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Chair

Mr. Larry Miller

Standing Committee on Transport, Infrastructure and Communities

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• (1530)

[English]

The Chair (Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC)): We'll call our meeting to order. This meeting is televised. We might be a minute early, but I believe everybody is ready to go.

Minister, thank you very much for being here.

Mr. Tupper, Ms. Kinney, and Mr. Langlois, thank you as well.

I'll turn it over to you, Minister.

Hon. Lisa Raitt (Minister of Transport): Thank you, Mr. Chair.

I just want to note that we're starting exactly one minute early, which is a good thing today.

[Translation]

Good afternoon, Mr. Chair and honourable committee members.

[English]

I am very pleased to be here with you today to talk about Bill C-52, the safe and accountable rail act, which, as you well know, is unquestionably a very important piece of legislation that aims to amend both the Canada Transportation Act and the Railway Safety Act.

I'm going to begin with the proposed amendments to the Canada Transportation Act, or CTA.

The tragic Lac-Mégantic derailment has shown us that our liability and compensation regime for rail must be strengthened. The Montreal, Maine and Atlantic Railway carried only \$25 million in third party liability insurance, which we now know is not nearly enough to cover the incredible magnitude of the resulting damage to and loss of both life and property that night.

[Translation]

In the 2013 Speech from the Throne, our government committed to holding railways and shippers more accountable. Bill C-52 does that by ensuring that sufficient compensation will be available to pay for damages and compensate victims in the event of a railway accident.

[English]

With this bill, railways will be required to hold a mandatory level of insurance based on the type and volume of dangerous goods that they carry. These levels will range from \$25 million for short lines carrying limited or no dangerous goods to \$1 billion for railways

carrying significant amounts of dangerous goods, namely, CN and CP.

These mandatory insurance requirements have been set based on analyses of historical accident costs, taking into account the severity of past accidents involving certain goods. These requirements make certain that a railway's insurance directly reflects the risk associated with its operations. These insurance levels were determined to be adequate to cover the cost of the vast majority of potential accidents.

While a scenario of the magnitude of Lac-Mégantic is thankfully an extremely rare occurrence, we want to be certain that all costs in such a case would be covered. That is why a supplementary shipper-financed fund was created to provide compensation above the railway's insurance for accidents involving crude oil, and any other goods added through regulation.

In the event of a rail accident involving crude oil, railways will be held automatically liable, without the need to prove fault or negligence, up to their insurance level, and that will happen immediately. There will be certain defences to this strict liability. For example, a railway would not be held liable if the accident was a result of war, hostilities, or civil insurrection such as a terrorist act, as these occurrences are outside of the railway's control. If accident costs reach beyond the railway's mandatory insurance level, the supplementary fund covers the remaining damages.

For the supplementary fund, we have included a broad definition of crude oil in recognition of the serious damage that all crude can cause if released. Even a less volatile crude can have a grave impact on the environment and result in very high remediation costs. The fund will be financed through a levy on shippers of \$1.65 per tonne of crude oil transported by federally regulated railways, indexed to inflation.

The aim is to capitalize the fund to \$250 million. That amount would provide substantial additional coverage for crude oil accidents above the insurance levels. Based on a reasonable projection of oil-by-rail traffic growth in the coming years, we have determined that with a \$1.65 per tonne levy, we would reach that target in approximately five years. That said, however, it is important to emphasize at this point that the \$250-million capitalization is a target. It is not a cap.

The bill allows the Minister of Transport to discontinue or reimpose the levy as necessary. It could be put in place indefinitely or for any specified time period. This means that the levy could continue for longer than five years should oil-by-rail traffic grow at lower than expected rates. It also means that the fund could be capitalized to a different amount should that be considered appropriate.

Just to be clear, Mr. Chair, the fund will cover all costs above the railway's insurance and will not be capped. In the unlikely event that damages from an accident surpass both the railway's insurance level and the amount in the supplementary fund, the government's consolidated revenue fund will back up the fund but then be repaid through the levy.

• (1535)

[Translation]

By creating mandatory insurance levels for railways and providing an additional pool of available funds, Bill C-52 makes certain that, in the event of a rail accident, there will be sufficient resources to cover all damages.

[English]

Following the tragic Lac-Mégantic derailment, and to address the recommendations in the Auditor General of Canada's fall 2013 report, the proposed amendments to the RSA will further strengthen the oversight of federally regulated railways and Canada's railway safety regime in certain areas.

These include the following: a new power for the minister to order a company to take corrective measures should a company's implementation of its safety management system risk compromising safety; a new authority to regulate the sharing of information, records, and documents from one party to another, other than the department, and an example here, of course, is from a railway company to a municipality; broader railway safety inspectors' powers to intervene in a more effective way with any person or entity, including companies, road authorities, and municipalities, to mitigate threats to safety; a broader power for the minister to require a railway to stop any activity that might constitute a risk to safe railway operations, or to follow any procedures or to take any corrective measures specified; and, a cost reimbursement scheme for provinces and municipalities that respond to fires believed to be caused by a railway company's operation.

Part of Transport Canada's prevention strategy has been to ensure the department has an effective oversight regime. This means both ensuring that industry is in compliance with the various regulations that govern it and responding to changes in the risk environment. Transport Canada continuously examines and monitors its resource levels to adjust and reallocate as needed to address emerging issues, trends, and higher-risk issues.

I announced, as part of the department's response to the Transportation Safety Board report on Lac-Mégantic, increased resources dedicated to the rail safety program. Rail safety had approximately 100 inspectors at the time of the Lac-Mégantic accident. As of March 2015, Transport Canada employed 122 rail safety oversight personnel.

Furthermore, I do want to assure the committee that the safety management systems are not self-regulation—far from it. Safety management systems complement a robust railway safety regulatory regime that includes requirements of the Railway Safety Act and the associated regulations, rules, and engineering standards. The new railway safety management regulations of 2015, which came into force on April 1 of this year, are more prescriptive than the 2001 regulations and really will further strengthen railway safety operations across Canada.

Mr. Chair, I would be pleased to answer any questions you may have.

This concludes my remarks.

The Chair: Thank you, Minister.

I don't have any questions for you, but I'm sure there are some around the table.

Mr. Mai, you have seven minutes.

[Translation]

Mr. Hoang Mai (Brossard—La Prairie, NDP): Thank you, Mr. Chair.

My thanks also to the minister and to our witnesses for being here today.

Madam Minister, for the disaster fund, you mentioned \$250 million. Could you tell us how you arrived at that amount? Given the current situation, how long will we need to reach that amount of \$250 million?

[English]

Hon. Lisa Raitt: Thank you, Mr. Mai.

I'm going to ask for the particulars of the specifics to be outlined by my colleague here.

What is your title, Shawn? You're the assistant deputy minister for policy?

Mr. Shawn Tupper (Assistant Deputy Minister, Policy, Department of Transport): That's correct.

Hon. Lisa Raitt: I got it right: Mr. Tupper, for policy. He's a policy wonk.

That's what Mr. McGuinty calls you. I call you my friend who will now answer the question, please.

Mr. Shawn Tupper: Thank you.

It's actually fairly straightforward math. We looked at the volume of crude oil that is transported in the system. We looked at what's forecasted in the future. We identified \$250 million as a reasonable sum to target in terms of capitalization of the initial fund, and we did the division based on the amount of crude we expected to be shipped against how we would get to \$250 million. It worked out to \$1.65.

• (1540)

Mr. Hoang Mai: How long will it take to reach that \$250 million?

Mr. Shawn Tupper: We're setting a target of five years.

Mr. Hoang Mai: Five years? Okay.

[Translation]

What are your figures on the Lac-Mégantic disaster? We hear \$400 million mentioned, if not more. The Government of Quebec has allocated a lot of money to it. Could you tell us what you feel is the total amount of the costs of the disaster at Lac-Mégantic?

[English]

Hon. Lisa Raitt: I think the numbers are still coming in as we continue the environmental cleanup. As you know, there's a process in place right now with respect to compensation for the victims, and that's before a specific level of court. I believe that there has been a settlement put in place.

I don't know if my officials have any further information than what I have. There are anecdotal numbers out there that are very high in terms of what it is, but remember, it's the first level of insurance starts...so in the case of CN and CP, you start at \$1 billion, then it's the \$250 million, and then beyond.

[Translation]

Mr. Hoang Mai: There are concerns and, unless I am mistaken, the objective of the bill is to make sure that taxpayers do not have to pay for the clean-up. In the case of Lac-Mégantic, have you considered making the funds retroactive and applicable to Lac-Mégantic, so that taxpayers do not have to pay for that clean-up?

[English]

Hon. Lisa Raitt: Our government always said, Mr. Mai, that we would stand with the people of Lac-Mégantic and ensure that there were funds available for both the cleanup and compensation.

With respect to the development of this, the supplementary shipper fund is developed on a going-forward basis. It is not a retroactive basis.

[Translation]

Mr. Hoang Mai: Thank you.

[English]

In subclause 17(1), we repeal the definition of "fatigue science". The definition states that it "means a scientifically based, data-driven and systematic method used to measure and manage human fatigue". According to the notes we had regarding the briefing for this bill, it was actually repealed because there was something limiting about the definition, or it was limiting during the development of the new SMS. Can you explain why was it limiting? Also, why not use science?

Hon. Lisa Raitt: The definition of fatigue science restricted the ability to make regulations for SMS, so the proposal was to remove it completely and instead include criteria within which SMS regulation-making authority could be used related to management of employee fatigue.

Perhaps Laureen can give you some more granularity on it.

Ms. Laureen Kinney (Assistant Deputy Minister, Safety and Security, Department of Transport): Yes, if I may.

Without getting into the legal details—Alain can do that if required—fundamentally, as we started to draft new and much more robust safety management system regulations, as the minister mentioned, what we found when we tried to add specific elements of a normal fatigue management system—and we can list some of those four or five elements for you, if you like—was that those elements were not allowable under the way that the definition had been written. It was a good definition of science in fatigue management, but it was actually crafted with three very short elements, and those three short elements confined our ability to do more with fatigue management. So it was fundamentally that.

Mr. Hoang Mai: Thanks very much.

I will leave my time for Mr. Sullivan.

The Chair: You have a minute and 45 seconds.

Mr. Mike Sullivan (York South—Weston, NDP): Thank you, Mr. Chair.

