CLIENT ALERTS & INSIGHTS

Now You See Them, Now You Don't: Longstanding Terms of the NMFC's Uniform Bill of Lading Vanish

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On July 14, 2016, the National Motor Freight Traffic Association ("NMFTA") published a supplement that changed the terms and conditions of the Uniform Straight Bill of Lading ("USBL") published in the National Motor Freight Classification ("NMFC"). NMFC 100-AP Supplement No. 2 became effective on August 13, 2016. The Transportation Logistics Council ("TLC") and the National Shippers Strategic Transportation Council ("NASSTRAC"), two trade groups representing shippers, filed a Petition for Suspension and Investigation of the changes with the Surface Transportation Board ("STB").

On August 12, 2016, the STB denied the request by TLC and NASSTRAC and allowed the changes to take effect on the following day, August 13, 2016. The STB did indicate, however, that it will consider comments on the matter, if filed by September 12, 2016, to determine whether to investigate the issue further. In its decision, the STB gave guidance as to the substance of comments that it will consider. First, does review of this issue fall under the jurisdiction of the STB? Secondly, does the STB's prior decision to terminate its approval of all remaining motor carrier rate bureau agreements affect the STB's authority to review these changes? An investigation by the STB has the potential of prompting a modification to the NMFTA changes.

The changes that went into effect on August 13 significantly change the terms and conditions that govern most motor carrier transportation of goods within the United States that is not subject to contracts negotiated with the motor carriers. Some of the changes are as follows:

- Section 1 (a). The motor carrier responsible for cargo loss or damage is the one shown on the bill of lading, rather than the one in possession of the goods when they are lost or damaged.
- Section 1 (b). Under the old terms and conditions, no motor carrier is liable for loss, damage, or delay caused by one of the five common law exceptions to carrier liability, if the carrier can prove freedom from negligence. The new language adds riots, strikes, and any related causes to the five exceptions and changes the burden of proof from that of the carrier to that of the shipper.
- Section 3 (b) The old language required claims to be filed within nine months after the delivery of the cargo, except that claims for failure to make delivery must be filed within nine months after a reasonable time for delivery has elapsed. The new language shortens the time allowed for filing claims for failure to make delivery to nine months from the date of the bill of lading.
- Section 5 (a). The old language states that limitations of liability may apply if the cargo value has been stated by the shipper or has been agreed upon in writing as the released value. The new language allows a carrier to limit liability simply by publishing the limitation in its tariff.

Please contact us with any questions about the important implications that these changes may have for your particular business.

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