

Memorandum

To: Karen V. Gregory, Secretary, Federal Maritime Commission
From: Bankers Insurance Company
Date: 7/31/2013
Re: Docket No. 13-05, Comments on Ocean Transportation Intermediary
Regulatory Revisions

Dear Secretary Gregory,

On behalf of our clients, Bankers Insurance Company and James Gorman Insurance, Inc., we comment on the Federal Maritime Commission's notice of proposed rulemaking to amend regulations governing ocean transportation intermediary licensing and financial responsibility requirements. Bankers is an active financial responsibility provider for many ocean transportation intermediaries and, thus, we offer these comments in an effort to contribute our experiences to the proposed rules under consideration.

Comments:

1. 46 C.F.R. § 515.21 – Financial Responsibility Requirements

We concur with the Federal Maritime Commission's ("FMC") proposal to increase the bond amounts to \$75,000.00 for ocean freight forwarders, \$100,000.00 for NVOCC's and \$200,000.00 for registered NVOCC's. We also concur with the FMC's proposal to permit ocean transportation intermediary's ("OTI") and their financial responsibility provider the right to increase their bond by way of rider. We include as Exhibit "A" a copy of a rider we suggest the FMC adopt to permit increasing the bond amount. If the FMC does not adopt this rider or another rider as the preferred method to increase the bond amount, we suggest the FMC include language in proposed section 46 C.F.R. § 515.21(e) that permits the financial responsibility provider to use a rider of their choice to effectuate the change in existing OTI bond amounts. In conjunction with this comment, we recommend giving the surety and bond principal the option of using one rider which would change all currently active bonds to the new date.

While the FMC in 46 C.F.R. § 515.21(a)(4) also proposes requiring an OTI to restore their bond amount when claims have been paid, we question the ability to effectuate this requirement from a timing perspective as well as the cost this requirement will have on the trade. In the proposed rule, the FMC will require an OTI to restore the bond to the full penal value required by regulation within 60 days. 46 C.F.R. § 515.21(a)(4), as proposed, does not explain from when the 60 days commences although FMC indicates in its discussion of the proposed rule that the 60 days will commence when a claim is paid and further prohibits the OTI from transacting business until the bond is fully restored.

We, nonetheless, question how the OTI will handle this 60 day time period if the financial responsibility provider cannot pay the claim until five months passes as the FMC proposes in 46 C.F.R. § 515.23(f). Is the OTI restricted from doing business during this five month period or does the prohibition to conducting further business commence after the passage of five months? If this rule takes effect after the passage of five months, we submit the FMC's intent to ensure bond availability would be entirely or partially negated as additional claims may occur during this period. We also do not believe that restoring a bond to its full penal value in 60 or even 30 days will have the desired effect of protecting more claimants particularly when numerous claims occur at the same time as often happens when an OTI is in financial trouble. Further, given the time lag inherent in ocean bound shipments, the event leading up to additional claims may occur prior to when an OTI is prohibited from conducting further business. If an additional claim occurs during the 60 day period, does the bond have to be restored again and does another 60 day period commence?

If the FMC's intent is to maintain the full penal value of the bond, we submit the OTI will incur additional cost in premium, collateral or otherwise for the financial responsibility provider to maintain this risk. This cost may become prohibitive for an OTI to continue its business particularly OTI's that run a small business. In this regard, the FMC's statutory mandate to protect small shippers may be at the cost of small OTI's even though the purpose of the Shipping Act under 46 U.S.C. § 40101(a) is to establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs.

Rather than the 60 day restoration period proposed by the FMC, we recommend the FMC adopt a bond renewal process similar to the process applied by the U.S. Customs and Border Protection wherein a bond automatically renews its penal value one year after the bond's effective date. Customs applies this process to continuous bonds and this process may also be applied to OTI bonds in order to restore the penal value of the bond. That being said, the bond would only be available up to its penal value for that bond year. For example, Customs specifically states on its bond that "this bond constitutes a separate bond for each period in the

[penal] amounts listed below for liabilities that accrue in each period.” The same would be true for OTI bonds. While the bond principal or the financial responsibility provider may always terminate a bond, we believe automatic renewal of a bond yearly on its anniversary date will add certainty to potential claimants and will not create burdensome cost issues for OTI’s.