Madam Minister, you stated that Lac-Mégantic was an extremely rare event, yet since Lac-Mégantic there have been upwards of a dozen collisions in North America involving oil transported by rail. The result of the most recent event, in Gogama, Ontario, is that CN has voluntarily reduced its own speed, which is five miles an hour slower than the speed that you have suggested they should run at.

The railroads have also provided the ministry with risk assessments, which I'm sure have enlightened you in terms of this amount of money, but what do those risk assessments show? First, can we get copies of the risk assessments? CN has already said that they will.... Second, what do those risk assessments show about the risk in heavily populated urban areas such as Toronto and what the residents there are facing in terms of a heightened risk because of the 400-fold increase in transportation of crude?

• (1545)

Hon. Lisa Raitt: I'll answer first on the risk assessment, if I may, Mr. Sullivan. Basically, although CN may want to release information and has said that it would release some information, the information is not only proprietorial in terms of business but is also security information, so the department has to look at it from that perspective.

With respect to the questions around the severity of Lac-Mégantic, I said it that way because it was such a horrible loss of life as well as an environmental degradation. Although we have seen a number of derailments that have also ended with an escape of fuel and a subsequent fire and damage, they have never been to that extent....

That's exactly what we're trying to do with this kind of act: to prevent that from happening. We've been working collectively on that since I think July 2013.

The Chair: I'm sorry, Mr. Sullivan. Your time has expired.

Mr. McGuinty, you have seven minutes.

Mr. David McGuinty (Ottawa South, Lib.): Mr. Chairman, it's good to see you again.

Thank you very much, Minister, for being here this afternoon.

Minister, I want to just begin by asking you this: when you prepared this bill, did you look at the cost implications of administering the measures in the bill?

Hon. Lisa Raitt: There was a very fulsome stakeholder outreach done on this, I would say, Mr. McGuinty.

Specifically, there are two aspects. You take a look at what the costs will be on those who will be affected, and you take a look at the costs of implementation on the department. I think you're talking about that one. Transport Canada, which held the pen on drafting and did the consultations, hasn't indicated that it needed any further resources for the implementation. Secondly, the stakeholders did give us feedback, which we incorporated before we went out to the final publication of this bill.

Mr. David McGuinty: So in regard to the costs, for example, to establish the pooled compensation fund and administer it, are there no costs?

Hon. Lisa Raitt: We already have the ship-source oil pollution fund, Mr. McGuinty, and we're able to actually put those two together. We believe that's going to be adequate in terms of resourcing.

Mr. David McGuinty: Are there resources for the Canadian Transportation Agency as they take on a new conflict resolution role?

Hon. Lisa Raitt: For the Canadian Transportation Agency, I'll turn to either Shawn or Laureen on the funding of that.

Mr. Shawn Tupper: I don't have it.

Hon. Lisa Raitt: Go ahead, Laureen.

Ms. Laureen Kinney: I think that's a good question, but I think one of the issues is the provision is in legislative authority to make a regulation. The scope and the extent of the regulation obviously would affect the scale of the work required. The frequency, as we would expect, is quite low. We don't expect that this type of issue would come in front of the CTA very often. We did have a conversation with them, obviously, before this was drafted, but I think it is early to say what the implication will be over time. But we do, on a regular basis, assess economic issues.

Mr. David McGuinty: Okay, so there may be costs, correct? There may be costs involved with the CTA.

Hon. Lisa Raitt: It depends, Mr. McGuinty, because maybe the CTA isn't dealing with grain issues with respect to the movement of grain by rail at the time and it balances this out in terms of the work before it.

I would also say that Mr. Emerson is currently chairing a review of the Canadian Transportation Act for us and taking a look at the CTA itself as well. Through that, I assume we'll get some good advice on the CTA with respect to its resource level, and decisions could be made on that once that report is received.

Mr. David McGuinty: Well, I ask, Minister—I think you know where I'm going—because the last time you and I spoke here at this

committee I asked you about your department being cut by 11%, or \$202 million, at a time when you're short of key staff and inspectors.

I have the budget speech here in front of me. I listened to it. In fact, I read every one of the 3,553 words. The word "transport" appears only once and only in regard to marine safety.

We're interested in finding out, and we'll watch very closely to see, Minister, what the implications are of additional responsibilities for regulatory boards and bodies, for example, and your own staff, without any additional resourcing. In fact, they're going to have to accomplish all of these additional responsibilities with a \$202-million reduction—over 10%—from your department. You would agree that those are the numbers, correct?

Hon. Lisa Raitt: What I would agree with is that the department has a bulk number, and they know they can reallocate funds internally depending upon what they're focusing on at the time, and that we worked very closely with the department in developing this legislation, their plan going forward, and their budget for the next five years. We have a good understanding of what needs to be done, and I'm very satisfied that they're resourced well enough for it.

Mr. David McGuinty: Last time you were here, we were in disagreement about the fact that your department was cut by 11% or \$202 million. Are we now in agreement that your department was cut by 11%, by \$202 million?

Hon. Lisa Raitt: I didn't say that, Mr. McGuinty. What I said—

Mr. David McGuinty: Was it cut?

• (1550)

Hon. Lisa Raitt: The amount of money requested by Transport Canada is the amount that they say they need to carry out all of the projects and the priorities they list in the RPP.

Mr. David McGuinty: Okay. So was your—

Hon. Lisa Raitt: That was the number they indicated. Like last year, though, as you know, through supplementary estimates, if something comes up along the way, there is always the ability to come back to Parliament and ask for a further appropriation. That's what we've done in the past with things that we simply don't know about.

Mr. David McGuinty: I simply want to confirm this for Canadians who are watching. I have in front of me the Library of Parliament document prepared for this committee, in which they say that in the 2015-16 estimates Transport Canada was cut by \$202.4 million, or 11%. Is that right or is that wrong? It's important in the context of the implementation of this bill, wouldn't you agree?

Hon. Lisa Raitt: No, Mr. McGuinty. For the context of the implementation of the bill, that was taken into consideration in the department making the request, both in the main estimates and in their ongoing budgets for what they need to do. I'm satisfied that they know what they're asking for.

Mr. David McGuinty: Let me ask you again, Minister, just so we're perfectly clear: was there an 11% cut at Transport Canada in these estimates?

Hon. Lisa Raitt: Mr. McGuinty, Transport Canada requests the amount of resources they need in order to be able to fulfill their projects and their priorities. They've indicated that's the amount they need, and that's the amount we appropriated.

Mr. David McGuinty: So there was a cut?

Hon. Lisa Raitt: Transport Canada has indicated how much money—

Mr. David McGuinty: Was there a cut?

Hon. Lisa Raitt: —they need in order to carry out all of their services, Mr. McGuinty.

Mr. David McGuinty: Between one fiscal year and the other in terms of estimates, was there a cut?

Hon. Lisa Raitt: They have looked at their priorities and their projects for this year and they have determined that this is the amount of money they need.

Mr. David McGuinty: Minister, you run the department—

Hon. Lisa Raitt: I do.

Mr. David McGuinty: —so was there a cut in your budgets? Please just answer the question. It's right here in black and white.

Hon. Lisa Raitt: I understand what you're saying, Mr. McGuinty, but the reality is that they set what the projects and the priorities are for the department, and they indicate—

Mr. David McGuinty: I'm sure they do, and they do a good job of it. So was there a cut in terms of the funding?

Hon. Lisa Raitt: They indicate how much money they need. They have indicated—

Mr. David McGuinty: So they indicated they needed—

Hon. Lisa Raitt: —that they didn't need as much as they had in previous years. But they—

Mr. David McGuinty: Okay. So they indicated that they needed 11% less.

Hon. Lisa Raitt: Mr. Chair, can I finish answering the question?

The Chair: Yes.

Mr. McGuinty, last time you crossed the line, and I let you get away with it. If you want her to answer the question, please let her answer the question.

Mr. David McGuinty: I'd be delighted. I've asked it six times in a row.

The Chair: I think I've heard the answer.

Hon. Lisa Raitt: The proposal for 2015 and 2016 is the amount they've put forward. If they find through the year that they need to ask for more money, they always have the ability to do that through supplementary estimates—

Mr. David McGuinty: Okay.

Hon. Lisa Raitt: —and we have done so in the past.

Mr. David McGuinty: Right. So there has been a cut. Thank you, Minister. I appreciate that.

Hon. Lisa Raitt: I did not say there was any such thing, Mr. McGuinty. They are operating on the resource level they asked for. It's what they wanted.

Mr. David McGuinty: So what is the budget for this year, Minister?

Hon. Lisa Raitt: I don't have that number in front of me, Mr. McGuinty, because I'm here to talk about our safe and accountable rail act.

Mr. David McGuinty: So am I.

Hon. Lisa Raitt: I can help in terms of preparing...

You can tell me what it is, because obviously you have it in front of you.

Mr. David McGuinty: You don't have the budget numbers as Minister of the Department of Transport in front of you today?

Hon. Lisa Raitt: I did not come with the budget numbers—

Mr. David McGuinty: Okay.

Hon. Lisa Raitt: —but I can look to somebody else in the department for that information and we'd be pleased to provide it to you.

Mr. David McGuinty: What's my time?

The Chair: You just have a couple seconds. Use them—

Mr. David McGuinty: Judiciously? Thank you, Mr. Chair.

Minister, a key part of the railway safety regime is of course safe tank cars. I don't see the new highly anticipated regulations in this bill for these new cars. Why not? The companies who manufacture these cars are asking for these standards, and they've been asking for them to be announced immediately.

Hon. Lisa Raitt: I agree with you, Mr. McGuinty. We are working very diligently to come out very soon with what that new standard is. The department has provided an update on their website, but most importantly, we need to ensure that we are harmonizing as much as possible with the United States, and those discussions are ongoing.

The Chair: Thank you.

Mr. Watson, you have seven minutes.

Mr. Jeff Watson (Essex, CPC): Thank you, Mr. Chair.

We are here to talk about Bill C-52, not last year's public accounts, and certainly not tank cars, which are not what's in Bill C-52, so I will direct my questions, Minister, to the actual legislation in front of the committee.

Proposed section 153.1 of Bill C-52 states:

A railway company is not liable under subsection 152.7(1) if it establishes that

(a) the railway accident resulted from an act of war, hostilities, civil war or insurrection; or

(b) any other defence set out in the regulations applies.

Minister, does this proposed subsection also establish terrorism, including, for example, a lone terrorist attack, as a defence to the railway company's liability?

