



**NORTH AMERICA**  
**FREIGHT CAR**  
**A S S O C I A T I O N**

presentation to

**National Grain and Feed Association**



# Objective



- Outline goals and objectives of North America Freight Car Association (NAFCA)
- Describe past work done by NAFCA
- Review current issues and concerns
- Review NAFCA proposal
- List watch items for the future



# NAFCA



- NAFCA organized 16 years ago to deal with issues related to private rail equipment
- In 1997 LOSAC (organization formed to obtain better mileage compensation for covered hoppers) merged into NAFCA
- NAFCA inherited LOSAC's antitrust immunity to meet and discuss compensation for railcars
- NAFCA membership is open to private car manufacturers, owners, lessors and lessees



# NAFCA Membership



- Currently made up of 30 members who collectively own or operate in excess of 650,000 privately marked freight cars
  - Approximately 70% of all private freight cars operated in the US as of January 1, 2007
  - Members include:
    - All major railcar manufacturers
    - Major railcar owners and lessors
    - Shippers who own and lease railcars (AG and Petro Chem)
- NAFCA holds a Section 501(c)(6) tax exemption and antitrust immunity from the STB under Section 10706 to discuss private car compensation



# NAFCA Mission Statement



- Promote the safe, efficient and economical use of private cars
- Investigate and educate the public regarding operational, regulatory, economic and legal matters that affect private cars
- Secure the establishment and maintenance of reasonable, equitable and lawful practices and rules affecting the use of, repair of and principles of compensation for all private cars



# NAFCA Goals



- Educate the public and lawmakers regarding operational, regulatory, economic and legal matters that affect private cars and private cars owners and lessees.
- Work with carriers and legislative bodies and seek areas where we can work together to find ways to improve the safe operation of private rail equipment while protecting the rights of private cars owners and lessees.



# NAFCA Actions



- NAFCA will take the lead in protecting the interests of private car owners and lessees
  - We performed a study comparing AAR labor rates to independent car shop labor rates and negotiated with AAR to obtain a reduction in AAR labor rates
  - Worked closely with the AAR and other groups seeking voting memberships on many of the AAR committees that develop rules and regulations for railcars and maintenance issues
  - Corresponded with the AAR, STB, railroads, Senate and Congress regarding issues of importance to our members
    - Rule 91 service interruptions
    - Rules and regulations covering railroad pools
    - Car registration rules and regulations
    - Preemption of Federal law concerning private rail equipment



# NAFCA Actions



- Worked with the AAR OT-5 TAG to help develop a centralized database registration system for OT-5 approvals.
- File complaints before the STB and/or Federal Courts
  - BNSF Storage Case where the BNSF began charging storage on empty private railcars on railroad property
    - Supported by NITL and ACC
    - Sat before the STB for over 5 years before ruling in 2007
    - Ruling went against NAFCA
  - Declaratory order proceeding to determine if an individual railroad (UP) can deny OT-5 based on a railroad's individual standards for equipment that meets all AAR and FRA standards and safety requirements
    - Can a carrier force a shipper to abide by different standards than are required by the AAR under the Interchange Rules
    - Can OT-5 loading authority be withheld for mechanical reasons if identical cars are allowed to operate over the same railroad



# NAFCA Current Issues



- Liability Transfer
  - Carriers continue to seek to shift liability to shippers
    - Liability associated with or under track agreements
    - Liability under contracts or Limited Distribution Tariffs
    - Carriers liability and responsibility under AAR interchange rules
      - Carriers responsibility to place clean car for loading
      - Carriers responsibility to check car for problems (mechanical or safety) before placing in a train
      - Carriers responsibility for damage to private cars (damaged cars missing JIC)
      - Carriers responsibility for product loss and damage



# NAFCA Current Issues



- Carriers duty to inspect equipment
  - UP recently published a rule covering exterior cleanliness of railcars
    - Rule makes shipper responsible for exterior cleanliness of railcars
      - Wheels
      - Safety appliances such as ladders, grab irons, brake handles, catwalks
    - Shipper held liable for damages including personal injury and death
  - Carrier has obligation under AAR Interchange rules
    - Provide clean car for loading
    - Inspect every car for safety and mechanical defects before placing in a train



# NAFCA Current Issues



- Mileage equalization (tank cars)
  - Currently operate under the 106% rule
  - Not included in the calculation
    - Departure from reverse route that causes additional empty miles to accrue
    - Mileage accrued to shops for DOT, AAR or FRA mandated retrofit programs, inspections or repairs
  - Reasons for circuitous routes
    - Directional running
    - Routing protocols
    - HM 201 inspections (tank cars)
  - Application of rules not being followed
    - Carriers using “for carriers convenience” to justify additional miles



# NAFCA Current Issues



- Allocation of cost for modifications to railcars
  - Today under AAR process the carriers determine modifications to all railcars
    - Car owners have limited input
    - Car owners have limited voting rights
    - Car owners many time pay 100% of costs when carrier gain majority of benefits
    - Carriers have sought to institute individual rules that are more stringent than AAR Interchange rules



# NAFCA Proposal



- Interchange rules must be reasonable and non-discriminatory
- The process for adopting rules must be reasonable and non-discriminatory
  - AAR process open and accessible to all interested parties
  - AAR should provide timely access to data relating to cost-benefit, safety or other aspects of proposed rule



