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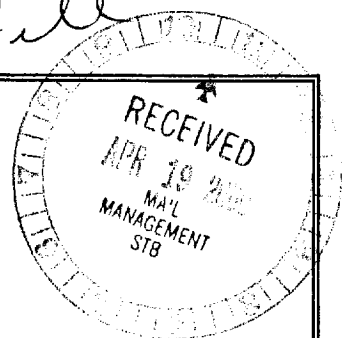
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BEFORE THE

SURFACE TRANSPORTATION BOARD



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SECTION 5a APPLICATION NO. 61 (SUB-NO. 6)  
NATIONAL CLASSIFICATION COMMITTEE - AGREEMENT

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COMMENTS IN SUPPORT OF NCC PETITION  
TO DELETE PORTION OF PRIOR DECISION

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By: Kevin M. Williams  
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(703) 838-1806

Dated: April 19, 2000

The *Distribution & LTL Carriers Association*<sup>1</sup> submits these comments in support of a recent petition filed by the National Classification Committee (NCC) to delete a paragraph from the decision of the Surface Transportation Board served February 11, 2000. The first full paragraph on page 7 of that decision discusses the issue of motor carrier notice to a shipper regarding a limitation of liability provided through the bill of lading. In relevant part, the STB says that in its decision in Docket No. ISM 35002, served December 24, 1997, “we have recognized in the past that any liability limitations imposed by the bill of lading should be affected in a way that gives the shipper actual notice of the arrangement being undertaken.” (emphasis added). In that decision, the STB approved amendments to NMFTA’s bill of lading stating that it “would prominently disclose to the shipper in note 2 the fact that limitations on liability may exist and that information regarding these and other non-filed tariff provisions is available.” The STB concluded correctly that the NMFTA’s amendments assisted in alerting shippers that carriers have a legal obligation to provide, upon request, any applicable rate, including release value rate. It is this carrier obligation to provide this information to a shipper, upon request, which constitutes legal (or so-called “constructive”) notice to shippers. This legal notice was previously provided by filed tariffs. It is important to emphasize that “legal” notice eliminates the need for actual notice to each customer. Legal notice *is* imputed

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<sup>1</sup>The *Distribution & LTL Carriers Association* is a national trade association representing LTL motor carriers and is a party of record in this proceeding.

actual notice.<sup>2</sup>

Several shipper associations, which disliked this legal analysis, asked the STB to strike the discussion of the statutory language in the 1997 decision, arguing it was extraneous. The Board granted their request for procedural reasons. The Board never disavowed its prior legal analysis of the notice requirement.

We support the NCC petition because this new language does again seem to interject the Board into the notice requirement under law, 49 U.S.C. §14706(c). However, our reading of this paragraph on page 7 is the Board, by relying on its December 24, 1997 decision<sup>3</sup>, is equating note 2 on the current NMFTA bill of lading as providing *actual notice* of the liability arrangement to the shipper: that is, it provides additional notice to the shipper, beyond the legal notice served by a

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<sup>2</sup>Since the inception of motor carrier regulation in 1935, it has been the shipper's responsibility to inquire and ascertain from the carrier about its service, rates and terms of services, such as liability provisions. The filing of rates in tariffs at the ICC merely provided a repository for shippers to access the information. Tariffs provided constructive or legal notice about the transportation, rates, terms and conditions. Congress has consistently treated shippers like other business people, expecting them to be responsible enough to ask about price and service – a nominal obligation which individuals engage in daily.

<sup>3</sup> Even in its revised decision in STB Docket No. ISM 35002, served August 4, 1998, the Board states: "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. Unless carriers are allowed to incorporate provisions from other sources, the sheer volume of provisions that they would have to include in bills of lading would likely render them unusable in their current form. We believe NMFTA's amendment to the Uniform Straight Bill of Lading assists in alerting shippers to incorporated provisions and the carriers' responsibility to make them available upon request." (Decision on p.2)

carrier's obligation to furnish liability information upon request. The Board again finds that the present Uniform Bill of Lading meets, in full, the Section 14706(c)'s requirements that apply to the carriers limitations of liability.

The Board now is saying that it will remain "sensitive to any challenge that may be raised about any particular bill of lading the NCC may develop." (emphasis added). In other words, future changes to the NCC bill of lading should provide notice to the shippers similar to the current one which the Board approved in December, 1997. Consequently, we believe this paragraph helps motor carriers that use the current uniform bill of lading developed jointly by NMFTA and NASSTRAC.

But the NCC is correct in stating that neither the statute nor the December, 1997 decision require motor carriers to provide actual notice. That is self-evident from the legislative history on Section 14706(c). (See NCC petition, Appendix C).

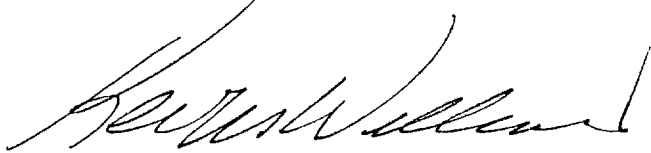
Consequently, the STB has three basic options on this matter. First, it can delete this paragraph as requested, because it is unnecessary to the decision and does contravene the Board's decision to remain neutral on the notice requirement, leaving it up to the courts to address.

Second, the Board could once again address, on the merits, the notice requirements under Section 14706. The Board's legal analysis of the notice requirement in December, 1997 was absolutely correct, and we filed comments recommending that it be retained. We would welcome a re-examination of this issue. However, such a proceeding must be separate from this one, and must afford all interested parties an opportunity to comment after public notice is given.

A third option is for the Board to merely restate what *Congress* intended by printing in full the conference report language. It would help the courts and parties who may not be aware of it, and importantly, is not an expression of the Board, but of the legislators who enacted this provision.

In sum, we support, for procedural reasons, the NCC petition requesting the deletion of this paragraph, even though it does not adversely impact the current NMFTA bill of lading, and indeed provides an even stronger endorsement of the notice provision in note 2, which the STB approved in 1997.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kevin M. Williams", written over a horizontal line.

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Dated: April 19, 2000

***CERTIFICATE OF SERVICE***

I hereby certify that a copy of these comments was served on the petitioner and all parties of record, by mail, postage prepaid, on the 19<sup>th</sup> day of April, 2000.

  
Kevin M. Williams