

Before The
SURFACE TRANSPORTATION BOARD

Docket No. ISM 35008

PETITION FOR SUSPENSION AND INVESTIGATION

Opening Comments of
NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.

Paul G. Levine
Executive Director
National Motor Freight Traffic
Association, Inc.
1001 North Fairfax Street, Suite 600
Alexandria, VA 22314
Tel.: (703) 838-1822
Email: levine@nmfta.org

John R. Bagileo
Law Office of John R. Bagileo
15292 Callaway Court
Glenwood, MD 21738
Tel.: (301) 404-8382
Email: jmbagidell@msn.com

Counsel for National Motor Freight
Traffic Association, Inc.

Due and Dated September 12, 2016

In its Decision served in this matter on August 12, 2016, the Surface Transportation Board (STB) denied the requests of the Transportation and Logistics Council, Inc. (T&LC) and the National Shippers Strategic Transportation Council (NASSTRAC) to suspend the revisions in the Uniform Straight Bill of Lading (USBOL), and the related Rules in Item 360-B, published in the National Motor Freight Classification (NMFC) and appearing in Supplement 2 to NMF 100-AP. Left open was the issue of whether the agency has authority to investigate the subject matter. Specifically, the STB requested that the Parties address whether 49 U.S.C. Section 13703(a)(5)(A), or 49 U.S.C. Section 14701, provides the STB with authority to undertake an investigation of the involved bill of lading revisions where there is not an approved Section 13703 agreement. Further, the Parties were requested to address any effect or impact the STB's prior decision in Motor Carrier Bureaus-Periodic Review Proceeding, EP 656 (STB served May 7, 2007), would have on whether the agency should investigate the changes to the Uniform Straight Bill of Lading at issue here. (STB Decision, p. 2.)

As set forth below, NMFTA respectfully submits that the STB does not have authority or jurisdiction to investigate the subject revisions either as a tariff matter or as a contract, or under the agency's general authority, as the involved USBOL provisions do not constitute a violation of any matter subject to the STB's jurisdiction. Lastly, the STB's prior decision in Motor Carrier Bureaus-Periodic Review Proceeding should have no effect or impact here because that agreement, as pertains to National Motor Freight Traffic Association, Inc., was solely related to the collective making of freight classifications by the carrier participants, and did not involve agency authority over the terms and conditions of the USBOL.

I. Court Jurisdiction Over the Uniform Straight Bill of Lading

Bills of lading have been in use for the transportation of goods by carriers since the sixteenth century. From that time until the present, the interpretation and enforcement of the terms and conditions of bills of lading have been vested exclusively in the courts. Moreover, it has been Congress, which through legislation, has interpreted and clarified the application of bills of lading. Such legislation is found in the Harter Act of 1893, Ch. 105, 27 Stat 445 (1893), currently at 46 U.S.C. Sections 190-196; the Uniform Bills of Lading Act, Section 23(b) (1909) (withdrawn in 1951); the Federal Bill of Lading (Pomerene) Act, Ch. 415, 39 Stat. 538-45 (1916), currently at 49 U.S.C. Sections 80101-80116; and the Carriage of Goods by Sea Act (COGSA), Ch. 229, 49 Stat. 1207 (1936), codified at 46 U.S.C. Sections 1300-1315.¹

¹ See Daniel E. Murray, History and Development of the Bill of Lading, 37 U. Miami L. Rev. 689 (1983).

The role of the bill of lading in the transportation of goods is well established. As is stated in West's Encyclopedia of American Law, 2nd Ed., The Gale Group, Inc. (2008):

Carriers using all modes of transportation issue bills of lading when they undertake the transportation of cargo. A bill of lading is, in addition to a receipt for the delivery of goods, a contract for their carriage and a document of title to them. Its terms describe the freight for transportation purposes, state the name of the consignor and the provisions for the contract for shipment and direct the cargo to be delivered to the order or assigns of a particular person, the consignee, at a designated location.²

The first motor carrier Uniform Straight Bill of Lading was published in National Motor Freight Classification LTL-1, effective April 1, 1936, by the American Trucking Associations, Inc., Tariff Bureau. A copy of that publication is appended to these comments. As can be seen, a number of the terms and conditions set forth almost 80 years ago in that document had not been updated or clarified since that publication.