Hon. Lisa Raitt: Thank you very much.

Mr. Chair, what I can tell the committee is that subsequent to tabling the bill and having the discussion, we of course have been meeting with industry and with insurance representatives as well. I want to make it clear, just for the sake of making it clear, that the language used in the defence pertaining to war hostilities, civil war, or insurrection that's in proposed section 153.1 does align with the other statutes in Canada, and those statutes are interpreted to include acts of terrorism as well. I appreciate the opportunity to make that clarification here to the committee.

• (1555)

Mr. Jeff Watson: Thank you, Minister.

We have been hearing, I think incorrectly, that the supplemental fund is somehow capped at the level of \$250 million. It's something I've been hearing frequently. I think it's even been reported that it's capped at \$250 million. That's not my understanding of the bill.

Minister, can you clarify that?

Hon. Lisa Raitt: Yes. Sometimes it's easy for people to see the term “capitalization” and think that we're saying “a cap”. What we are saying is that initially the fund would be for \$250 million. That's how we developed the amount of \$1.65 and the number of years, based upon how much oil there was.

But the important part of this, Mr. Chair, is that this fund is not meant to be capped or cut off. It will cover all damages above the railway insurance in the event of a rail accident involving crude oil. Claims against the fund will not be limited. As I said, we picked \$250 million to capitalize to, because that would actually give a substantial additional coverage for crude oil accidents, but it is a notional target.

Also, the bill does provide that a ministerial order can be used to suspend or reinstate a levy to ensure that the fund is at the appropriate level to accommodate liability in excess of insurance requirements. As well, if needed, while not holding excess capital unnecessarily—because you don't want a fund that can't be utilized necessarily—in the unlikely event that damages from an accident surpass both the insurance level and the amount in the fund, the government's CRF will back up the fund, but this is a loan, and it would be recouped through levies back to the shippers.

Mr. Jeff Watson: In fact, you wouldn't want levies in perpetuity, I think for the reason you gave earlier, Minister, which is that, first of all, you may not require them. The ship-source oil pollution fund I think is a perfect example of that, where there was a target initially for it and the levies ultimately stopped, but the fund continued to grow based on interest on the fund, to a significant level. This would function in very much the same respect, if I understand that clearly.

Hon. Lisa Raitt: That is the model that we chose to follow, and it's for good reason too. From a public policy point of view, shippers don't want to see the government collecting taxes and levies on a continuous basis and growing that capital that cannot be utilized in other parts of the economy.

Mr. Jeff Watson: I want to return to the question of “fatigue science” for just a moment. That is being withdrawn. I think it's in subclause 17(1). But authority is being put in—I think it's in subclause 34(3)—for the authorization, if you will, for the SMS regulations to tackle the issue of fatigue management with respect to employees' scheduling.

I think Ms. Kinney referred at least notionally to some of the the restrictions in the legislative definition. I'm looking at the principles that I think are included in the gazetted SMS regulations. Can you cover the four aspects that are in the SMS regulations?

Hon. Lisa Raitt: On the four things that we wanted to ensure were covered on human fatigue, the principles are as follows: that human fatigue is governed by physiology; that human alertness is affected by circadian rhythms; that human performance degrades in relation to hours of wakefulness and accumulated sleep debt; and that humans have baseline minimum physiological sleep needs. Those are important things that people have been asking to have recognized.

Mr. Jeff Watson: Companies, with respect to the operation of their rules, once the regulations are in place and they adopt and graft these into their safety management systems, would have to schedule in only a manner that is consistent with those principles and shouldn't be violating those principles when it comes to scheduling. Is that fair?

Ms. Laureen Kinney: If I could, I'll phrase that slightly differently. They would need to take this into account in their safety management system. They would need to take it into account in their work/rest rules scheduling. They would have to look at any risks created by how they address that issue, and then they would have to look at how they mitigate those risks. It's a matter of taking those principles and turning them into specifics, which is a bit complex, but you're generally correct.

• (1600)

Mr. Jeff Watson: Okay. So the regulatory route gives the flexibility needed to address it in a way that you couldn't draft regulations in order to address it.

Ms. Laureen Kinney: Exactly.

Mr. Jeff Watson: Okay, fair enough.

Minister, the class I railways are concerned that they'll be exposed to additional risk from short lines operating on their track due to regulatory requirements to interswitch. Will railways be able to refuse to allow other railways onto their tracks to interswitch? How will you handle the issue of interswitching?

Hon. Lisa Raitt: Railways already have obligations with respect to interswitching and those are not going to be affected by this bill. There is currently a risk that class I railways may not want to provide short lines with access to their tracks, especially those with poor safety records, given their liability concerns. This bill ensures that short lines have minimum insurance coverage, which helps mitigate that risk for them.

Regulated interswitching ensures that shippers' goods are moved to market efficiently, but the question of whether a class I railway can refuse access to a short line in the context of regulated interswitching has to be addressed by the CTA, should that case arise.

The Chair: Thank you, Mr. Watson. Your time has expired.

Mr. Yurdiga, you have seven minutes.

Mr. David Yurdiga (Fort McMurray—Athabasca, CPC): Thank you, Mr. Chair, and thank you, Minister, for being here today.

Could you please clarify for the committee how the CRF backstop will function?

Hon. Lisa Raitt: In the unlikely event that insurance has been exhausted and the consolidated shippers fund has been exhausted as well, we would utilize the CRF as a backstop, but it's always going to be subject to terms and conditions that are established by the Minister of Finance.

The way it would work is that a shipper levy would first repay that loan made from the consolidated revenue fund to the shipper fund, and then that fund would be recapitalized through the levy as well. The bill allows and gives authority to put in place a special levy on railways to help repay that loan to make sure that liability continues to be shared appropriately in the event of a catastrophic accident. We have covered off how he can go back and recoup those levies and that loan from the shippers.

Mr. David Yurdiga: Thank you, Minister.

As you know, proposed section 152.9 of Bill C-52 states:

If a railway company is liable, without proof of fault or negligence, under subsection 152.7(1) and under any other Act with respect to the same railway accident, the company is liable under that subsection up to the greater of the limit of liability for an amount that is referred to in that subsection and the limit up to which the company is liable under the other Act.

Could you please elaborate on the intent of this clause and whether it will expose the railways to any additional risk?

Hon. Lisa Raitt: Again, this is one of the concerns that has been raised by industry and by insurers, and I appreciate the opportunity at the committee to discuss and clarify what the position is.

What I can tell the committee is that this is standard language that is in line with the modernized liability and compensation regime that has been put forward on pipelines in Bill C-46, as well as the regime for offshore oil and gas in Bill C-22, which received royal assent on February 26, 2015. The purpose of the provision is to ensure that the strengthened regime for rail would not preclude any other regime, including future regimes that set higher limits of liability, from being applied to a railway accident. That's a clarification that was sought by industry, and I'm pleased to be able to address it today.

Mr. David Yurdiga: Thank you.

Minister, could you please describe the consultation process your department undertook to ensure stakeholder feedback was considered in the drafting of this bill? What did you hear from the stakeholders?

Hon. Lisa Raitt: We started this process in the Speech from the Throne, and we've always made it very well known that we were going to be going down this road. It has been a lengthy process, and there has been a significant amount of consultation, so perhaps the people who did the consultation would like to answer this.

I don't know if you'd like to answer it, Mr. Tupper, or if you would like Ms. Kinney to answer the question—whatever you like.

Mr. Shawn Tupper: I'm happy to answer. I think it was a fairly straightforward process. We had public meetings with stakeholders and interested parties, and we received written submissions as well.

Fundamentally, I think we had a reasonably good response in the consultations. Most of the questions and concerns that were raised were points of clarification, and just as the minister has responded, it's that ability to make sure people understood the details. By and large, it was fairly straightforward, and it was fairly widespread.

• (1605)

Mr. David Yurdiga: Thank you.

How much time do I have left?

The Chair: You have a little over three minutes.

Mr. David Yurdiga: Thank you.

Minister, could you please elaborate on how the fund for railway accidents involving dangerous goods will be financed?

Hon. Lisa Raitt: Sure. As we indicated, the objective of our reviewing of the liability and compensation regime first was to make sure that we have "polluter pay". That's where we started with this whole piece. We also wanted to make sure that there would be adequate resources available for potential victims or for cleanup costs to make sure that taxpayers were going to be protected in the event of an accident.

But we had to make sure that it was a fair sharing; it's not just railways that are involved. Shippers are to be involved as well. That's how we ended up coming up with the bill that's before you and the insurance requirements.

On the first side, with respect to the railways, it was to determine the appropriate level of insurance, because what happened in the case of Lac-Mégantic was that there was only \$25 million available, and to review what are the appropriate levels of insurance, which was done. Second was to take a look from the other side as well, at a second source of compensation, which would be this fund for railway accidents involving designated goods. We determined to start this with crude for various reasons, including the fact that it is an increasing source, but the initial focus is not just for that. It's because we know exactly what happened in the Lac-Mégantic derailment and we saw what costs were associated with it. As crude is not the only product that could cause damage in the case of a rail accident, it is left open, and there is flexibility there to provide, by regulation, other dangerous goods in the future.

The administration would require establishment of a body, but we've been doing that already, as I've said, in the shipper finance fund, the ship-source oil pollution fund under the Marine Liability Act, and there are a lot of similarities. We've mirrored those responsibilities with regard to both fund management and accountability.

We're going to start with crude oil. Railways are going to be required to pay compensation to the limit of their insurance level without the need to prove fault or negligence. We are also making sure that we take into consideration the things that are beyond their ability. I've listed those already previously in answer to a question. As well, regulatory authority is there to include things other than crude oil with respect to the railway. To make sure there's continuity, damages covered by the fund would mirror those for which railways would be held liable, for all loss or damage.

We've indicated how we would go ahead and capitalize the fund. We figured that the best way to do that would be a per tonne levy. It was, as Mr. Tupper pointed out, a straightforward exercise in determining what that level of levy would be. We said that the shippers would be required to pay the levy to the railways and then the railways would remit it to the government for a deposit in a special account as part of the CRF. As we've gone through already, the fund will be the payer of last resort, because most accidents will be covered by those mandatory insurance levels. There will be a few.... God willing, we won't have any accidents, but there may be a few that would end up tapping into the fund. If that fund is depleted by that accident, then the CRF would be called upon as a backstop.