# NAFCA Proposal



- Interested parties should be allowed to challenge the reasonableness of an interchange rule or the AAR Rulemaking Process
  - AAR should be prohibited from adopting rules or practices
    - That limit operation of private cars based on individual carriers mechanical or operating requirements
    - That discriminates between the conditions under which private and railroad cars operate
    - That allow non-uniform interchange rules that permit different levels of standards for freight cars operating on different carriers



# NAFCA Proposal



- Car owners need more voting power at the AAR with respect to modification of equipment
  - Car owners have limited voting rights on some committees
  - Carriers maintain majority of voting rights
  - Third parties own and control over 55% of all rail equipment



# NAFCA Proposal



- Challenge to modifications of equipment should be allowed based on unreasonable or discriminatory allocation of costs
  - Cost sharing based on efficiency or safety
    - Percentage should be assigned based on efficiency gain or safety improvement
    - If modification is safety related cost goes to car owner
    - If modification is efficiency related cost goes to carrier



# NAFCA Proposal



- Deprescription
  - Concern about current process and its failure to establish proper car hire rates
    - Current process flawed
    - Car owners have limited power in negotiating car hire rates
    - Many car hire rates today do not compensate car owners for profitable maintenance of the equipment
  - Current deprescription rules should be eliminated and new rules prescribed to establish car hire that is not subject to a bilateral agreement

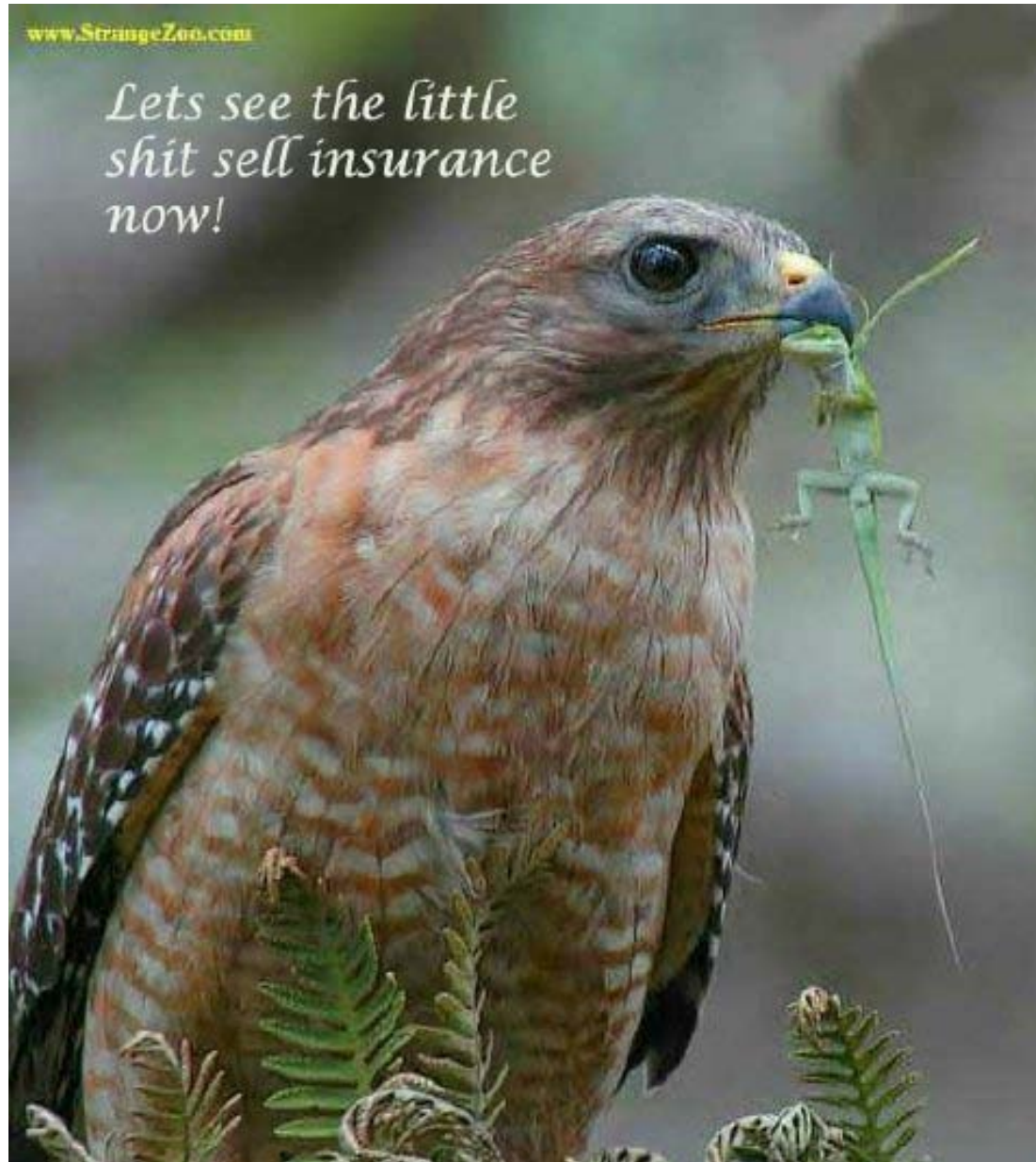


# NAFCA Future Issues



- Straight plate wheels
  - Condemnable at any time or place
- Preemption of Federal law
- Shift of liability
- Electronic brakes

You cannot relax in any business.....



It's been quite a ride.....





**NORTH AMERICA**  
**FREIGHT CAR**  
ASSOCIATION