II. The Subject Matter of the Uniform Straight Bill of Lading is Not Within the Ambit of Section 13703(a)(5)(A) of 49 U.S.C.

The reference to an "agreement" in Section 13703(a)(5)(A), rather than an "approved agreement" found in Section 13703(a)(5)(B), is not a substantive difference regarding any authority of the STB to conduct an investigation. At the outset, it must be noted that the subject matters which are properly covered in the those agreements are identified in Sections 13703(a)(1)(A) through (H). These include through routes and joint rates; rates for the transportation of household goods; classifications; mileage guides; rules; divisions; rate adjustments of general application based on industry average carrier costs (so long as there is no discussion of individual markets or particular single-line rates); or procedures for the joint consideration, initiation, or establishment of matters described in subparagraphs (A) through (G). Unequivocally, the USBOL, which sets forth the contract terms and conditions of the motor carrier transporting the goods tendered, do not fall within any of those categories.

The decision of the former Interstate Commerce Commission in Investigation and Suspension Docket No. M-29788, Charge for Shipments Moving on Order-Notify Bills, 367 I.C.C.

² As early as the decision in Mason v. Lickbarrow (1794) 1 H. Bl 359, at pp. 404-405, the bill of lading was identified as the contract of carriage. It concluded: "A bill of lading is the written evidence of a contract of carriage and delivery of goods sent by sea for a certain freight. The contract in legal language is a contract of bailment. In the usual form of the contract the undertaking is to deliver to the order or assigns of the shipper."

330 (1983), clearly established the scope of agency authority under Section 13703. It concluded:

Because of our own jurisdictional limitations, we could not have granted respondent immunity to promulgate general rules and regulations unrelated to classification. Our jurisdiction is neither unlimited nor coextensive with all the possible kinds of collective carrier activity that might form an antitrust violation. Under former section 5a(2) of the Interstate Commerce Act only six substantive areas were specifically approved for collective carrier activity. As the following quotation from section 5a(2) demonstrates, a rate bureau's authority to adopt rules and regulations is strictly an ancillary power:

*** rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules and regulations pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof *** (footnote omitted).

The use of the phrase "pertaining to" clearly indicates that the power to make rules and regulations is only to be used in conjunction with any of the six substantive areas properly the subject of ratemaking agreements. Accordingly, we could not have authorized a general power to make rules or regulations unrelated to classification. (367 I.C.C. at 333.)

The Interstate Commerce Commission's description of the nature of classification leaves no doubt that the Uniform Straight Bill of Lading is not classification. As the agency stated: "The primary purpose of a freight classification is to assign each article or groups of articles with comparable transportation characteristics to a class. Assignments are made according to well known classification principles which are based upon distinctions relative to transportability". (367 I.C.C. at 335.) Plainly, the contract terms and conditions in the Uniform Straight Bill of Lading, and Item 360-B relate solely to the USBOL, and not activities within Section 13703.

Further, the provisions of Section 13703 must be read together. Until such time as a collective agreement has been approved, and the parties are operating under its approved procedures, thereby promulgating a rate, rule, classification or rate adjustment of general application "made pursuant to an agreement under this section," the authority of the STB to determine the reasonableness of the proposal is not operative. The absence of the term "approved" in Section 13703(a)(5)(A) does not broaden the agency's authority to investigate rates, rules, classifications or rate adjustments of general application which have not been

established collectively under an approved agreement. As per Section 13701(a) of 49 U.S.C., the issue of rate reasonableness is limited to household goods movements, movements in the noncontiguous domestic trade, and rates, rules and classifications made collectively by motor carriers under agreements approved pursuant to Section 13703. In any event, the terms and conditions of the USBOL, and its related rules, are not matters within the scope of collective agreements.

