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BROKERS NOT BEING CARRIERS, WIVES' WEEKENDS, AND VOTERS AND THEIR PRESIDENTS

Brokers are involved in the transportation of a lot of cargo. When claims arise, shippers frequently file claims against their brokers instead of against carriers since they hired the brokers to get their freight moved, presumably without getting damaged.

Although brokers may mean well and want to help their shippers, the fact is that the pertinent law (Carmack Amendment) does not afford brokers the same protections or advantages that it affords the carriers.

A recent case illustrates how a well-meaning broker can end up on the short end of the stick.

The fact scenario is all too common: A shipper contacts a broker to get a load moved from point A to point B. The broker contacts a carrier and the wheels are literally set in motion. And of course during transport there is damage to the cargo.

The shipper makes a claim against the broker. There is a twist here in that the shipper and the broker have a contract which imposes liability on the broker for cargo damage. The broker sends a letter to the carrier stating that if the broker is required to pay the shipper for the damage, the broker would seek to recover the damage from the carrier.

The shipper never makes a claim against the carrier.

More than two years after the accident, the shipper sues the broker, based upon their agreement. The broker brings the carrier into the lawsuit. The court awards the

shipper damages against the broker. However, the court does not allow the broker to pass the loss through to the carrier, since neither the shipper nor the broker ever filed a claim against the carrier.

The court says that the precautionary letter previously sent by the broker to the carrier was not a claim, and even if it was considered to be a claim, more than two years had passed since the carrier had responded stating the claim will be denied, so the broker loses either way.

Stated another way, the court does not allow an extension of the normal 9 month/2 year time constraints within which to file claims and lawsuits based upon an agreement between the shipper and the broker, a contract in which the carrier had no involvement.

There are some lessons to be learned from this outcome.

It is apparent that the broker should have made sure that the shipper filed a claim against the carrier. That would not have precluded the shipper from going after the broker on their contract. And the claim needs to be made directly against the carrier. Not against the carrier's insurance carrier, but against the carrier itself.

Another lesson concerns the matter of indemnity. Normally, a carrier which has been sued by a shipper can make an indemnity claim against the carrier that actually caused the damage. Only carriers can make indemnity claims against other carriers under Carmack. That option is not available to brokers. It may be possible to get around this

hurdle by getting a shipper to assign its claim to the broker, although there could problems with that approach.

At the same time, brokers are not normally liable for loss and damage claims. The broker wants the shipper to have a remedy, which would be against the carrier. But where the shipper only files against the broker, both the shipper and the carrier may lose out against carrier.

It is imperative that the broker and shipper, while perhaps agreeing to disagree, make sure that the carrier is kept in the loop when it comes to an invite to the party, i.e. making claims and filing lawsuits. Otherwise, the broker may be left holding the bag, and the carrier gets a free pass based upon procedure, not facts.

Wives' Weekend Gone Wild: What Is a Husband to Do?

An elderly friend is once again getting near the annual out-of-town weekend where his wife and other married women friends gather together and, as he puts it, talk about who married the worst husband. For his part, he grabs a bottle of his favorite scotch and hunders down in a quite spot.

Election: Gullible Populace

Whew, it's nice to get the debates behind us. There was a clear winner of the third debate: Israel.

We, the U.S. population, are a pretty gullible bunch and will generally believe what we want to hear. We are left to fill in the voids left by the candidates. And then, as the saying goes, we get the president we deserve.

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

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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 litigation.