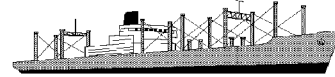




Rollin' On



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INSPECTIONS & MISDEMEANORS, INDEMNIFICATION & NEGLIGENCE, AND DETAINING DRIVERS

Every once in awhile a trucker gets the short straw and finds himself on the receiving end of a road side inspection. These unscheduled inspections are loads of fun since they can take forever and the driver is sitting there, watching his/her hours click by while the inspector goes through the motions. You might get real lucky and get two inspectors, for the price of one. Now there is value.

As an aside, in the housing industry, the various governmental entities have reduced the number of their building inspectors as the number of permits have plummeted. Those inspectors who are fortunate to still have jobs may be inspired to find problems, in the name of job security, and therefore repeat on-site visits.

But this of course is not true for carrier inspections.

At the conclusion of your unscheduled detention, the inspector might place your vehicle out of service (OOS) due to some deficiencies with the tractor or trailer. Some deficiencies can be remedied on site, while others cannot.

The inspector might also place the driver out of service, e.g. missing eyeglasses or hearing aids as required by the CDL medical card. Again, the problem might be quickly remedied on site, or not.

In any event, if an OOS notice is issued, it is very important to not operate while the OOS is still in effect. In Oregon, violation of an OOS is a Class A misdemeanor, which means up to six months in jail and a \$10,000 fine. If you are in a hurry and violate the OOS, six months will slow you

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down and let you contemplate life or your navel or whatever is on your mind. Plus you get roommates and can make new friends while also be fitted for such colorful clothing that you should be noticeable while on road crews and not subject to being hit by another truck driver who is actually still making a living in the free world.

Of some comfort, but still possibly illusory, is the fact that Oregon has a law that allows the District Attorney to treat the misdemeanor as a citation. It is comforting if the DA exercises the statutory discretion, while it is illusory if the DA passes on the opportunity. It is best not to place yourself at the mercy of governmental discretion.

Anti-indemnification; or negligence a la carte

Whenever the Oregon legislature is in session, it is usually advisable to grab the infirmed and seek shelter, since public safety in general is at risk during that dangerous time. How many times have we ever said to ourselves, boy it's nice what got done in Salem this year? The usual outcome are new laws that consume more time on the part of businesses trying to comply with the new laws.

There is a positive outcome, however, that may transpire this year, at least for motor carriers. There is a proposed anti-indemnification law which would void a provision in a motor carrier transportation contract (with some exceptions, such as for intermodal equipment such as containers and chassis) which requires the carrier to indemnify the other party

(usually the shipper) against that other party's own negligence.

One would wonder who would ever sign such a contract in the first place. The reality is that large shippers are aware of their enhanced bargaining power and will use that power to their advantage. In some instances the carrier is small in size, perhaps an owner-operator, and is generally unaware, or not knowledgeable, about these legalities. In other instances the carrier is itself large and fully knowledgeable, yet will take the gamble simply to get the business.

More than half of the states have enacted laws voiding any such provision in a motor carrier transportation contract.

If you're a shipper, it is nice if you can get away with it. The thought that you could screw up, yet make some one else responsible for your *faux pas*, well what's not to like about that. But it appears that Oregon will be aligning itself with the majority of states which do not allow that type of provision in motor carrier transportation contracts.

Detaining drivers: Waiting for another day

On the federal level, there has been some talk, and some efforts, to sanction shippers and receivers who detain drivers longer than what is considered a reasonable time. The legislation from Congress has been stalled, so there is a push to get a FMCSA regulation. This is obviously an effort made on behalf of carriers.

As it is, there is nothing that will come about in the near future, which means the drivers need to wait longer for any relief from the feds.

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

The Obligatory Disclaimer

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

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