insights

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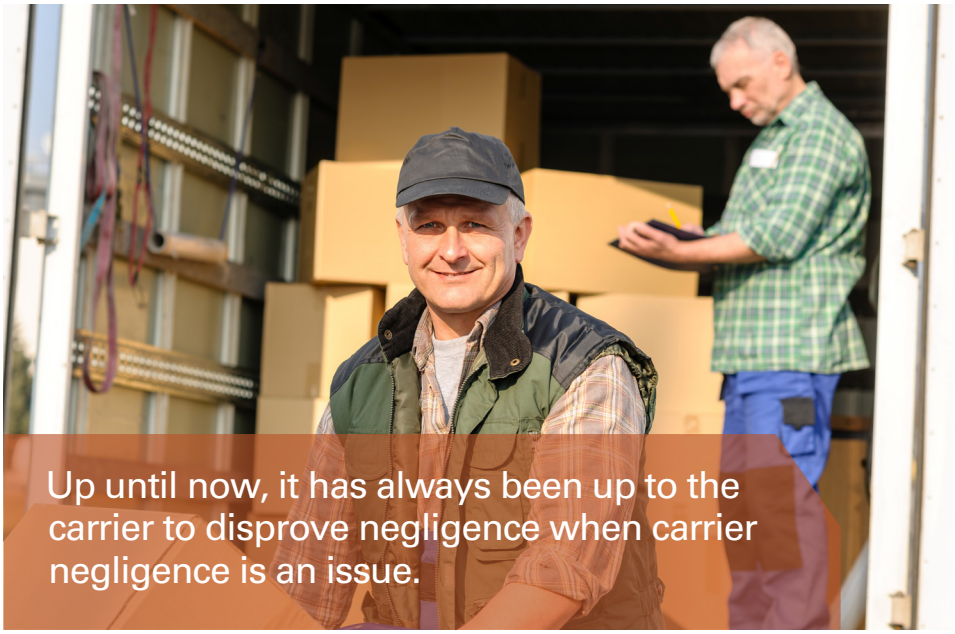
Shippers Beware:

The Proposed New Motor Carrier Standard Bill of Lading Form

There has always been a "battle" between motor carriers and shippers around the issue of applicable bill of lading ("BOL") forms. With primarily respect to less-than truckload ("LTL") carriers who participate in the National Motor Freight Classification ("NMFC") tariff, many such carriers attempt to use the standard NMFC BOL which incorporates by reference the published tariff which contains specific (and often severe) limitations on the cargo damage and loss claims liability of the motor carriers. Since shippers rarely actually receive or read the substantial NMFC tariff itself, by agreeing to a carrier BOL they often find themselves subject to severe claims limitations, much to their surprise and chagrin. The NMFC tariff is written by the NMF Conference which is, of course, dominated by carriers with a desire to downwardly limit their exposure to claims for cargo damage and loss.

By Michael M. Briley



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The standard form BOL is part of the NMFC and several changes to the form have been recently proposed by the Transportation and Logistics Council and will be adopted or rejected by the Surface Transportation Board ("STB").

The most significant proposed change is the proposal that absent a written, bi-lateral shipper/carrier contract to the contrary, all NMFC carriers (i.e., most LTL carriers) will haul only under the standard form BOL. That means that even if shipper uses its own BOL, absent a bilateral transportation contract between the carrier and the shipper that says otherwise, the NMFC standard form will apply and it will override the shipper BOL. Bad news for shippers.

The next most significant proposed change has to do with carrier liability for negligence resulting in cargo claims. Up until now, it has always been up to the carrier to disprove negligence when carrier negligence is an issue. The carrier has the burden of proof to show that it was not negligent in causing

the loss. It is important to recognize that negligence is admittedly not an issue in most cargo claim situations. Pursuant to the Carmack Amendment (USC 514706 et. seq.), carriers are liable for loss, damage or delay of loads in their care in most cases, regardless of whether or not they are negligent. However, under both the old and proposed new BOL forms carrier liability is limited to proof of carrier negligence (1) if the cargo is stopped and held in transit upon the request of the shipper (or owner of the cargo) or, (2) when the loss results from a faulty or impassible highway, lack of capacity (failure) of a bridge, highway or barge or is due to a defect or vice in the cargo itself. This would also include, for example, cases where the cargo was loaded or secured by the shipper in an allegedly improper manner causing the loss. In such cases, the carrier is liable under the current BOL form unless the carrier can produce evidence that it was not at fault. The new form, however, shifts the burden of proof of carrier negligence to the shipper in such cases. Albeit not common, such claims do occur and this shifting of the burden of proof to the shipper is extremely important from a claims prosecution and settlement perspective. Also bad news for shippers.

Regardless of the ultimate decision of the STB, once again this issue cries out loudly in support of the admonition that we have always made to shippers. You need to have a written, bilateral transportation contract with all of your carriers–especially LTL carriers. Only such a contract can protect a shipper from being subjected to the NMFC cargo damages limitation, but also against things like the proposed change to the uniform BOL that diminish the standard for carrier liability in negligence situations.

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