III. The Uniform Straight Bill of Lading is Not Within the STB's General Authority Under Section 14701 of 49 U.S.C.

Initially, as discussed above, carrier bills of lading are the products of the Federal Bill of Lading Act, and prior related federal legislation, and not the Interstate Commerce Act. When questions have arisen as to the legality of the terms and conditions of the bills of lading, including the USBOL, those matters appropriately have been resolved through the courts. The jurisdiction of the courts pertaining to bill of lading terms and conditions has been acknowledged by the Surface Transportation Board. In its decision in STB Docket No. ISM 35002, entitled Amend The Uniform Straight Bill of Lading and Accompanying Contract Terms and Conditions, decided July 29, 1998 (not printed), it stated: "As we noted in our December 24 [1997] decision, disputes regarding motor carrier liability and the enforcement of incorporated provisions must be resolved by the courts. In these circumstances we believe it is preferable that we take no position on either side of the issue at this time." (At p. 3.)

Moreover, assertion of authority over the Uniform Straight Bill of Lading would be inconsistent with Section 14101(b) of 49 U.S.C. which authorizes motor carrier contracts with shippers. Under Section 14101(b)(2) Congress specifically provided that the exclusive remedy for any breach of a contract initiated under that section shall be in an appropriate State court or United States district court, unless the parties otherwise agree. Accordingly, Congress made it clear that the courts or the parties were to have exclusive authority as to the resolution of contract disputes. Without question, the USBOL is and always has been a contract between the carrier and the shipper, and the courts have jurisdiction over disputes regarding its terms and conditions. To have the STB now assert authority to investigate the terms and conditions of the USBOL would be contrary to the jurisdiction which it has recognized is vested in the courts. Also, that assumption of authority by the agency, contrary to Congressional intent expressed in the Federal Bill of Lading Act and related legislation, would undermine the USBOL's role as a contract for carriage in the transportation community by subjecting it to regulatory restraints not imposed on Section 14101(b) contracts.

Nevertheless, NMFTA submits that nothing in Section 14701 creates any right in the agency to institute an investigation “in light of the fact that the agreement at issue was not approved by the Board.” As indicated, and as has been long recognized, the terms and conditions of the USBOL are not among the six substantive areas which comprise the collective activities which can be the subject of a Section 13703 agreement. Therefore, there is no agreement at issue here which could be the subject of agency approval under Section 13703. Thus, such lack of approval has no bearing on the agency’s investigative powers under Section 14701.

Further, as provided in Section 14701(a), the general authority of the agency to conduct investigations is related to the necessity “to compel compliance with this part.” As shown, there are no provisions in that part, or any other part of the Interstate Commerce Act pertaining to motor carriers, violated by the subject revisions of the USBOL, or under the authority of the agency. Accordingly, the authority conferred on the STB under Section 14701(a) has no application in this matter.

IV. STB Prior Termination of the Rate Bureau Agreements Has No Bearing on the Institution of an Investigation into this Unrelated Matter

The STB has requested that more detailed discussion be undertaken regarding the decision in Motor Carrier Bureaus-Periodic Review Proceeding, EP 656 (STB served May 7, 2007). The Parties are requested to address the effect of the decision and any impact it has on whether the Board should investigate the proposed changes in the Uniform Straight Bill of Lading.

NMFTA submits that the STB’s decision in Motor Carrier Bureaus-Periodic Review Proceeding has no effect on the USBOL’s terms and conditions, and does not warrant the initiation of an investigation of those changes. That decision has no relevance here. As the STB concluded:

This termination of approval of bureau agreements does not affect beneficial bureau activities that do not come within the scope of activities covered under 49 U.S.C. 13703. Our approval and the resulting antitrust immunity applied only to those activities that are specified in section 13703(a)(1)(A)-(G). While we will not attempt to specify those bureau activities that fall outside of the section, we recognize the probability that there are such activities. (Decision, at p. 27.)

As shown above, the USBOL does not fall within any of the six categories of recognized activities which properly are the only areas included within Section 13703. The USBOL is not ratemaking or classification-making activity. As also addressed above, the USBOL is the product of the Federal Bill of Lading Act and related legislation, and not the Interstate Commerce Act. Accordingly, that decision presents no basis for the institution of an investigation here.

