



International Warehouse Logistics Association

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September 21, 2009

The Honorable John D. Rockefeller IV
Chairman
Commerce, Science, and Transportation Committee
United State Senate
Washington, DC 20510

The Honorable Kay Bailey Hutchison
Ranking Member
Commerce, Science, and Transportation Committee
United State Senate
Washington, DC 20510

Dear Senators:

On behalf of the members of the International Warehouse Logistics Association (IWLA), I am writing concerning the Senate Commerce Committee's ongoing work on legislation to reauthorize the Surface Transportation Board (STB).

IWLA represents warehouse-based third party logistics providers (3PLs). Our more than 500 member companies provide a wide range of logistics services including warehousing, transportation, and value-added services. In 2008, the estimated gross revenue of the U.S. 3PL warehouse industry was in excess of \$29.40 billion. It is an industry that depends on an efficient, integrated transportation system.

IWLA supports balanced regulation of the rail industry and urges the Committee to avoid legislation that would re-impose excessive and counterproductive regulation of rail carriers. There are changes, however, that should be considered to enable our nation's railroads to be in the best position to fairly serve their customers and to reflect the changes in the supply chain that have occurred since enactment of the Staggers Rail Act.

As the Committee moves forward, we ask that you include a review of rail demurrage, which is a charge payable to a rail carrier for failure to load or discharge a rail car within an allotted time period. Demurrage disputes between rail carriers and 3PL warehouses are an increasing problem for the 3PL warehouse industry. Often demurrage charges are assessed against the warehouse regardless of whether the warehouse is a party to the freight contract.

Under current law (49 USC 10746) railroads are required to compute demurrage charges and establish rules related to those charges in a way that fulfills the national needs related to freight use and distribution and maintenance of an adequate supply of freight cars to be available for transportation of property. Current law provides little authority to the STB with respect to demurrage and makes parties that rely on the rail system, such as 3PL warehouses, vulnerable to unjustified demurrage charges.

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Rail carriers are concerned, and rightly so, that some shippers and receivers may purposefully delay unloading, using the rail cars for temporary storage. In these circumstances, demurrage charges serve to counteract this incentive to delay unloading and should be reflected in the freight contract. As a transportation intermediary in a midpoint of the transportation system, the 3PL warehouse is rarely the consignee or a party to the freight contract.

IWLA and its members have worked for many years with the STB, the rail industry and the individual Class I carriers to resolve the demurrage issue, with limited success. Therefore, we request that the Committee consider amending 49 USC 10746 to clarify that demurrage charges shall not be applicable to a third party logistics provider when the third party logistics provider is neither the shipper nor consignee of a shipment for which a demurrage charge is computed and the third party logistics provider is not a party to or beneficiary of any transportation contract between the shipper or consignee.

This proposed revision simply removes the 3PL warehouse from liability for demurrage where the warehouse is neither the consignee nor a party to the freight contract. It ensures that the warehouse will not be arbitrarily assessed demurrage charges and allow the warehouse to avoid the cost, complexity and time involved in resolving demurrage assessments. The proposed revision is consistent with various court decisions which held that a party who is not a consignee or a party to a transportation contract cannot be held responsible for demurrage charges.¹ It is also consistent with a change to demurrage billing practices for some warehouses recently announced by a Class I carrier.

Thank you for your consideration and we look forward to working with you to ensure efficient freight transportation on America's freight rails.

Sincerely,

A handwritten signature in black ink that reads "Joel D. Anderson". The signature is written in a cursive, flowing style.

Joel D. Anderson
President and CEO

cc: Members of the Senate Commerce Committee

¹ See *Illinois Cent. R.R. Co. v. S. Tec Dev. Warehouse, Inc.*, 337 F.3d 813, 820 (7th Cir. 2003); *Union Pac. R.R. Co. v. Ametek, Inc.*, 104 F.3d 558, 563 (3d Cir. 1997); *CSX Transp., Inc. v. City of Pensacola, Fla.*, 936 F.Supp. 880, 883 (N.D. Fla. 1995); *Middle Atl. Conference v. United States*, 353 F.Supp. 1109, 1117-19 (D.D.C. 1972).