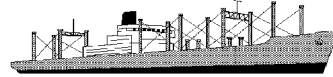




# Rollin' On



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## CARRIER LIABILITY: LIMITATION THEREOF, and ALCAN/sleeping in. PART 1

If you're a shipper and you tender freight to a motor carrier for the transportation of your cargo to a destination within the lower 48 states, your cargo will move, or should move, on a bill of lading. That bill of lading might be furnished by the carrier, which is the way it is supposed to work, in which case the carrier may have left you with a stack of preprinted bills, to be completed by your employees at the time of shipment. In other instances, the bill of lading is furnished by you, the shipper, but for now we'll assume it is a carrier form of bill of lading.

If that shipment is going to a destination in another state, in most instances the law governing that shipment will be the Carmack Amendment, which generally provides that the carrier is liable for the market value of that cargo. In that sense, it is a shipper-friendly law. However, Carmack allows a carrier to limit its liability under certain conditions. More on that later.

If the cargo is to be transported by air, Carmack does not apply. Instead, in this shipment-by-motor-carrier-prior-to-shipment-by-air situation, the shipment is governed by federal common law. Like Carmack, the carrier can limit its liability.

If the cargo is to be transported to a destination within the same state, then neither Carmack, nor any other federal law apply, and the transportation of this shipment is governed by state law.

If the shipper has an inbound shipment, it might be governed by the laws discussed above, or, if the

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shipment comes off of a ship after crossing the ocean, it may be governed by the Carriage of Goods by Sea Act (COGSA), in which case the carrier's liability may, once again, be severely limited. More on that later (suspense is building).

Meanwhile, as you wonder which law might apply, you reflect on the fact that you have tendered numerous shipments, let's say 50 to 100, to the same carrier over the past several months, always using the same form of bill of lading. You haven't read the bill of lading, which admittedly is not edge-of-your-seat stuff. Had you read it, you would have noticed that it stated that the carrier's liability may be limited, and there is a reference to both a federal law and to the carrier's website. But you're busy, the carrier has never said anything to you about the liability being limited, and you go about your what-me-worry day.

Back to Carmack, for mundane interstate shipments. A carrier can limit its liability if it gives the shipper a choice of rates. There's the rub, in figuring out what that means. For some courts, that means that the carrier has to actually converse with the shipper, tell the shipper about the various levels of liability, and get the shipper to make a decision.

The downside to this approach is that the conversation is not a lot of fun. The shipper is going to say, "mr numbskull carrier, of course I want full value and of course I don't want to pay extra for it, your competitors don't make me pay extra, what makes you so special", something along those

lines. The fact is that frequently the competition is also limiting liability, without having had the discussion with the shipper, but we'll get to that.

Other courts will look at the level of sophistication of the shipper and go from there. So if you're the carrier and you have a so-called sophisticated shipper, you're in good shape, but if you have someone the court sees as just walking around and picking his/her nose and aw shucks just doesn't know nothin', well then you the carrier are in

**You can pick your friends, and  
you can pick your nose, but  
you can't pick your friend's nose.**

a bind. Actually, the shipper may be more on the ball than that, can use carriers day in and day out, but if the court views the shipper as somewhat carrier-challenged, you the carrier still have the same problem. You will have full liability, even if you computed the freight charged based upon paying the shipper pennies on the dollar in the event of a loss or damage claim.

--- to be continued ---

### **Oversleeping while on the road: Midnight sun**

My first trip over the Alaska Canadian Highway (ALCAN) was back in the early 70's. I had accepted a summer job on a survey crew in Fairbanks, and my new employer arranged for me to drive up a brand new Bronco, with me to take delivery in Portland. There was a delay in delivery, so I got off to a late start.

After a couple days of driving, I planned to get an early the next day. But sunlight in my eyes woke me up, and I was disappointed, thinking I had overslept, until I looked at my watch. It was 2:30 a.m.

That's it for now. Until next time, keep the cargo *rollin'*!

#### **Short Bio**

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 30 years and emphasizing transportation law, business law and related litigation

#### **The Obligatory Disclaimer**

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