V. Today's Role of the Uniform Straight Bill of Lading in Motor Carrier Transportation

Today the role of the USBOL as the principal contract of carriage for those carriers participating in the National Motor Freight Classification has been overshadowed by the prevalence of shipper bills of lading, as well as those of individual motor carriers, including a number of NMFTA's member carriers. With the advent of motor carrier/shipper contracts under Section 14101(b), the vast majority of less-than-truckload shipments moving in interstate commerce, which constitute the primary source of the transportation services provided by NMFTA's members, are transported under motor carrier and/or shipper Section 14101(b) contracts. The USBOL has no application to the overwhelming majority of motor carriers operating in interstate commerce due to their non-participation in the NMFC.

In implementation of those alternative transportation contracts, numerous "model contracts" have been created within the entire transportation community, and are sponsored and/or available through various transportation organizations. American Trucking Associations Inc. has a model motor carrier/shipper agreement. The Transportation Intermediaries Association has a model broker/motor carrier agreement. Shipper organizations, including the Transportation & Logistics Council, Inc. (T&LC) and NASSTRAC, Inc. (NASSTRAC), make available to their members and others sample contract terms and conditions.³

As indicated, a number of the terms and conditions which existed in the USBOL prior to the current revisions first appeared in National Motor Freight Classification LTL-1, effective in 1936, and remained unchanged since that time. The legislative changes which have occurred in motor carrier transportation since that time, as well as the necessity for the clarification and revision of terms and conditions which became evident, underscored the need for the revisions which have been made. Just as is the situation with the members of other organizations which are free to use or not use, or modify, the model or sample contract terms and conditions,

³ T&LC has available a publication entitled Motor Carrier Contracts Annotated, which indicates that its drafting philosophy is to be shipper friendly in that the terms are generally more favorable to a shipper than would be found on a carrier's own tariff terms and conditions. NASSTRAC indicates on its website that it has available for members transportation contract templates and a sample freight broker contract template.

NMFTA's 529 member motor carriers are able to use or not use the terms and conditions of the USBOL, accept shipper or broker bills of lading, or tailor their own.

Further, apart from the issue of the STB's authority to investigate the terms and conditions of the USBOL, it is believed that to do so is unwarranted by the revisions which have been made. As detailed in NMFTA's August 5, 2016 Response to the T&LC and NASSTRAC the changes are fully compliant with the law, and clarify antiquated terms which lacked adequate definition. Those matters will not be reargued here. But, it must be pointed out that regarding a major point of contention concerning released rates, the STB already has long concurred with NMFTA's interpretation of Section 14706(c)(1)(B). Section 5. (a) of the USBOL provides that, in addition to where a lower value is declared by the shipper, it can be established by the carrier itself in its tariff. NASSTRAC argued that such provision deviates from the statute. That is incorrect. As the STB concluded in its decision in STB Docket No. ISM 35002, Amend The Uniform Straight Bill Of Lading and Accompanying Contract Terms And Conditions, decided December 19, 1997 (not printed):

In our view, the statute permits carriers to establish rates, rules and regulations applicable to shipments tendered to them in common carriage under bills of lading such as the one proposed, without any further written agreements with shippers. We recognize that section 14706(c)(1)(A) provides that released rates are triggered by an express declaration or agreement of the shipper. However, that general provision is subject to the language of paragraph (B), which permits carriers to establish released rates in documents they maintain at their facilities, so long as they provide those documents to shippers on request. (At p. 2.)⁴

None of the contested changes in the USBOL abrogate the law or would warrant or authorize the institution of an investigation by the agency.

