

# Rollin' On . . .

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## Bill Of Lading

**A**s stated in prior issues, efforts have been underway to revise the bill of lading in view of the passage of the Trucking Industry Regulatory Reform Act of 1994 (TIRRA). This issue was the subject of the panel discussion by Bill Augello, one other speaker and myself at the recent Annual Conference of the Transportation Claims and Prevention Council, Inc. in New Orleans. As of this time, no agreement has been reached with the National Classification Committee (NCC) and various shipper groups as to the text of the uniform bill of lading. For example, the shipper groups have wanted to include a provision in the bill of lading stating that when the shipment is governed by an individually determined rate, classification, rule or practice, it shall be governed by the rate and rules to which the parties agreed, and of which the shipper had actual notice. This proposal stated that the burden of proving notice would be on the carrier assessing the rates and charges. This proposal was not approved.

The shippers also unsuccessfully sought to revise the bill of lading to require actual notice of the inadvertent clause incorporating 10 classification descriptions in Item 172 in which carrier's liability has been limited to a maximum value without an opportunity to declare full or higher value.

### The Obligatory Disclaimer

This newsletter is distributed to shippers, carriers and third party intermediaries. It is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

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Also rejected by the NCC was a proposal by an *ad hoc* committee of shippers and carriers to define "tariff" as any individually determined rate, rule, price, classification or practice established by the carrier or agreed upon by the shipper or carrier.

The NCC is also opposing efforts by interested shippers to allow shippers to participate in the classification making process if the NCC is to retain its anti-trust immunity. The NCC opposes this proposal, stating that:

- Shippers now have full opportunity to appear in person and present their views at the NCC's open public meetings.
- Participation would foster preference, as shipper members would have the incentive and opportunity to vote unjustifiably to lower their ratings for their products.
- Shipper participation would encourage discrimination by voting for higher ratings for the products of a competitor.
- Shipper members would have access to confidential information of their competitors' product.

Shippers are, therefore, preparing their own bills of lading for use when shipping via common carrier. The carriers must not be participants in the NMFC 100 Series or flag out in their own tariffs for the account of the shippers using the bill of lading.

### Maritime

As many of you know some ship-

pers are urging Congress to do to the maritime laws and the Federal

Maritime Commission what has been done already, and what will further be done, to the inland transportation laws and to the Interstate Commerce Commission. The primary issues regarding downsizing of the FMC involve antitrust immunity and the conference system. How Congress chooses to act remains to be seen.

### On the Lighter Side....

The following are quotes taken from insurance forms. Sometimes brevity is not the best form of expression.

\*The guy was all over the road. I had to swerve a number of times before I hit him.

\*I had been driving for 40 years when I fell asleep at the wheel and had an accident.

\*A pedestrian hit me and went under my car.

\*I told the police that I was not injured, but on removing my hat, found that I had a fractured skull.

### North to Alaska

Not really. But I will be speaking on Alaska claims at the regional meeting of the National Freight Claim & Security Council in Seattle.

That's all for now. To shippers, carriers and third party intermediaries, keep the cargo rollin'!

Larry Davidson is an attorney admitted to the bars of the states of Oregon, Alaska, Florida and Massachusetts. Larry has been practicing law for over 15 years and emphasizes transportation law, business law and related litigation.