

UPDATE: SAFE AND ACCOUNTABLE RAIL ACT RECEIVES ROYAL ASSENT

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On June 18, 2015, the Governor General of Canada gave Royal Assent to Bill C-52, the Safe and Accountable Rail Act. As a previous [bulletin](#) described in greater detail, Bill C-52 responds to a number of concerns that gained wide attention following the tragic derailment at Lac-Mégantic, Québec as well as railway company efforts to pass risks of liability onto shippers.

Specifically, Bill C-52 imposes a levy on shipments of crude oil and requires railway companies subject to the authority of Parliament to hold minimum liability insurance set at various thresholds for prescribed third party and contamination risks. Transport Canada's June 18, 2015 [news release](#) in respect of Bill C-52 receiving Royal Assent indicates that "The new liability and compensation regime under the Canada Transportation Act will be brought into force one year from today".

The legislative process in respect of Bill C-52 resulted in relatively minor revisions, which were primarily to clarify that a railway company is not required to collect, administer and submit the crude oil levy to the Receiver General when it carries traffic at an interswitching rate; instead Bill C-52 imposes those obligations on the first railway company to carry the traffic after loading at a rate other than an interswitching rate.

As explained previously, Bill C-52 restricts a railway company's ability to unilaterally shift to shippers the risk of third party liability. Recall that certain railway companies have unilaterally issued tariffs that purport to require shippers to indemnify and defend railways from third party spill and accident claims in connection with the transportation of certain dangerous goods. Bill C-52 attempts to address this issue by amending section 137 of the *Canada Transportation Act* to set out that a railway company's "liability, including to a third party" shall be dealt with "only by means of a written agreement". The amendments in respect of Bill C-52 are now effective. As a result, a shipper may now be able to limit its risk exposure by choosing to ship its traffic by way of tariff (as opposed to contract), although it may have to balance its desire for limiting risks it cannot control while its traffic is in transit on the railway with higher rates or inadequate terms of service or both.

by Ryan Gallaghe

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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