VI. Conclusion

In response to the questions raised in the STB's August 12, 2016 decision in this proceeding, for the reasons stated above, NMFTA submits that neither Section 13703(a)(5)(A)

⁴ Although the shipper conferences parties to that proceeding argued that the quoted language by the STB was "gratuitous," and "traditionally" not part of a decision in an investigation and suspension proceeding, and the agency subsequently removed segments of the prior decision dealing with Section 14706(c)(1)(B) in STB Docket No. ISM 35002, decided July 29, 1998 (not printed), the correctness of the STB's decision regarding the ability of a carrier to establish a released rate in its tariff without shipper agreement cannot be disputed given the clear provision in the statute authorizing such action.

nor Section 14701 creates authority in the agency to investigate the terms and conditions in the Uniform Straight Bill of Lading. The absence of the term “approved” in Section 13703(a)(5)(A) does not subject the USBOL to STB authority as it is a contract of carriage and not an agreement within the categories of activities included in Section 13703. Therefore, it could not be deemed a matter subject to the Section 13703 jurisdiction of the agency, and the presence or absence of the term “approved” has no relevance as to the STB’s authority over the USBOL which is subject to federal laws other than the Interstate Commerce Act. Concomitantly, the absence of provisions in the Interstate Commerce Act vesting jurisdiction in the STB over bills of lading terms and conditions evidences the USBOL is not subject to the general investigative powers of the Act, which is confined to matters in violation thereof. Further, and importantly, the STB has acknowledged that issues pertaining to liability and incorporated provisions in the USBOL “must be resolved by the courts,” and not the agency.

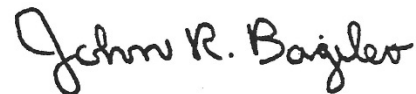
Finally, the prior STB decision in Motor Carrier Bureaus-Periodic Review Proceeding has no bearing on the authority to investigate the USBOL. That decision was confined to those matters which were within the scope of activities covered under 49 U.S.C. Section 13703, which patently does not include the USBOL, and had no bearing on those activities, such as the USBOL, which were beyond the activities subject to Section 13703.

Respectfully submitted,



Paul G. Levine
Executive Director
National Motor Freight Traffic
Association, Inc.
1001 North Fairfax Street, Suite 600
Alexandria, VA 22314
Tel.: (703) 838-1822
Email: levine@nmfta.org

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John R. Bagileo
Law Office of John R. Bagileo
15292 Callaway Court
Glenwood, MD 21738
Tel.: (301) 404-8383
Email: jmbagidell@msn.com

Counsel for National Motor Freight
Traffic Association, Inc.

P. S. C.-Pa. No. 1

MF-I. C. C. No. 1

I. C. C. No. 1

**AMERICAN TRUCKING ASSOCIATIONS, INC.
TARIFF BUREAU**



**NATIONAL MOTOR FREIGHT CLASSIFICATION LTL-1
(East - South - West)**

LESS THAN TRUCK LOAD RATINGS

Applies on LESS THAN TRUCK LOAD Freight Traffic covered by Tariffs made subject hereto.

ISSUED MARCH 2, 1936

EFFECTIVE APRIL 1, 1936

ISSUED AND FILED ONLY FOR THE INDIVIDUAL CARRIERS NAMED HEREIN.

**ISSUED BY
C. F. JACKSON, AGENT
1039 INVESTMENT BUILDING,
WASHINGTON, D. C.**

This classification is distributed to subscribers with the understanding that it will not be given away.

Copyright, 1936 by C. F. Jackson

Original—Not Negotiable—Domestic

Agent's No. _____

Carrier.

From _____, Date _____ 193_____

At _____ Street, _____ City, _____ County, _____ State

Consigned to _____

Destination _____ Street, _____ City, _____ County, _____ State _____

I. C. C. No. _____ Vehicle No. _____

Routing_____

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:
The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of consignor)

If charges are to be prepaid write or stamp here
"To be Prepaid."

