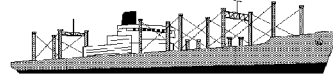
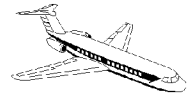




# Rollin' On <sup>®</sup>



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## **CARMACK AND FREEDOM OF CONTRACT, ANXIETY LEVELS AND MOUNTAIN CLIMBING**

Many or most people in the transportation world know that federal law governs the transportation of cargo in both interstate and intrastate commerce. The Carmack Amendment provides that a carrier's defenses to loss and damage claims are very restricted, thus imposing an onerous liability standard on carriers.

At the same time, Carmack restricts the type of damages that are recoverable by shippers in loss and damage claims. So the federal statute strikes some sort of balance.

The parties can enter into contracts pursuant to which some Carmack provisions may be waived.

### **Deadlines:**

#### **Doubling up the anxiety level.**

Here's the deal. You receive notice of a filing due date a month away. If you don't file on time, your client loses, not a pretty picture. So you mark that date on your calendar in red, circle it in red, and, just to make sure, you also calendar it for an earlier date, let's say a week in advance, so that it doesn't sneak up on you like a pilot-free drone.

All of these actions lock you in to the actual filing deadline.

Meanwhile, there is some built in stress in knowing that the job needs to be done on time. That is normal stress for the occupation; it comes with the territory.

But the deadline prompts many, probably most, in the profession to wait until the deadline is imminent before filing. Now, in addition to the normal stress, there is now what I will refer to as voluntary stress. This

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is stress and anxiety that can be avoided.

Of course, this layering up of additional stress is not confined to the legal profession. This practice is evident throughout the workplace, and on the home front as well.

I'm sure that I'm guilty of this practice at home. But in the office, I avoid it at all costs, partly due to good old fashioned paranoia. There are several different scenarios that can interfere with best laid plans, e.g. car issues, other emergency arises, etc. If all of the extra time has been burned up, you are now operating without a net. And life can be difficult enough even with a safety net.

#### **Life on the edge, or at the top of a mountain.**

I have a wonderful 20 year old daughter who must believe her father is also 20 years old. A couple of years ago I invited her to join me on a climb up South Sister, about 10,300 feet in elevation. All went well on that 8 1/2 hour climb.

Last year she wanted to climb the Middle Sister, roughly the same height but not readily accessible. That was an 11 1/2 hour day of virtual nonstop walking and climbing. Obviously, tons of fun.

Then came this year when we decided to try Mt. Adams, at 12,300 approximately 1,000 feet higher than Mt. Hood. This would be a different experience since it would be largely a climb up snow, requiring crampons, ice picks and

disregard of common sense – who would want to do such a thing?

Our original plan was to go only to an area known as the Lunch Counter at 9,300 feet. But on the way we met up with a solo climber, who had done the climb five previous times, and we all went past this intermediate goal and up the mountain. We reached the "false summit" at around 11,500 feet, at which point I was dead but hey, above Mt. Hood. My daughter and our new friend got to the top.

But that wasn't the end. We had to get down, which is done by glissading, or sliding, down. Do the math – we slide from 11,500 feet to 9,300 feet, a 2,200 vertical drop over a couple of miles or so, using our ice picks as brakes. It was scary, but my daughter took it in stride, videotaping the event on her phone on the way down.



Anyway, I did not see anyone else in my age group up there. (My sister says that my wife, who stayed home, was the smartest among us.)

We started the climb with flashlights at 4:45 a.m. and finished at 7:15 p.m., a mere 14 1/2 hours later with very few breaks. I can only wonder about next year.

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