

WHAT HAPPENED TO SECTION 7?

By George Carl Pezold

The Uniform Straight Bill of Lading was first prescribed for the railroads by the Interstate Commerce Commission in 1919 and the form and the terms and conditions on the reverse side were published by the Association of American Railroads in the Uniform Freight Classification. Use of that bill of lading was mandated and no changes could be made without the express authorization of the ICC.

One of the provisions of the original USBOL was the "Section 7" or "non-recourse" provision in the form of a box on the face of the bill of lading that, when signed by the shipper (consignor), incorporated Section 7 of the terms and conditions on the reverse side.

The language in the box stated:

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)

The original language in Section 7 on the reverse side stated:

Sec. 7. The owner or consignee shall pay the freight and average, 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 railroad 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 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.

One of the purposes of Section 7 was to relieve the shipper (consignor) from any liability for freight charges on "collect" shipments, i.e. that the carrier would have "no recourse" against the shipper, because the consignee has primary liability for payment of freight charges on "collect" shipments.

It would also be used to protect the shipper from any liability on "prepaid" shipments for additional freight charges after delivery that were incurred by and the responsibility of the receiver (consignee), - such as demurrage, detention, redelivery, etc.

Section 7 of the USBOL was discussed by the Supreme Court in the leading case of *Southern Pacific Transportation Co. v. Commercial Metals Co.*, 456 U.S. 336 (1982) in which the court stated that the consignor could have effectuated its release from liability for the freight charges by signing the nonrecourse clause in the bill of lading.

Although the ICC never prescribed the use of the USBOL by motor carriers, the railroad version was adopted and published in the National Motor Freight Classification. The same box and language for Section 7 were included and published in the motor carrier version of the USBOL until many years later.

Effective December 27, 1997, in *National Classification Committee Docket 975 - Uniform Bill of Lading Terms and Conditions*, the NMFTA made the following changes to the box on the face of the bill of lading and the language in Section 7(a) on the reverse side, as follows:

FOR FREIGHT COLLECT SHIPMENTS:

If this shipment is to be delivered to the consignee, without recourse on the consignor, the consignor shall sign the following statement:

The carrier may decline to make delivery of this shipment without payment of freight and all other lawful charges.

.....
(Signature of Consignor)

The new language adopted in 1997 in Section 7 (a) in the terms and conditions of the bill of lading stated:

Sec. 7. (a) The consignor or consignee shall be liable for the freight and other lawful charges accruing on the shipment, as billed or corrected, except that collect shipments may move without recourse to the consignor when the consignor so stipulates by signature or endorsement in the space provided on the face of the bill of lading.

The effect of this change was to limit the applicability of Section 7 to "collect" shipments only. Although it may not make any actual difference on "collect" shipments, it could no longer be used on "prepaid" shipments to protect the shipper from liability for additional freight charges after delivery that were incurred by and the responsibility of the consignee.

The last and most recent changes applicable to Section 7 of the USBOL were published in Supplement 1 to NMF 100-AU, which became effective April 10, 2021.

The most obvious change was that the "Section 7" (non-recourse) box on the face of the bill of lading disappeared completely.

The former language of Section 7 (a) was replaced with the following:

Sec. 7. (a) The consignor, consignee, or shipper shall be liable for the freight and other lawful charges accruing on the shipment, as billed or corrected as specified in 49 U.S.C. §13710, and carrier may require prepayment of the charges prior to delivery and refuse to give up possession at the destination until payment is made, as specified in 49 U.S.C. § 13707(a).

SHIPPER ALERT! If your LTL shipments move under this USBOL there is no "non-recourse" provision and you will be liable for the freight charges if the consignee doesn't pay them!

COMMENT - THAT'S NOT THE END OF THE STORY

What is most important to understand is that the changes described above - and the USBOL itself - as set forth in the NMFC apply only to carriers or transportation companies that participate in the NMFC, typically LTL carriers and LTL shipments.

Thus, the provisions of the NMFC do not ordinarily apply to truckload carriers or to TL rates and charges. Unless the parties have entered into a written agreement of some other kind, the "contract of carriage" is the bill of lading or receipt for the goods and liability for freight charges is governed by that document and applicable laws and regulations.

This raises a number of questions. For example, assume that either the carrier's bill of lading or one prepared by the shipper contains a version of the typical non-recourse language that says:

If this shipment is to be delivered to the consignee, without recourse on the consignor, the consignor shall sign the following statement:
The carrier may decline to make delivery of this shipment without payment of freight and all other lawful charges.

.....
(Signature of Consignor)

Obviously, since the NMFC does not apply, there is no reverse side to the bill of lading, no Section 7 and no terms and conditions incorporated by reference, the clear reading of the language is that if the shipper inserts a signature it protects the shipper from any and all claims for unpaid freight charges.

For example, in the case of *Gaines Motor Lines, Inc. et al v. Klaussner Furniture Industries, Inc.*, 2011 WL 1230811 (M.D.N.C. 2011), vacated on other grounds, 734 F.3d 296 (4th Cir. 2013), the shipper, Klaussner, had hired Salem Logistics, a broker, to arrange for its transportation needs. The carriers had been directed to bill their freight charges to the broker, which failed to pay the carriers. The carriers brought suit against the shipper, arguing that it was liable for the freight charges. In granting the shipper's motion for summary judgment the court held that, even though the bills of lading were "prepaid", the non-recourse provision protected the shipper from double payment liability.

So, what is the message? If a shipper wants to have a defense against efforts by a carrier that has not been paid (such as by a broker or intermediary) it has two options. First, it can make sure to include the language on the face of its shipper-prepared bills of lading. Second, it can include the appropriate language in its shipper-carrier transportation agreement.