That's basically a longer version of what I said in the speech and how I've answered with respect to these questions in the past. We want to make sure that the fund is transparent in its management, so the administrator would report on the management of the fund to Parliament through the Minister of Transport. There would be provision for a special examination of the fund at least once every five years as well.

That's it in a nutshell.

The Chair: Thanks very much, Minister.

We'll now move to you, Mr. Sullivan, for five minutes. I understand you'll be sharing your time with Mr. Kellway. The floor is yours.

Mr. Mike Sullivan: Thank you, Mr. Chair.

Madam Minister, you've suggested that this bill will prevent accidents. I put it to you that I don't think the insurance portion will prevent accidents. Certainly, it may cause railroads that are—

Hon. Lisa Raitt: I think we may both agree on that one.

Mr. Mike Sullivan: Okay.

In terms of preventing accidents, though, the recent collisions in Gogama and the U.S. have indicated that the CPC-1232 railcars are not safe, in that they don't contain the oil when they're involved in a collision at a speed that is lower than the speed that you have set as the threshold for speeds in cities.

There are two things. I know that the transportation of dangerous goods division had a working group on containment. Have they come up with a speed that is safe for the 1232s through urban areas? What is that speed?

Also, CN has admitted there will always be accidents. They thanked us for inviting them and were quite helpful, but they have said there will always be accidents. We can't have zero accidents. That's what they're saying. What we need to do is make sure the stuff is contained and doesn't blow up. If the 1232s aren't safe at 40 miles an hour, what speed are they safe at?

• (1610)

The Chair: Mr. Watson.

Mr. Jeff Watson: On a point of order, Chair, I appreciate the desire to have a general discussion on a range of topics, but we're talking about the regulatory framework itself here, the Railway Safety Act and the Canada Transportation Act specifically, and the government's proposed changes to that. We'll be doing clause-by-clause on that, and I would certainly hope....

Maybe the member is signalling that he likes everything in the bill and doesn't want to make any changes to it, but I at least would expect the topics to be related to the legislative framework. We can always ask the minister to come back to have a general discussion about containment or rail speeds or any of a number of items.

Mr. Mike Sullivan: I assume that my time is continuing.

The Chair: We paused, yes.

Mr. Mike Sullivan: With respect, the minister herself was the one who said that Lac-Mégantic was an extremely rare occurrence. The minister herself said that this bill is to prevent accidents. I'm asking about containment, which is how Lac-Mégantic happened: it wasn't contained in an accident. So I was talking about the bill.

Hon. Lisa Raitt: Actually, I can help you on this.

I'll answer the question; I appreciate the intervention of my colleague while I clarified my information.

I can tell the committee that the risk assessments process is not completed. We did receive them, but in the meantime we are not accepting the rules that have been proposed. As such, later on today I will be issuing another emergency directive. It has to do with speed. It is as follows: 40 miles per hour in localities where the census population is greater than 100,000.

That will be done later today.

Mr. Mike Sullivan: Wasn't that already the case? I thought it was already 40.

Hon. Lisa Raitt: It was 50.

Laureen will help you on that.

Ms. Laureen Kinney: If I can clarify, there was a reduction of speed to 50 for all key trains with 20 or more cars of dangerous goods. That was issued last year. That also required the risk assessments to be done, and that where there were higher-risk areas, they would need to look at, for crude oil, etc., a speed of 40 miles an hour. But it wasn't a consistent requirement in all urban areas. There were about 28 risk factors that were looked at.

Mr. Mike Sullivan: Thank you.

Go ahead.

The Chair: Mr. Kellway.

Mr. Matthew Kellway (Beaches—East York, NDP): Thank you very much, Mr. Chair. Through you, thank you to the minister for being here today.

You mentioned a formula, or Mr. Tupper did, for the determination of the fund. It was essentially volume now, plus forecast, to get you to the \$250 million in five years. I was wondering if you could please fill me in on what that volume is now and what the forecasted volume is. What's the math there?

Mr. Shawn Tupper: I don't have the specific math with me; it's grand to call it an equation. Essentially, our objective was to capitalize the fund. We set a notional target for capitalizing that fund. We tried to have a good understanding of what the volumes were that were currently on the rail. Basically, it was simple math—how much is going over five years, and straight division.

I can get you those numbers if you want the specifics.

Hon. Lisa Raitt: Through you, Mr. Chair, if the member is interested in seeing what the projections are that we used to base this math on, we would be very happy to provide that to the committee through you, and you can distribute it to the members.

Mr. Matthew Kellway: That would be great. Thank you very much.

Second, the sum we're talking about is being called reasonable and a notional target. I'm wondering if you could tell me more about the scenario that gives rise to that sum.

You are in receipt, I know, Minister, of a letter by Mayor John Tory of Toronto and 17 councillors who are quite reasonably anxious about dangerous goods running through quite literally their backyards in Toronto, in very dense neighbourhoods. I'm wondering if

you could lay out for us what scenario you imagine this sum would actually end up covering.

•(1615)

Hon. Lisa Raitt: Through you, Mr. Chair, the department undertook a number of analyses. They took a look at the types of accidents that had occurred historically and at the levels of damage that had occurred from them. From there they did a statistical analysis, literally, of how much we would need to have, given that there would be insurance involved as well, too, in order to make sure that they would be able to carry off the entire amount in terms of an accident that could happen.

I'm just looking for the particular information, because I know what you're seeking. I've had that information in the past.

Mr. Tupper has it right there, so perhaps he could speak to it.

Mr. Shawn Tupper: Essentially, what we did was a thorough analysis of our historical data, and we came up with a projection that we believe will cover between the 90th and the 99th percentiles in terms of risk—

Mr. Matthew Kellway: This is my question—

The Chair: Mr. Kellway, your time—

Mr. Matthew Kellway: For all the paper flipping, can I get 30 seconds in?

The Chair: Well, not 30 seconds, but—

Mr. Matthew Kellway: I'm concerned about the reliance on historical data when the growth in dangerous goods by rail has been increasing exponentially. Clearly, the probabilities are growing over time, and that's my interest in the formula.

The Chair: That's more of a statement than a question.

Minister, can you give us your comments, please?

Hon. Lisa Raitt: The answer to that question is that this is exactly why we ended up having this ability to use the consolidated revenue fund as the backup and then put a levy on the shipper to recoup that loan, as well as continue to recapitalize the fund again. That's exactly why we did that: to make sure that we set it at a level that is between the 91st and the 99th percentile, which is a good analysis. From there, we do have the ability to ensure that the polluter pays and that taxpayers are not on the hook.

The Chair: Thank you very much.

Mr. Leung, you have five minutes.

Mr. Chungsen Leung (Willowdale, CPC): Thank you, Mr. Chair.

Minister, I would like you to elaborate a little on how the fund for railroad accidents involving dangerous goods will be financed. More specifically, once it is financed, is there a cap to it, or is this a continuous fund that grows into an astronomical figure? How is that fund expected to be managed in such a way that, like any other fund, there is growth involved, or is it given to a third party, such as an insurance company, to do the work?

Hon. Lisa Raitt: Thank you very much for the question.

Mr. Chair, the fund has been based upon and mirrored on very successful funds that we have had in the past. That would be the ship-source oil pollution fund, where, simply put, you put a levy on the shipper, collect that levy, and maintain a fund to be utilized in the event that other sources to do the cleanup or to compensate are exhausted. In this case, we say that there will be a minimum insurance level. After that, the fund is available.

We discussed at length a minute ago the importance of ensuring that we took a look at the historical information on quantum associated with accidents. I'm comfortable that the department did a thorough analysis, and that is why the target for this initial capitalization is \$250 million.

To give you an example, in the case of CN or CP, if there were to be an accident that did indicate there would be compensation to victims or an environmental cleanup for crude oil, then, first and foremost, victims would turn to the rail company, because it has strict liability to the limit of its insurance. It caused it. They would turn to it and produce their receipts, and they would be paid through the insurance company.

One of the important parts of this bill is that before this bill, and currently as it stands, there would be a process through which CN or CP, if they disagreed that the cause of the accident was theirs, could make the individual take them to court. We wanted to cut out the expense and uncertainty associated with that, to ensure that compensation would flow quickly. As such, the individuals would be able to claim first to the insurance company.

If that first billion dollars, in the case of CN or CP, were to be exhausted, then they could turn to this fund and go through our administrator here in the government to ensure that they would be paid quickly and to ensure that they are held whole. That fund is solely funded by shippers. It is not a railway fund; it is a shipper fund. The process by which that fund is accumulated is that the railways charge the shippers and the railways remit to the administrator of the fund, and that is held in a separate account as part of the consolidated revenue fund. That is the scheme that has worked in the past and that we have put together.

We have to abide by the Constitution and we have to make sure we are doing things legally, and that is the best process in order to ensure that the taxpayer is not on the hook for cleanups and that the polluter who caused it, either the rail or the shipper—because by nature these goods are dangerous to move—is adequately fulfilling its respective liabilities.

• (1620)

Mr. Chungsen Leung: It's supplementary, then. Are we in the process of consultation to speak to the stakeholders, the railroad transporters, about how this would impact on their costs and competitiveness of doing business in transporting products in Canada or the United States?

Hon. Lisa Raitt: With respect to the railways, because it's a pass-through fee, it's not going to affect the railway company. What I can say with respect to railway insurance levels is that CN and CP already carry a billion dollars.

There are going to be some short-line companies in the country that will have to significantly increase the amount of insurance they're paying and, as a result, they're going to see their premiums go up. But we did have those conversations with the affected companies, and they understand the importance of making sure there's adequate insurance in place, and we understand what the effect will be on their bottom lines.

With respect to the effect on the shippers of the crude oil who will be paying the \$1.65, we are comfortable and satisfied that it is in the range that can be absorbed by these companies, that they are fully aware of what our intention is, and that they understand the reasons behind it. Also, as I've said, it happens in other modes of transport already.

The Chair: Thank you. Your time has just expired.

We have time for about two-and-a-half to three minutes on each side.

Mr. Mai, you can ask one or two questions depending on the....

Oh, I'm sorry, Mr. Kellway.

Mr. Matthew Kellway: Very quickly, I'm going to pick up where we left off, Mr. Chair.

Minister, I say it's becoming increasingly dangerous with exponential growth in oil by rail, with probabilities increasing and risk is increasing. You say "exactly", and that's why the CRF sits at the end of this. That's what I want to know. What's the scenario you're anticipating? What damage to buildings, what environmental degradation, and, most importantly, how many lost lives are we talking about?

