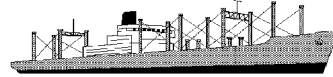




Rollin' On



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MCS-90 Endorsement, \$345 Million STB Award, and Other than Transportation Law

Motor carriers operating in interstate commerce are required to file proof of liability insurance with the Federal Motor Carrier Safety Administration. Specifically, the motor carrier's insurance carrier, not the agent, is required to file with the FMCSA a document known as an MCS-90 endorsement, which confirms that the motor carrier is insured up to the regulatory minimum of \$750,000, a number which has been on the books for several years.

The intent of the filing is to make sure that all truckers have some sort of insurance. The requirement came about as a result of, shall we say, lapses, where owner-operators did not have insurance, and they weren't covered by a company filing. We can all agree that there should be a public policy of protecting motorists, and their passengers, from the negligence of uninsured motor carriers.

However, the courts have expanded the application of that policy to situations that were not foreseen. In a recent case from the 9th Circuit Court of Appeals in San Francisco, which covers the western states, the court found liability on an endorsement where the policy holder was neither involved in the accident, nor named as a party in the lawsuit.

In that case, the motor carrier had sold its trailer to a third party which took possession of the trailer, which, naturally enough, was later involved in an accident before title had been transferred. The trailer was no longer considered a covered vehicle under the policy, nor was the purchaser insured under the policy.

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship

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Nevertheless, the court ruled that coverage would be extended to the purchaser of the trailer even though that person was not listed as an insured on the policy. Keep in mind that the motor carrier to which the policy was issued was not involved in the accident.

So be careful how you do things. Don't leave decisions to the courts.

\$345 Million Award: **Ouch! Or yeepee!**

The Surface Transportation Board, the successor in interest to the Interstate Commerce Commission, recently awarded \$345 million to a couple of captive customers for reparations and rate reductions. The STB determined that the BNSF had charged far more than was needed to earn a reasonable rate of return.

Interestingly, the customers (let's say utility) had failed to prove, in its first attempt, that the rates were unreasonable. But the rules were changed mid-stream and the STB gave the utility, which shipped eight million tons of coal each year to the BNSF, a second chance. And on that rewind, the utility rang the bell.

The STB had jurisdiction over the case since common carriage rates were charged and the utility's plant was deemed captive to the railroad.

The utility's station was very close to the source. The STB found that the BNSF had been forcing the utility to cross-subsidize other parts of BNSF's broader rail network that the utility did not use.

In its decision, the STB proudly announced that this was the single

largest reduction in rail rates ever ordered by the agency. You don't usually see that kind of language or proclamation in a decision from a court. It just isn't done.

**Words to live by, courtesy of
The Duke:
Sorry don't get it done.**

Lawyer stuff: Other than transportation law

As my esteemed readers know, I spend much of my day working on transportation matters. I know the area, and with transportation lingo such as lumpers and dollies, what's not to like about the area.

But there is life beyond transportation, and I have always practiced in other areas as well. It comes with the territory, since clients always have tangential issues that pop up from time to time. Other items that frequently cross my desk involve business matters, corporation and limited liability company issues, among others. Sometimes they involve proactive planning, while at other times they are damage control and stop-the-bleeding actions.

I also handle business and commercial litigation matters in federal and state courts, both in Oregon and elsewhere, in which case I associate with local counsel as is normally required by the local court rules.

I can also assist, without charge, in finding another attorney in a practice area outside of my practice areas.

Anyway, I thought I would pass this friendly reminder along so that I don't get too pigeon-holed with my readers. Also, as a sole practitioner, it is up to me to pass the word.

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