2. 46 C.F.R. 515.23 – Claims Against an Ocean Transportation Intermediary

Pursuant to proposed section 515.23(e)(2), the FMC will require the financial responsibility provider to “provide notice of each claim, court action or court judgment against the financial responsibility provider and each claim paid (including the amount) by the provider.” Section 515.23(e)(6) states that the “notices are for public information and should not be an indication of the merits or outcome of a claim.” These two sections are contradictory as one requires notice of the amount paid and the other states that the information is not indicative of the outcome. A financial responsibility provider cannot simultaneously provide notice of a claim and the amount paid on the claim as the claim must be reviewed for its merits. If a financial responsibility provider must report a claim and then report the amount paid, the reporting requirements clearly become an indication of the outcome of the claim. We suggest the FMC restrict the reporting requirements to the claim amount rather than the amount paid to avoid the contradiction in the regulations. We also seek clarification from the FMC as to the meaning of “prompt” in terms of the reporting time required under 46 C.F.R. § 515.23(e)(3).

The FMC also proposes requiring a financial responsibility provider to wait five months before paying a claim if two or more claims are made or noticed or the claim represents more than 20 percent of the bond as stated in proposed sections 515.23(f)(1)-(2). We submit, however, that this five month period may conflict with court orders, bankruptcy actions or other actions that are time sensitive. The five month period also contradicts the intent of the priority system the FMC is attempting to create in that it takes away the ability of a small shipper to be made whole from an OTI’s conduct within a reasonable period of time. Rather the five month period inadvertently requires a small shipper to carry the loss for which it made a bond claim for five months, a loss it may not be able to carry. We do not believe the priority system or the five month wait period will benefit shippers and consignees as intended and we suggest the FMC eliminate the proposed priority system.

3. Responses to Questions Posed by the FMC:

- a. How many claims and their total dollar amount were made during the period 2009 through 2012 against OTI financial responsibility instruments provided by you?

Answer: 9 claims made for an aggregate total claim amount of \$100,299.12

- b. How many claims (and their total dollar amount) did you pay?

Answer: 3 claims paid for an aggregate total payment of \$43,637.90

- c. How many individual claims were paid that exhausted the entire financial responsibility amount for the instrument; and as to these claims, what was the total amount of the claims sought by claimants (as opposed to the amount that you paid out)?

Answer: none

- d. How many claims received only a fraction of the amount sought due to other claims exhausting the bond's value?

Answer: none

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel Shapiro", is written over a horizontal line.

Daniel Shapiro on behalf of Bankers Insurance Company, James Gorman Insurance, Inc. and Surety Claims, Inc.

Exhibit A

SURETY BOND ENDORSEMENT

Bond No. _____

To be attached to and form a part of [FMC/NVOCC] Bond, issued by the undersigned Company, as Surety, on behalf of [Company Name] as Principal, and in favor of the United States of America, as Obligee,

Effective _____ Principal and the Surety hereby agree to amend the attached Bond as follows:

Additional Bond amount:

[Insert Additional Amount]

Total Bond amount is now \$[Insert Amount]

Provided that the liability under this endorsement shall be part of, and not in additional to, the liability under the attached Bond, and in no event cumulative.

Nothing herein contained shall vary, alter or extend any of the provisions, conditions, or other terms of this Bond except as stated above.

Signed, sealed and dated this [insert day] of [insert month], 2013.

[Bond Principal Name]

(Name/Title)

Bankers Insurance Company,
(Surety)

By: _____

(Name of Obligee)

By: _____
Title