Hon. Lisa Raitt: Mr. Chair, as committee members know, the best way to come up with an idea of what the number should be going forward is by examining historical data. By far and away, Lac-Mégantic—

Mr. Matthew Kellway: But the numbers are growing.

Hon. Lisa Raitt: By far and away, Lac-Mégantic is the most serious of all the accidents that have happened with respect to the transportation of dangerous goods—

Mr. Matthew Kellway: Luckily.

Hon. Lisa Raitt: —so you do keep that in mind as you're figuring out what the quantification is.

Mr. Chair, the important part with this as well is to make sure you balance it against the reasonableness of that happening again. Everything we've done since July 2013 is to prevent that from happening: preventing derailments from happening, and mitigating, should a derailment happen, to ensure the cleanup can be done quickly, with the third principle being that the polluter pays. That's been the focus for us since then.

This is part of it. Part of it is the lowering of the speed in urban areas, as we talked about. Part of it, too, is developing the new tank car standard. Part of it is saying that you have to phase out the older legacy DOT-111s, which we've done as well, and creating a schedule upon which everything has to be converted to the brand new car that's coming out soon.

It's a work in progress. We'll continue to work on it. We continue to monitor. You had CN officials appear before you as witnesses. They gave good information. They have a responsibility for safe operation as well. It's not just about what we do here in creating laws. They have to operate safely on a day-to-day basis, and they need to invest in their infrastructure, and we'll be here to hold them accountable.

The Chair: You have 40 seconds for a question and an answer.
[Translation]

Mr. Hoang Mai: I will be brief, Madam Minister.

We know that municipalities and first responders suffer from insufficient resources. When we met with the Canadian Association of Fire Chiefs, they talked to us about government assistance, along the lines of what is being suggested here, assistance for training, support for resources, and so on. Has consideration been given to using a part of those funds or additional funds? What has been done along those lines?

• (1625)

[English]

Hon. Lisa Raitt: Madam Kinney is going to answer that.

Ms. Laureen Kinney: It's a good question. One of the things that did come up in a number of conversations is that kind of issue.

One of the things the minister announced last spring was an emergency response task force. The purpose of that was to bring together the broad community of people who are involved in this, from municipal firefighters, to aboriginal firefighter groups, to the companies that respond to these spills on behalf of the shippers, etc.

There are about 35 members of that task force. It has been meeting on a monthly basis and has developed a number of recommendations in response. It has developed new training curricula, which are nearly complete, to be put out for recommendation to those who do training in order to be able to improve the ability of firefighters to respond to—so they have the background to respond—oil pool fires, etc.

In terms of resources, that's something that hasn't been the key focus at this point, but certainly as the people work through the ways in which we can improve the system as a set of jurisdictions and responsible authorities, those questions will come up.

The Chair: Thank you.

Mr. Watson, two minutes is all I can give you.

Mr. Jeff Watson: Thank you, Mr. Chair.

Just briefly, to the point of exponential growth, oil by rail last year was down, and we don't know yet what impacts will be continued into 2015 on both extraction and transport of oil due to low pricing of oil globally. That said, we are doing what we can to ensure that as the trend picks up at some point in the future we have the best

prevention and, ultimately, liability and compensation regime as well.

To that point, I want to move to the minimum insurance level requirements. I believe that's in schedule IV in clause 14. It comes into effect a year after the bill gains royal assent. What has the department determined in terms of the ability of the market to supply the insurance necessary and at a price that the short lines are able to afford? Then, of course, when those minimum requirements go up, is there plenty of room within the industry to continue or to sustain that growth, and what is the price effect on short-line railroads?

Hon. Lisa Raitt: Very quickly, Mr. Chair, from what we understand in consultation, insurance companies set premium costs based upon the risk profile of each individual railway. What we understand is that railways would typically pay between \$650,000 and \$850,000 per year for \$250 million in third party liability insurance. For \$100 million in insurance, it's approximately \$200,000 per year.

We've heard from the short lines as well that they have concerns about their increase in operating costs because of the increases in their insurance premiums, and \$200,000 to \$650,000 is a significant amount. Some financially vulnerable short lines will have more limited capacity to absorb these additional short costs. To allow them to ramp up to that, we're going to adjust the new requirements so that those requirements would be phased in, as you pointed out, and we'll also get to see how the insurance market adjusts to these increases in demand.

But, Mr. Chair, if I may, this is very important. This is one of the big lessons that we learned out of Lac-Mégantic: that carrying \$25 million when you're carrying crude oil is not enough insurance. We took a stand in the Speech from the Throne and we're following through on it.

The Chair: Thank you.

We're pretty well out of time, but if there's anything you want to add at the end in 30 seconds, Minister, the floor is yours.

Hon. Lisa Raitt: I have no surprises for the committee. I'm not asking you to bring any other witnesses forward, as I've done in the past, but I will mention, if I may, that next week is Rail Safety Week. If you do have something happening in your riding with respect to rail safety, such as Operation Lifesaver or something with respect to municipalities, let us know. We'd be happy to follow along on social media and make sure that we're publicizing the importance of rail safety.

The Chair: Thank you very much, Minister, and thank you to the department's staff.

I'd like to ask the minister and the other witnesses to please vacate the table. We'll have the witnesses for the second half move in as quickly as possible. We're going to suspend for a couple of minutes.

• (1625)

(Pause)

• (1630)

The Chair: I call the committee back to order.

I'd like to thank all of our witnesses for coming here today. I know that quite a number of you are from the railway association, and you're here as experts, I guess we should say. Everybody has a part in it.

Mr. Bourque, I think you're going to lead the discussion, so we'll turn it over to you.

Mr. Michael Bourque (President and Chief Executive Officer, Railway Association of Canada): Thank you very much. I'm only going to lead the discussion. We are going to start with Mr. James Beardsley from Marsh.

The Chair: As you wish, Mr. Bourque.

Mr. James Beardsley (Chairman, Global Rail Practice, Marsh and McLennan Companies, Railway Association of Canada): Thank you, Mr. Chairman.

Thanks to all of you for allowing us to speak today.

My name is Jim Beardsley, and I am the chairman of Marsh's Global Rail practice. I am here with Ms. Lois Gardiner, senior vice-president with Aon Global Risk Consulting. We represent the two largest rail insurance brokers in Canada.

We appreciate the opportunity to offer our collective view on some of the potential ramifications in the railway insurance market if Bill C-52 is passed into law in its current form. We believe these potential ramifications could hinder the railways in their effort to comply with the bill and perhaps create unintended and negative repercussions in the delivery of these essential services that the railways provide for the Canadian economy and in the wider economic benefits for all organizations in the supply chain.

The general insurance market today is one where the insurance buyers are enjoying an abundant supply of insurance. However, it is important to note that the railroad liability is not a general insurance market, but a global specialty market. Specialty markets are more limited than the general market when it comes to the number of insurers available and the amount of insurance or capacity. In addition, due to varying appetites for risk among those same specialty insurers capacity is not interchangeable throughout a program tower.

If you review the program tower graph that we had submitted, you can see that the insurers that write the risk at the top of the tower are usually different from those that write at the bottom or in the middle. The point is that if capacity is lost from one part of the placement, there is no guarantee their vacancies can be filled from the other existing insurers.

In 2008, for the first time in Canada, the railways were able to construct a liability tower to over \$1 billion, suggesting now that market disruption might jeopardize the ability for the most active railways, through insurance, to meet the \$1-billion minimum limit

that the bill requires. For short lines, this level of coverage is theoretically available; however, it would not be financially viable, nor would it be likely to be self-insured.

Insurance underwriters manage their exposure through the use of familiar data that adds security to their underwriting process. A major concern is that in a fluid, cyclical market, some of the proposed wording in Bill C-52 and some of the coverage extensions could create enough uncertainty in the underwriting community to undermine the railways' ability to comply with the bill.

Lois.

• (1635)

Ms. Lois Gardiner (Senior Vice-President, Risk Consulting, Western Canada, Aon Global Risk Consulting, Railway Association of Canada): Uncertainty in insurance underwriting historically has manifested in reduced limits, coverage constraints, and increased pricing. Our wish today is to encourage the committee to reduce some of the underwriting uncertainty with clarifying amendments to the bill, which will assist in stabilizing available capacity.

The example of strict liability in lieu of at-fault or negligence-based liability as outlined in proposed section 152.8 is a major change that could be problematic for underwriters. While we understand that strict liability is a feature of the new legislation, it is unclear in the bill which "involved" railways would be subject to strict liability as the term "involved" is not specifically described or defined in the bill, as you can see in proposed section 152.7. Underwriters in this market are likely to write multiple companies that could be "involved", while not physically involved in the goods movement causing the loss.

Under the proposed strict liability wording, insurers might think they could be paying out far more limit than they might have paid under a fault-based regime. This change could create uncertainty and encourage insurers to pull back on capacity, protecting themselves from the unfamiliar. Similarly, the use of phrases like "any action or measures" and "all loss of non-use", instead of something like "reasonably incurred", all referred to in proposed section 153, leaves an underwriter with a sense of limitlessness, which could be met with a similar overreaction. It is possible that this uncertainty could severely limit the capacity available in the rail insurance market that is global.

Additionally, further clarity is required in describing that the minimum limit also acts as a per-accident cap on liability, as alluded to in proposed section 152.7. We feel that this will add to loss forecasting certainty for the underwriters. We also recommend clarifying the role of approved self-insurance as noted in proposed paragraph 92.1(b), as a potential substitute for third-party liability insurance. This feature adds flexibility to the railways' ability to comply with the bill.

According to proposed section 94.2 of the bill, “The agency shall suspend or cancel a certificate of fitness” of a non-compliant railway. We would recommend substituting more flexible wording so that the agency might be able to make a decision that benefits all stakeholders. As an example, substituting the word “may” versus “shall” could allow for greater flexibility.

Another concern is that we can imagine that stacking limits under strict liability might actually discourage cooperation among the railways, especially if they suspect that direct cause of a loss could be the responsibility of a railway not covered by the act. The economy does depends on this inter-rail cooperation.

Mr. James Beardsley: In closing, we urge the committee to consider more clearly defining the bill’s language in those areas noted and to work to eliminate or minimize the wording that adds to underwriter uncertainty before final voting on the bill’s passage.

