MARSH

MARSH INSIGHTS:

BILL C-52

SAFE AND ACCOUNTABLE RAIL ACT

As a result of the events of July 2013 in Lac Mégantic, Quebec, the Canadian Government has made amendments to the Railway Safety Act (in the form of Bill C-52) that will provide greater oversight and accountability throughout the industry. Included in these amendments are changes that will provide the Canadian Transportation Agency (CTA) with the authority to assign minimum levels of insurance to railways in relation to the types of dangerous commodities they carry. The key components are as follows:

- The prescription of minimum insurance levels for federally regulated railway companies only, based on the type and volume of goods that are transported. For the short term, this is limited to crude shipments, but the Canadian Government has expressed the possibility of including other dangerous commodities, like Toxic Inhalation Hazards (TIH) (see below). Minimum limits can be supplied through traditional insurance or CTA-approved self-insurance.

- Establishes that a railroad operator is liable, without proof of fault or negligence if it is involved in an accident (introduces strict liability). The term "involved" is not specifically defined in the legislation.

- Liable up to the level of the company's minimum liability insurance coverage.

- Ability for railroads to subrogate remains intact.

- Short-line railways transporting larger quantities of dangerous goods will be able to "phase-in" with $50 million or $125 million in insurance. After one year, those levels will increase to $100 million and $250 million, respectively.

Minimum Liability Insurance Coverage (Volumes expressed in tonnes per year)

Minimum Insurance (CDN)	Crude Oil	Toxic Inhalation Hazard (TIH)	Other Dangerous Goods
$25M	0	0	<40,000
$100M	0 - 100,000	0 - 4,000	≥40,000
$250M	100,000 - 1.5M	4,000 - 50,000	-
$1B	≥1.5M	≥50,000	-

Additionally, the Government has created a supplementary “shipper-financed” fund available in excess of the available insurance. The key components are as follows:

- The fund provides non-aggregated indemnity to third parties above the individual insurance requirements.
- The fund is financed by levies paid by shippers.
- The levy for the year ending March 31, 2016 will be $1.65 / tonne (adjusted annually). This is based on a capitalization target of $250M over a five year period.
- It is intended to cover the losses, damages, costs and expenses resulting from railway accidents involving crude oil and potentially other designated goods.
- The fund will apply when losses exceed the minimum liability insurance coverage of the railroad involved in the accident.
- Railways (not shippers) will be required to keep records concerning the levy, with administrative monetary penalties of $100,000, if they fail to do so.
- Minimum limits must be maintained at all times. If minimum limits are allowed to lapse, the CTA will suspend the railway’s Certificate of Fitness.

Marsh has been the leader in rail liability insurance for over a decade, innovating various products and programs for a wide variety of rail operators in Canada (and the US). We have been actively engaged throughout the entire evolution of Bill C-52 and are eager to assist both clients and prospects in tailoring the most appropriate insurance solutions to their needs.

For more information, please contact;

PANCHALI SHAH,
Senior Vice President
Marsh Global Rail - Canada
panchali.shah@marsh.com

JIM BEARDSLEY
Global Rail Practice Chairman
Marsh Global Rail
james.r.beardsley@mmc.com

USDG-18581 (C150731JB): 2015/07/25