



Transportation Law Alert

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY

NMFTA Revisions To The Uniform Straight Bill of Lading – Problematic Provisions & Anti-Trust Concern. Should Participating Carriers Opt Out of the Revisions?

The NMFTA has revised the Uniform Straight Bill of Lading and the terms and conditions contained therein pursuant to Supplement 2 to NMF 100-AP issued July 14, 2016 (scheduled to become effective August 13, 2016). Several of the revisions purport to change or otherwise impact Carmack Amendment liability, claim filing periods, carrier defenses and related issues. As an example, the changes now state the carrier “shown as transporting the goods” is liable for cargo loss or damage (taking out language about the carrier “in possession”) and suggesting that the carrier in possession may not be liable if not listed on the bill of lading. Likewise, the changes require the shipper to prove carrier negligence (rather than requiring the carrier to prove it is free of negligence) when a common law defense to carrier Carmack liability is asserted by a carrier (Act of God, Inherent Vice). It is debatable whether changes to the Uniform Straight Bill of Lading (particularly without a waiver as required under 49 USC 14101(b)) can alter Carmack Amendment liability, claim filing periods and defenses. It is also unclear whether the NMFC has the authority to revise the Uniform Straight Bill of Lading without approval of the Surface Transportation Board (STB) and whether the STB would give that approval if requested or forced to decide whether to approve in the context of litigation. These issues have been raised. On July 28, 2016, the Transportation & Logistics Council filed a petition with the STB challenging the implementation of the changes to the Uniform Straight Bill of Lading by the NMFC, requesting a STB investigation and suspension of the proposed tariff changes; and on August 1, 2016, NASSTRAC, Inc. filed a similar petition in support of the T&LC petition. Both petitions point out the problematic changes to the bill of lading, but NASSTRAC also alleged the revisions may constitute an anti-trust violation actionable against both the NMFTA and the member carriers. NASSTRAC makes it clear that if STB declines to act to block the NMFTA changes from going into effect, the shipper group will be forced to take its challenge into the courts, raising antitrust issues the courts are ill-equipped to resolve. Carriers that are members of the NMFTA and participants

in the NMFC should consider whether they should opt out of the revised NMF-100 prior to the effective date of the revisions, August 13, 2016, to protect against potential anti-trust claims that may be actionable against participating carriers, if the NASSTRAC arguments carry the day.

The firm continues to monitor the potential implementation of these changes and the challenges filed with the STB. If you have questions or concerns, please contact [Craig Helmreich](#), [Nathaniel Saylor](#), [Kim Mann](#), [Prasad Sharma](#), or [Kathleen Jeffries](#).

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