Thank you for your time. We welcome your questions, but first we will hear from Mr. Robert Taylor of Canadian Pacific.

Mr. Robert Taylor (Assistant Vice-President, North American Advocacy, Canadian Pacific Railway, Railway Association of Canada): Good afternoon, Mr. Chairman and committee members.

My name is Robert Taylor, and I’m the AVP for North American advocacy at CP. We operate a 22,000-kilometre network throughout Canada and the United States. In 2014, we moved over 2.7 million carloads of traffic.

I am proud to say that CP is the safest railway in North America. We have achieved the lowest frequency of train accidents in each of the last eight years. In 2014, we had 1.2 train accidents for every million train miles. Our performance in 2014 was a 30% improvement over the previous year, which is a new record.

Rail safety is critically important, as is modernizing the liability and insurance regime for Canada. Our journey is not yet complete, but continuous improvement in safety is evident.

It’s important to recognize that North America’s rail network moves 99.998% of hazardous materials, including crude, without incident. Because even one accident is one too many, we are continuously working to eliminate the last 0.002% of risk from our operations. We can safely and securely move dangerous goods.

Now I will talk about the bill.

We support the intent of Bill C-52, which is to better define and make accountable all those involved in the production, manufacture, transportation, and distribution of dangerous goods. We need to strengthen the safety and security of the rail supply chain so we can maintain a world-class transportation system, one that is accountable and responsive and works to prevent incidents from occurring as well as to provide compensation and liability in the event of an incident.

Several elements of this bill are items that CP has been calling for over the last number of years, and we welcome action. We do think, however, that in a few important areas the bill lacks policy clarity, and we urge the committee to consider this as you perform your review of this bill. The most important of these are as follows.

One, in proposed section 152.7, is the wording “involved in a railway accident”, especially in instances where traffic is inter-changed or passed between railways. The second is proposed section 152.9, which references other acts that could negate the railways strict liability cap. The third is how the shipper fund is to be recapitalized if depleted. Fourth, we also question why the shipper fund is only initially capitalized to \$250 million while the railway has a strict liability of \$1 billion.

These are important items that need to be clarified in your consideration of this bill.

Thank you.

• (1640)

The Chair: Mr. Bourque.

Mr. Michael Bourque: Mr. Chair, our last presenter is Terry Berthiaume from Essex Terminal Railway. He is a short-line operator.

The Chair: Thank you.

Please be as brief as possible.

Mr. Terry Berthiaume (President and Chief Executive Officer, Essex Terminal Railway Company, Railway Association of Canada): Thank you, Mr. Chair. I’m very grateful to have this opportunity to speak about how Bill C-52 may have some unintended consequences that will affect my company and the community in which we operate.

I will start by saying first that while all men are created equal, all railways are not. That’s especially true in the case of the Essex Terminal Railway Company. One hundred per cent of our revenue is from interswitching. It’s from servicing the industries that are located on our line and taking those goods to and from the main-line carriers that we connect with. I believe that we are unique in that aspect. The CTA recognized that when they exempted us from the interswitching regulations due to the fact that 90% of our revenue is from interswitching operations.

We’re unique in other ways. We operate totally within yard limits. We do not have main-line track. Our main track is only 19 kilometres in length. Although we don’t handle crude oil, we do handle dangerous commodities in excess of 40,000 tonnes. Seventy per cent of those commodities travel only 4.4 kilometres on our railroad at speeds of 10 kilometres per hour or less during daylight hours, on very flat geography where there are no hills. We have an incredible safety record.

I have been with the company for 34 years. We have a very strong safety culture. Never in the 34 years has our insurer had to pay a claim due to damages to third party property or rail.

But because of Bill C-52, we will be forced to increase our insurance four times. That will come with very significant costs, and they are costs that we cannot pass on to our customers. We are operating in a very competitive environment in a very depressed local economy. We have the highest unemployment in Canada. We have lost 50% of our business in the last 10 years. We've lost that business because plants have closed. They've moved their operations to other areas where operating is more economical. Anything we do to increase the cost of our customers' business will undoubtedly result in lost business for them and lost jobs for the 850 or so people who work for the industries we serve.

I was glad to hear the minister say that the railway liability limits should be equal to the risk of the company. The risk of our operations obviously is not the same as that of MM and A. We operate at very slow speeds. As I said before, we have an impeccable safety culture.

•(1645)

The Chair: Could you wrap up, Mr. Berthiaume?

Mr. Michael Bourque: We'll handle the rest through questions.

Thank you.

The Chair: Thank you very much.

Last, we have you, Mr. Benson, for 10 minutes or less, please.

Mr. Phil Benson (Lobbyist, Teamsters Canada): Thank you, Mr. Chair.

This is really two bills, the first dealing with insurance. We called for the creation of these types of funds. We are supportive of them. After inquiries, we were informed that the money deposited to the fund would go to a special purpose account. Our question is, is that in a CPP lockbox or in an EI cash till? We would recommend that it go into a lockbox, as all special purpose accounts should.

The second issue, of course, is the sufficiency of the fund. We do understand that risk assessments were made. However, after Lac-Mégantic, we're hearing costs of \$800 million to a billion dollars. We thought that perhaps to be consistent with marine, a billion dollars in the fund or some higher amount may be required, but I'll leave it to the committee to deal with.

The second part of the bill is where we want to focus. These are the Railway Safety Act portions of it. Just as a note, sometimes when bills are reviewed and amended, parties know what has to be done but they just don't get done at the time. I suggest that this is what happened in 2011 when we reviewed the act, but post-Lac-Mégantic, the landscape has changed. Overall, we welcome the powers this act gives to the minister and department to oversee rail operations, but we do have a few concerns we would consider that you address.

We ask again, where's our 1-800 number? The answer is, it's locked up in the safety management system regulations, where it doesn't really belong. When this idea was included as an amendment to the Railway Safety Act, it was understood that it really should be more like a rule. That's why we're asking you to amend section 18 of the Railway Safety Act to give the minister the power to move forward with the implementation of non-punitive internal reporting and confidential reporting to Transport Canada employees of contradictions of the act, etc.

Clause 17(1) of the bill we are dealing with today deletes the definition of "fatigue science". We think that should be read with changes made to fatigue management between the *Gazette*, part I and the *Gazette*, part II, in the new safety management systems regulations. *Gazette* I clearly spelled out the running trades—the locomotive engineers, conductors, etc.—to which the regs must apply, which disappeared in *Gazette* II, coupled with what we think is rather vague language.

We asked, "Why the deletion?" First, it was an outright mistaken belief we were given that the definition came from this committee. It didn't. It was demanded by Justice as a requirement. Second, they said, as you heard earlier, that the definition caused drafting problems. Curious, we said, that it wasn't picked up in *Gazette* I. Finally, we were told the definition would require the industry to use scientific and peer-reviewed studies and in dealing with fatigue science it would be difficult. Really? That's exactly what happens in air and road when we deal with these issues. We're asking you to strike out clause 17(1), put the definition back in, and, if Ms. Kinney was correct, amend it appropriately.

At the same time, let's rectify another item that was left out of the review. Fatigue management should definitely be in the safety management system, but the rules should be set industry-wide. Without this change, each railway could create its own concept of fatigue management, resulting in each trying to gain competitive advantage through manipulation of a safety issue. We propose a further amendment to Railway Safety Act section 18 giving the minister the power to—quote—create safety management systems including the principle of fatigue science applicable to scheduling.

We think it might be time to look at anachronism in this act, the Railway Safety Act's section 20. I won't go through the whole thing. I'll paraphrase it: "A company shall file with the Minister for approval any rules" with respect to "subsection 18(1) or (2.1) that it proposes to formulate or revise" of its own accord. Further, in section 20.1, the act permits the Railway Association of Canada, a lobby group, to act on behalf of the companies.

It's unique. I can't think of anywhere else in transportation this occurs. This is a section that resulted in a retiring ADM of Transport signing off on rule changes on December 26, rules that we opposed and objected to because we believed they weakened the ministerial directive on rail safety post-Lac-Mégantic, changes that were less about public safety and more about a corporate bottom line—business as usual.

Let's be serious. Does the public believe the RAC rail companies will put the public interest before the bottom line?

We think this act, if you look at the section on rail safety, could be renamed the “we don't trust the companies act”. The powers to inspect or the powers to the minister are all very good things, things that probably should have been included in 2011 but weren't. Let's get rid of sections 20 and 21. Let's put an end to the perception—the reality, we think—of the industry's self-governance and self-regulation.

•(1650)

We think rule changes should be consistent with other sectors, where rule changes are brought, for example, to the CCMTA or the advisory council for TDG, and we have set up the advisory council on rail safety. Let's make the act modern. If we're going to get into it, let's get into it.

I welcome any questions you have.

The Chair: Thank you very much, Mr. Benson.

We'll move to Mr. Mai for seven minutes, please.

[Translation]

Mr. Hoang Mai: Thank you, Mr. Chair.

My thanks to the witnesses for joining us today.

Mr. Benson, let me start with you. I do not know whether you were here when I asked the minister about why the definition of fatigue management had been removed. What do you think about the answer the officials gave?

[English]

Mr. Phil Benson: It is consistent. We had several briefings on it, Mr. Mai, and I thank you very much for the question. It is consistent with what we were told; however, the rationale behind it wasn't given. The idea that this would make difficulties in making studies and having to look at scientists was raised. We did ask to talk to their legal people to see what the problem was between *Gazette*, parts I and II. Of course, we were told that was not possible.

The huge concern from the TCRC, the Teamsters Canada Rail Conference, who can't be here today because they're in executive board meetings, was the deletion of the running trades specifically spelled out. They feel that in the new *Gazette* II it leaves a possibility—because of the varied wording, which I have but won't get into—which could actually mean that the people who really require the fatigue management system to be in place may in fact be excluded.

We were told we were wrong. We will see what happens going forward, but our concerns are such that it is why we're asking for an amendment in the clarification. Fatigue management has to be dealt with. This committee has dealt with it and studies have dealt with it. People know we have to solve that problem in the rail industry. As

we said about the act, we probably trust the rail companies less than the government does. That is clear by this act.

Mr. Hoang Mai: Quickly, regarding the 1-800 number, I think you've mentioned this before.

Can you tell us what has been done since you first raised the issue? Why it hasn't gone forward?

Mr. Phil Benson: Are you talking about fatigue management?

