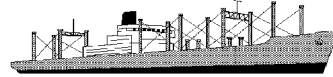




Rollin' On [®]



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COMPETING BILLS OF LADING, BROKERS AND CARMACK, IMPROPER LOADING, AND KIDS/UGLY CARS/BYGONES

It's time to take a look at some recent court cases.

Competing bills of lading, limitation of liability, and, just for fun, a contract thrown in.

Fact scenario: Carrier A accepts tender of a load from shipper, then Carrier A subcontracts the load to Carrier B which, naturally, has a problem, to wit, the load was stolen. (I would say stolen by a moron, but the fact is that these morons frequently get away with their misdeeds.)

Meanwhile, Carrier A had issued a bill of lading to the shipper which contained a limitation of liability. Simultaneously, Carrier A also had Carrier B sign a contract specifying that Carrier B had full liability for any cargo loss. So Carrier A had it both ways.

The shipper's insurance carrier paid the shipper for the full loss and went after Carrier B, which tried to rely upon Carrier A's bill of lading's limitation of liability.

The court said no way Jose. Carrier B got tagged for the full loss. And why not – it had signed a contract stating as much.

Broker, not subject to Carmack, but still held to Carmack.

So the shipper hires a broker to get a load moved, and the broker hires a honest-to-goodness legit carrier. The load gets stolen (pretty common occurrence these days) and the broker makes nice with the shipper/customer by paying the shipper and taking back an

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assignment of rights against the carrier. So far pretty vanilla stuff.

The broker goes to court and makes claims beyond Carmack, since brokers aren't subject to Carmack. All true. Good point. But the court said Carmack applied in the case. The court reasoned that the broker's rights came by way of the shipper. The court distinguished cases where there was a separate contractual obligation between the broker and carrier which went beyond Carmack.

Improper loading: Who is responsible?

Fact scenario: While still on the shipper's premises, the truck driver gets hurt due to the supposed negligence of the shipper's forklift operator in loading pipe on to the flatbed.

A state court recently had that situation before it. The state court relied upon federal court case law from several decades ago, where the federal court let the shipper off the hook, stating that the shipper didn't have a duty regarding loading and securing the freight. The federal court had stated that the carrier had a nondelegable duty to load and secure the freight.

On appeal, the state appellate court said not so fast. The court said that the prior determination was made when the court used a prior standard of contributory negligence, which made the carrier liable only if the driver did not contribute to his own injury. Fast forward to today's

world where the court reviewed the actions based upon comparative negligence, which allocates fault proportionately, instead of an all or nothing approach. The court reversed the trial court decision and sent it back to the trial court, to figure out what duty the shipper may owe the carrier when the shipper loads the freight and, further, to determine the effect of the driver's failure to follow the securement regulations. Trial court's gotta love that directive.

New generation kids, ugly cars, and bygone car generations.

You may have seen where today's young people have much less interest in cars than did prior generations. Well duh, there are reasons for that.

For one, many of today's vehicles look the same. Boring, uninspired, sometimes downright ugly (and people get paid good money to design those eyesores). Contrast that with vehicles from prior generations, such as from the 50s and later years, with diverse body styles.

Also, the colors are often times downright horrible. I saw a vehicle where a kid lost her lunch while on the freeway. Got smeared all over the side of the vehicle. No worries – it all blended with the vehicle color.

Yes, young kids today have their cell phones and I-pads, but they don't get that top down/four on the floor experience with a real shiny car. Hey, America has always had a love affair with its cars. That is in jeopardy. \$4 or \$5 gas doesn't help.

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

Short Bio

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

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