Received \$_____ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per _____
(The signature here acknowledges only the amount prepaid)

Note—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

_per

Collection On Delivery \$_____for account of and remit to:

Street _____ City _____ State _____

Shipper _____ Agent. _____

Per _____ Per _____

Permanent address of Shipper: _____ Street, _____ City, _____ State

Charges advanced :

\$-----

CONTRACT TERMS AND CONDITIONS

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the Act of God, the public enemy, the authority of law, or the act or default of the shipper or owner or for natural shrinkage. The carrier's liability shall be that of a warehouseman, only, for loss, damage or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after the notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given and after placement of the property for delivery at destination. The carrier's liability shall be that of a warehouseman, only, for loss, damage or delay caused by fire occurring after the tender or delivery of the property to the party entitled to receive it, or at the address given for delivery, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes. No carrier or party in possession of all or any of the property herein described shall be liable for delay caused by obstruction, faulty or impassable highway, lack of capacity of any highway, bridge or ferry or caused by breakdown or mechanical defect of vehicle or equipment.

(c) In case of quarantine the property may be discharged at risk and expense of the owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, and in such cases, carrier's responsibility shall cease when the property is so discharged, or property may be returned by carrier at owner's expense to shipping point earning freight both ways. Quarantine expense of whatever nature or kind upon or in respect to the property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts done or required by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents or employees, nor for detention, loss or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular schedule, vehicle, train or vessel in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier in possession of the property when the loss, damage, injury or delay occurred, within nine months after delivery of the property (or in case of export traffic, within nine months after delivery at port of export), or, in case of failure to make delivery, then within nine months after a reasonable time, for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable and such claims will not be paid.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperation, packing and repacking at owner's cost.

Sec. 4. (a) Property not received by the party entitled to receive it at the time of the arrival of the property at destination or at the port of export (if intended for export) and tender of delivery of the property to the party entitled to receive it or at the address given for delivery has been made, may be kept in vehicle, warehouse, or place of business of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a warehouse at the point of delivery or at other available points, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all packing, moneys advanced, transportation, and other lawful charges, including a reasonable charge for storage.

In the event the consignee can not be found at the address given for delivery, then in that event, notice of the placing of such goods in warehouse shall be left at the address given for delivery and mailed to any other address given on the bill of lading for notification, showing the warehouse in which such property has been placed, subject to the provisions of this paragraph.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it or claim within 15 days after the arrival of the property at destination or at the port of export (if intended for export) and tender of delivery of the property to the party or at the address given for delivery has been made, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier. Provided, That the carrier shall have first mailed, sent or given to the consignee notice in person or by leaving notice at the address given, that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published. Provided, That 30 days shall have elapsed before publication of notice of sale after said notice that the property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale. Provided, That if there be time for service of notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale. Provided, That if there be time for service of notification to the consignor or owner of the refusal of the property or the failure to receive it and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Where the carrier is directed to unload or deliver property at a place at which the consignee or its agent is not present, the risk after unloading or delivery shall be that of the owner. Property taken from or destined to a place or places where there is no authorized agent of the carrier shall be entirely at the risk of the owner until loaded into or after unloaded from the vehicle.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated on the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are endorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage caused by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the advance charges, packing, transportation and storage, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by motor shall deliver or relinquish possession at destination of the property covered by this bill of lading, until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. Provided, That, where the carrier has been instructed by the shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect to the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him if the consignee (a) is an agent only and has no beneficial title to said property and, (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigning or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigning or diverted, the beneficial owner, shall be liable for such additional charges. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. Nothing herein shall limit the right of the carrier to require at time of or before shipment, the prepayment in part or in full or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of Congress of the United States, approved on February 13, 1893, and entitled "An Act relating to the navigation of vessels, etc.," and of other statutes of the United States authorizing carriers by water the protection of limited liability, and to the conditions contained in this bill of lading not inconsistent therewith or with this section.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped, and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924, Sections 1 to 15, inclusive, and Sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the ship-owner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors or lakes when performed by or on behalf of carriers other than water.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

Certificate of Service

I hereby certify that I have this 12th day of September, 2016, served a true and correct copy of the foregoing document by first class mail, postage prepaid, and by electronic means, on counsel for the Transportation & Logistics Council, Inc. and NASSTRAC, and by first class mail, postage prepaid on ODW LTS.

A handwritten signature in cursive script that reads "Paul G. Levine". The signature is written in black ink and is positioned above a horizontal line.

Paul G. Levine