Mr. Hoang Mai: No, the 1-800 number.

Mr. Phil Benson: The 1-800 number was placed within the safety management system, so we have the absurdity in the language that says that the company must have a non-punitive reporting system, and they must have this 1-800 number, basically to the ministry, so it makes no sense to have it within the safety management system. It should be something the minister does.

[Translation]

Mr. Hoang Mai: My next question goes to Mr. Berthiaume.

You mentioned the impact it could have on your company. What exactly are you proposing? Could something in the bill be changed that would consider the risks that your company is taking, for example, risks that you feel are lower than for other companies?

[English]

Mr. Terry Berthiaume: One possibility would be exempting us from this regulation in the same way we've been exempted from the interswitching regulation in recognition of the very unique characteristics of our company. The fact is that we don't operate on main lines. We operate over very short distances at very slow speeds. Our maximum speed is 10 kilometres per hour. For these reasons, I think there's justification to exempt us from those regulations. We would continue with insurance limits of \$25 million, which we have been carrying for many years and for which there have been no claims at all—zero claims. I've been there 34 years and we have had no claims paid by our insurers.

Mr. Hoang Mai: Maybe I'll ask Mr. Bourque a question. Do you know if there are other companies in the same situation? Or is Mr. Berthiaume's company very different?

•(1655)

Mr. Michael Bourque: Yes, it's precisely the point. His company is very different.

But there are other consequences for other short-line railways. I think the important point that was made was that not all short lines are created equal. They're all different. For that reason, there are some unintended impacts that result from the legislation.

I'll give you one example. Let's say a short line takes out \$25 million in insurance, which it's required to do because it typically doesn't move any crude or any toxic inhalants, really, but it might move the odd carload of diesel or something else. Let's say that then one day it's asked to move a carload of crude oil. Under its common carrier obligation, it must move that one carload of crude, and it must go from \$25 million in insurance to \$100 million in insurance.

The profile of that company may be such that it is a very safe company, operating on very flat land, with an extremely good safety record, modern infrastructure, and so on. Yet it must purchase \$75 million in additional insurance or it has to violate its licence and its common carrier obligation to say no to the customer.

These are the kinds of unintended consequences that I think warrant language that is a little bit more nuanced, so that each short-line railway can be examined on its own merits. Perhaps that's something that could be done by regulation, something that could be done by the agency, but clearly, in stark terms, it causes significant unintended consequences.

[*Translation*]

Mr. Hoang Mai: I am thinking about the public's reaction. We saw what happened at Lac-Mégantic: a company with insufficient resources for the situation. I kind of understand the difficulty that Mr. Berthiaume's company is going through. I also think that it may well affect other small, local railway companies. If you have any concrete proposals for changes, could you send them to the committee so that we can look at them?

[*English*]

My last question, because I don't have much time, is for you, Mr. Benson. I think you mentioned section 21, where the Railway Association can actually come up and make recommendations or actually suggest changes to the law. What is your position? Is it because it's allowing only one group to propose changes? If the bill were amended to allow all parts of the industry to make proposed changes, would that be satisfactory?

Mr. Phil Benson: I hadn't thought of it that way. I'd prefer to eliminate it entirely. In other areas of transportation, everybody has an opportunity to bring it to the committee. I think it's improper for one group, or any group, to go directly to the minister. The frustration I have in dealing with Transport is that quite often the response is, "We'll just call over to the RAC and ask them to write a rule." This is absolute silliness in the modern world.

A company's bottom line is to make money. The government's job is peace, order, and good government. This mixes the two. It assumes that somehow a company is going to have the best interests of the Canadian public in mind. That's your job. This is these people's job.

Eliminate it. Or if not, if you like it, then add on to it and say that Teamsters Canada can do the same. I'm sure that will fly.

The Chair: Thank you.

Mr. McGuinty, you have seven minutes.

Mr. David McGuinty: Thanks, Mr. Chair.

I must say, Mr. Chair, that the minister was here an hour ago or less, and I think she repeated three times that there was extensive

stakeholder outreach on this bill. It's really hard to square her claim of extensive stakeholder outreach when we have senior labour and a large railway company represented, along with the insurance sector, a short-line railway, and the Railway Association of Canada, all saying that there are serious problems with this bill.

I'm not sure where the minister was consulting, or with whom, but it's a little bit rich to come to this committee now, Mr. Chair, when we have very few meetings scheduled to deal with the bill, and to hear the depth of concern on this bill. I think what it's telling us is that this thing was cobbled together on an urgent basis, pre-election and post-budget, even though there was an 11% cut to the department of \$202 million. They have come here to the committee and have brought us this bill, speeding it through, and we have the industry sector telling us, with labour, there are serious flaws in this bill.

Each of you said that there are unintended consequences, that there are distributive effects, and that it's about reducing underwriting uncertainty. It went on and on. Maybe I will ask you this: were any of you consulted on this bill? Did any of you sit down with the drafters inside Transport Canada and actually get asked what your core concerns were before this was cobbled together?

Mr. Benson, very quickly, please, and then we'll just go down the line.

• (1700)

Mr. Phil Benson: As far as I know, not at all.

Mr. David McGuinty: Mr. Taylor.

Mr. Robert Taylor: There was a consultation process that Transport Canada led, which we provided written comments to. Obviously we don't sit down with the drafters of legislation. I think our concerns relate to some of the drafting, but we did provide written input into the department in terms of modernizing this regime.

Mr. David McGuinty: So you raised the question of \$250 million, for example, as quantum. Did you get an answer to that?

Mr. Robert Taylor: That was one item we would have liked.

Mr. David McGuinty: Did you get an answer?

Mr. Robert Taylor: We got an answer when we saw the legislation.

Mr. David McGuinty: I see. Okay.

Mr. Beardsley.

Mr. James Beardsley: Marsh Canada was consulted by the CTA at some early point in the process, but prior to the drafting of any draft legislation. For part of my questions to them with regard to some of the concerns we've raised today, the answer I got was that it was not made available to them. They were talking about the overall insurance market today, which, as I alluded to earlier, is really quite robust. What we're trying to do is really offer up some recommendations to make sure that the bill, when passed, is going to be sustainable from an insurance standpoint, even looking at all of the what-if situations that could come down the pike.

Mr. David McGuinty: Yes. It's unfortunate that you're having to do it here now. If they had been listening, maybe some of those concerns would have been addressed in the legislation.

Mr. Berthiaume, I want to pick up on my colleague's questioning. I want to learn more about the short-line challenge. Perhaps you can extrapolate a bit. I know it's hard because you're with one company, but just give us a better idea. They clearly weren't thinking through the ramifications here on short line. We know that the costs around Mégantic, even though the minister's refusing to tell us, are somewhere between \$450 million and \$600 million and counting. We know that they would have been significantly higher had there not been a layer of natural clay below the substrata and the soil in Lac-Mégantic. Had there not been this layer of clay, most of this oil would have seeped into the aquifers, and the cost would have been way over \$1 billion to clean it up.

Leaving that aside as one incident, and just in helping us design our way forward, tell us more about the specificity you'd like to see built into this bill, so we can get this balance proper between your company and, for example, CP.

Mr. Terry Berthiaume: First of all, as I said earlier, there's no comparison between us and even other short lines, let alone a comparison between Essex Terminal Railway and main-line carriers. We operate under totally different circumstances, and our risk is entirely different. The fact that in 34 years our insurers have not paid one claim says something about the risk associated with our business, yet suddenly we'll be forced to increase our insurance coverage from \$25 million to \$100 million simply because we carry more than 40,000 tonnes of dangerous goods. We carry those goods about four kilometres during daylight hours at very slow speeds. The cost of that insurance will be somewhere between \$75,000 and \$100,000.

As the minister alluded to earlier, we can't pass that through to our customers, unlike the main-line carriers, so we have to find a way to deal with those costs. We are operating under very depressed conditions. We've lost half of our customer base. For us to try to absorb that cost at the volumes that we're doing right now is just impossible. We wouldn't be viable.

How do we deal with this? Does it cost jobs? Do we put fewer ties in every year? Where do we find the money to pay for this? Also, why do we have to? We've proven that we have sufficient insurance to cover the risk of our operation.

Mr. David McGuinty: Another thing that jumps out is that one constituent said to me that this bill appears to be all about fossil fuels. I want to get a better sense of your perspective on this. There are many dangerous goods being transported. In the hierarchy of

risk, as I think Mr. Bourque alluded to earlier in one of his answers, we have a number of different products that are risky.

In the insurance sector, Mr. Beardsley—perhaps this is for Ms. Gardiner, but I don't know—what would be the most dangerous in terms of the hierarchy here, and is it being addressed properly in Bill C-52?

● (1705)

The Chair: Given your thoughtful question, we'll get the answer.

Mr. David McGuinty: Thank you, Mr. Chair.

Mr. James Beardsley: It's very difficult for me to say whether it's being addressed properly in a piece of legislation, as I'm not a legislator. However, I'm happy to offer an opinion on dangerous goods.

It really depends. The two things that we have are frequency and severity. We have a number of models out there that target TIH/PIH as a very difficult commodity with regard to the aspect of severity, but there are very few and falling shipments of that. As was noted, crude by rail has been on the increase but has started to flatten out.

Looking forward, it's very difficult to rate them as one through four or something like that, but as was alluded to by Robert, one accident is too many. The crude-by-rail accident at Lac-Mégantic was very severe. The TIH accident in Graniteville, South Carolina, 10 years ago, was very severe. It's almost, dare I say it, a tie. They're all severe and one accident is way too many.

The Chair: Thank you. Your time has expired.

Mr. Braid, you have seven minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

Before I begin, I wanted to ask, Mr. Chair, if we could have a couple of minutes for committee business in camera at the end of our meeting today for me to table a motion, as I know all of my colleagues have been anxiously awaiting this motion.

The Chair: Okay.

Mr. Peter Braid: Thank you, Mr. Chair.

Thank you to our witnesses for being here.

Mr. Taylor from CP, I wanted to start with a couple of questions for you. You mentioned that there are a number of items in Bill C-52 that you have been calling for, and for some time. Could you outline what aspects of the bill those are? Obviously, these are aspects of the bill that you deem to be critically important. Could you tell us what they are?

Mr. Robert Taylor: I think one element of the bill relates to a liability cap. As has been alluded to, we have a common carrier obligation, so we have no choice but to move goods that are tendered to the railway, and obviously that includes dangerous goods. The quid pro quo for being essentially compelled by law to move a good, in our view, is a cap on liability. You shouldn't be forced as a company to move a good that could actually bankrupt your company.

