **Linda Chiem**

Law360 (August 31, 2021, 7:30 PM EDT) -- Freight railroads, ports, trucking companies and logistics operators still assessing the damage wrought by Hurricane Ida over the weekend are scrambling to help with disaster relief efforts in the Gulf Coast, while also bracing for supply chain disruptions that will reverberate nationwide.

Louisiana, Mississippi and other Gulf Coast states, which are home to major shipping ports, oil refineries and industrial chemicals plants, have been impacted by flooding, **power outages**, washed-out highways, overburdened water and sewage systems and other storm-related damage.

Transportation and infrastructure companies that were already digging their way through the pandemic-ravaged U.S. economy are bracing for even more capacity constraints, bottlenecks and supply chain problems in Ida's wake, experts told Law360.

"The transportation industry, already overburdened due to the labor shortages caused by the global COVID-19 pandemic, will likely take another big hit from Hurricane Ida," said Barnes & Thornburg LLP partner Tiffany Presley, explaining that reduced shipping capacity and increased costs are among the most immediate challenges.

"Hurricane Ida will create additional delivery delays by damaging transport vehicles, such as trains, planes, trucks and vessels, making current and generally most cost-efficient transportation routes impassible, and/or [by] damaging oil refineries, which will create fuel shortages," she said.

For the time being, certain roads and bridges have been crippled by flooding. One of the Gulf Coast's busiest ports, the Port of New Orleans, was still closed as of Tuesday and was figuring out when it would resume operations. Getting disaster relief supplies, rebuilding materials and fuel to the hardest-hit communities take priority.

"Moreover, trucks that head into, or even near, these flooded areas are necessarily tied up much longer than during a typical trip into these markets," said Marc Blubaugh, co-chair of the transportation and logistics practice group at Benesch Friedlander Coplan & Aronoff LLP. "In other words, the pace of traffic is unavoidably much slower than usual. In turn, this 'slow going' reduces overall regional capacity."

"Further," he said, "the need for trucks to move a large volume of supplies to the affected region saps trucking capacity from and puts strain on other regions."

Blubaugh explained that the Port of New Orleans is the only deep-water container port in Louisiana, and it also handles a great deal of breakbulk cargo, which typically consists of oversize goods like structural steel, and manufacturing or construction equipment, that doesn't fit into standard containers. So when a bottleneck occurs in New Orleans, it can reverberate throughout the supply chain.

"While sophisticated shippers always build in redundancies to account for this type of supply chain disruption, some disruption is inevitable when a storm like this hits," he said. "For example, recall how the winter storms in Texas in February played havoc with supply chains and transportation pricing."

It's still early to gauge how far-reaching the storm's impact will be on the overall transportation network, but experts say they're hopeful that lessons learned from previous natural disasters and the

COVID-19 pandemic will help transportation providers navigate some of the most pressing challenges.

"The question is how do you squeeze out additional capacity, but the industry will do everything it can to try to help," Ron Leibman, head of McCarter & English LLP's transportation, logistics and supply chain management practice, told Law360.

"The infrastructure issue is really significant because if you remember from [Hurricane Sandy], you can move goods all you want but can you move them where you need them?" he continued. "So, if you can get them to some place in Louisiana or Mississippi that was not hit terribly, the question is then, how do you get it into flooded New Orleans? It becomes a local — for lack of a better term — last-mile issue. That's the harder transportation issue than the over-the-road [issue] of getting supplies there."

To help expedite Ida relief efforts, the U.S. Department of Transportation's various agencies have relaxed certain regulations in recent days.

The Federal Motor Carrier Safety Administration issued a regional emergency declaration to exempt commercial truck drivers from strict hours-of-service regulations governing how long they're allowed to drive on the road and when they must take meal and rest breaks. Temporarily suspending federal HOS regulations in Alabama, Arkansas, Louisiana, Mississippi, Tennessee and Texas will give truck drivers flexibility to haul essential items like food, water, fuel and power restoration equipment like utility poles, transformers and generators, to help support emergency relief efforts, according to the FMCSA.

Additionally, the Federal Railroad Administration activated its "emergency relief docket," which allows railroads to request short-term waivers from federal safety regulations that will help them speed up the restoration of rail lines and services to transport goods needed for emergency relief efforts.

"I think it depends on how mission-critical it is to business. I would think refineries, for example, would move heaven and earth to get up and running if they're down," Leibman said. "But there's other production facilities that might make products we use every day that are not going to get the same level of attention, at least from the federal government. These things are always triage."

Also, the U.S. Environmental Protection Agency issued emergency fuel waivers for Louisiana and Mississippi, in effect until Sept. 16, in response to Ida-related fuel shortages. That means the two states are temporarily freed from having to follow Clean Air Act rules requiring they produce, sell and distribute low-volatility gasoline during the summer months.

The move addresses the availability and cost of diesel fuel in the region, but prices could still be unpredictable.

"My understanding is that nine refineries were in the direct path of the storm and that 13% of U.S. capacity was offline due to the storm," Blubaugh said. "While I imagine that the refineries that closed during the storm will restart before too long, transportation stakeholders will feel some further pain for the time being. Of course, all of these factors affect prices, particularly in the spot market. So, shippers who are reliant on the spot market will experience surge pricing for a period."

--Editing by Robert Rudinger.