I think the intent of the bill and the intent of these regimes is also to trade off a strict liability with a liability cap. A strict liability we automatically pay out, or our insurers automatically pay out, which obviously compensates damaged parties. For that, you have a cap on your liability. This is something that we've been talking about as a company for quite a while.

Mr. Peter Braid: Could you give us some insight? I presume that currently as a railway you enter into agreements with shippers on certain types of goods that you transport by rail. Could you give us some insight into how those agreements work, what they cover, and specifically how they deal with the issue of third party liability and insurance?

Mr. Robert Taylor: That's a very, very good question.

Shippers have a number of recourses under law, and one of those is final offer arbitration. We have been focused on liability in our negotiations, and in a number of cases these contracts have been brought forward for final offer arbitration, which is a very blunt instrument. An arbitrator looks at your offer or the other offer and often makes a determination on price without any consideration of the other clauses. One of those clauses would relate to liability, and we are trying, through those clauses, to incent shippers of dangerous goods in terms of the means of containment—the tank car—to ensure that they're moved as safely as possible.

Jean, you are an expert. I don't know if you want to pick up on that.

• (1710)

Mr. Jean Patenaude (Assistant General Counsel, Canadian National Railway Company, Railway Association of Canada): No. I think you've explained it well. The only addition I would provide is that this goes even beyond just the limitation of liability that you could have on the goods themselves. If you damage the goods, you could have an agreement with your shipper on how you're going to share the risk, but this is third party risk. For example, in Lac-Mégantic, it's the risk of the victims and the environment and all that. That typically would not be part of your shipper relationship. It would be a liability-based or fault-based regime that we would have. This establishes a strict liability. You cannot say, "I'm not paying because I'm not at fault." You pay, and you do have recourse. The bill provides recourse against third parties who may have been involved.

We always use this example. Let's assume that there's a truck that hits your railroad at a crossing and it causes a dramatic accident. We can sue the truck company, but chances are that it won't have a billion dollars of insurance, so that's a major difference. We are the first ones to whom they will turn for compensation. We're okay with that. We can accept that, but there has to be something other than

that, like the cap. We want to make sure that this is a solid cap. It's \$1 billion and not more than \$1 billion.

We think that the word "involved", for example, or the fact that there's stacking.... For example, if we're operating on CN and we have an accident of a billion dollars, fine, we're stuck with it. But if we happen to have the same accident operating on CP with the same causes, all of a sudden the cap becomes \$2 billion, because with both companies a limitation is involved. These are adjustments that we were looking at, especially on the word "involved".

I'm sorry for the length of my answer.

Mr. Peter Braid: Thank you.

Are you okay with and do you support the \$1-billion level?

Mr. Jean Patenaude: Well, we could say that it's a bit high, but yes, we're prepared to accept that and to live with that. Yes, we do—

Mr. Peter Braid: As a class I rail line, can you tell me how much insurance coverage you have now or is that proprietary?

Mr. Jean Patenaude: The actual amount is proprietary, but we have said that right now, in the current market, we have in excess of \$1 billion.

Mr. Peter Braid: Mr. Benson, I believe I heard you say that you feel these levels of required insurance are appropriate. Was that correct?

Mr. Phil Benson: I think it's up to the companies. It's not the level of the insurance. I think it's more to do with the fund. When you look at Lac-Mégantic and \$400 million or \$800 million.... It's not for the main lines. I have no concern about CN and CP, but for some of the shorter lines there may be more funding required. I'm leaving it to the committee, but it was a concern raised by the rail conference, and they asked me to pass it on.

Mr. Peter Braid: Thank you.

The Chair: You have just a few seconds left, Mr. Braid.

Mr. Peter Braid: Mr. Beardsley, which Marsh office are you with? There is no indication here.

Mr. James Beardsley: I'm actually a Global employee, but I sit in Washington, D.C.

Mr. Peter Braid: How familiar are you with the Canadian market?

Mr. James Beardsley: I'm more familiar with the global railway market than I am with the local Canadian market—

The Chair: Okay. I'm going to have to—

Mr. James Beardsley: —and there is a difference.

The Chair: Thank you.

We'll now move to Mr. Komarnicki for seven minutes.

Mr. Ed Komarnicki (Souris—Moose Mountain, CPC): Thank you very much.

Obviously, I hear that at least CP and CN carry insurance pretty much in line with the cap amount here, and of course the new fund is there for any excess coverage. My question is probably going to relate most to the short lines, because there seems to be a greater degree of consternation about the amount of insurance there.

Mr. Beardsley, I think I heard you say that theoretically the insurance is available but it might not be “viable”. I think that's the word you used.

There is no question that short lines carrying dangerous goods—crude oil—can be involved in an accident, and I think the general public would expect that there would be some insurance coverage by short lines and, of course, a pool to draw from beyond that. As I understand it, that coverage is either \$50 million or \$125 million, is coming into effect a year after the act comes into being, and is then doubled in the two years.

First, from the insurance perspective, is there any reason why that amount couldn't be made available to short lines?

• (1715)

Ms. Lois Gardiner: I'll answer that.

At the end of the day, there is capacity available in the marketplace for short lines. There is capacity, but the cost would be in excess of what they're currently paying.

Mr. Ed Komarnicki: So obviously what they're currently paying may not be sufficient for coverage, but you're saying that you have the capacity to provide the insurance. If I heard you correctly earlier, you said that you might want to have some limitations within the policy to limit some of the coverage to reduce the premium, and you might look towards that. But in either case, you're able to provide the insurance.

Ms. Lois Gardiner: Yes, I think so.

I think the greater concern for the insurance industry is with the word “involved” and how clear that is, because as we spoke of, the insurance pays on a per accident basis. The way this could work, based on the word “involved”, is that you could have multiple railroads paying out at the same time. Although we're not certain, there is a possibility that the insurance companies could try to limit that to make sure they only have to pay out once.

Mr. Ed Komarnicki: Now, from the short-line perspective, I appreciate that not all the short lines are the same, but if you're carrying a dangerous product and you have an accident, the liability may well be the same. From your perspective as a short line, do you see the amount that initially is set in place and then doubled as being too much of a burden, too fast, or just simply as a burden you can't bear?

Mr. Terry Berthiaume: It's a burden we can't bear.

Again, as I said earlier, a short line is not a short line.... You can't compare the risk for my company moving a car 4 kilometres at less than 10 kilometres per hour to that of another short line that has main-line track and is operating over hundreds of miles of track at higher speeds. There's no comparison in the risk between the two operations, yet we're all painted with the same brush.

Mr. Ed Komarnicki: You're saying that you don't argue with the fact there should be insurance. You're saying there should be varying amounts depending on how much you haul or carry and the circumstances under which you carry it.

Mr. Terry Berthiaume: Yes.

Mr. Ed Komarnicki: What about the timing? I noticed that the amount of insurance is required to be in place within a year and then to be doubled in two years. Would an additional amount of time allowing the short lines to get into position to meet those requirements be of any benefit to your company or to other short lines?

Mr. Terry Berthiaume: I don't understand how you would get into position. Do we cut back on our maintenance? Do we cut back on our employees? Where do we find the money? If we don't have to find it this year, we have to find it next year or the year after. We can't pass it on to our customers, so at some point in time we're going to have to deal with the reality of the increased premiums.

Mr. Ed Komarnicki: You're speaking of your own particular corporation, but does anyone here have knowledge of other short lines that do haul a lot of crude? I know that in my riding, for example, in Souris—Moose Mountain, there is a lot of crude being hauled.

Mr. Michael Bourque: I can speak to that. We do have short lines that are moving significant amounts of crude, and some of them are able to charge their customers for the additional amount of insurance. They can absorb it into the costs of their operation. In that case, the amount of insurance that is proposed in the bill is commensurate with the risk. It is possible for that railway to recoup its additional costs from its customers. This is not universally true for all the short lines.

What we're suggesting is that there needs to be flexibility in the bill so that companies like Mr. Berthiaume's could go to the agency and argue that its risk is not commensurate with the table that's suggested by the bill and that it pays an amount of insurance that is equal to the risk.

Mr. Ed Komarnicki: What percentage of short lines would you say are in the Souris—Moose Mountain category, where they haul a significant amount of crude, compared to the one that's mentioned?

• (1720)

Mr. Michael Bourque: In the case of the one you're talking about, they are a provincially regulated short line and isn't even subject to this bill. But what we expect will happen is what happens in more than 90% of the cases of rail safety bills: they are copied by the province identically. They don't have the regulatory capacity and the legislative capacity to review, invent, and write a new bill. Instead, they copy the federal bill, so at some point all of those 40-plus short lines out there will be subject to this bill or a provincial equivalent.

Mr. Ed Komarnicki: What's the percentage between the two types of dollars?

Mr. Michael Bourque: There are not two. There are going to be more than two.

Mr. Ed Komarnicki: Fair enough. The categories?

Mr. Michael Bourque: I would suggest to you that with probably 30%, 40%, or even 50% of railways, when you look at this particular regime, any reasonable person would see that the risk is not commensurate with the amount of insurance they will be forced to pay.

Mr. Ed Komarnicki: Okay. Where the risk is commensurate with the amount of insurance that it is proposed they pay, have you any knowledge in that case in terms of whether the two years, coming from the minimum to the maximum amount, is an issue or not?

Mr. Michael Bourque: I'm glad you asked that question, because my view is that I don't think it's going to help much. Even though I recognize that it was there to help, I don't think it helps much, because in two years the insurance situation could change. There could be an accident involving a short line, and that could be a provincial short line, by the way, but the insurance market could change as a result of that, because there would be a change in the perceived risk by the insurance industry. All of a sudden the cost of that same amount of insurance is higher next year than it is this year, so it's a difficult thing.

What I guess I'm signalling is that there is a real need for the bill to have a mechanism so that somebody can decide what makes sense. That's what we'd be asking for.

Mr. Ed Komarnicki: To differentiate the two types?

Mr. Michael Bourque: I think it's a reasonable request.

The Chair: Thank you. We are out of time. We have to clear the room and go into camera.

I want to thank all of you for coming here. I appreciate it very much.

Thanks again.

We will suspend for a couple of minutes while we secure the room.

[Proceedings continue in camera]

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