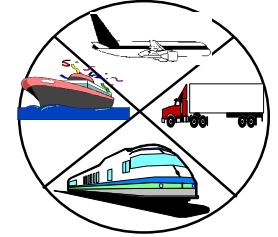


# Rollin' On™ . . .



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## AIR FREIGHT: IS IT REALLY?

**A**ir freight is the method by which cargo is moved via air. At least that would be the common sense expectation. This would be especially so if you are the shipper that pays a premium to have your cargo delivered on time, frequently within a short time frame. By utilizing air instead of ground movement, whether by motor carrier, rail or ship, you theoretically reduce hazards such as closed or clogged highways and rail lines or perils of the sea.

As many of you know, the real world does not always work that way. Every day, tons of "air freight" simply does not ever get on a plane. Instead, it moves on the surface, usually via motor carriage, from origin to destination. Sometimes the shipper knows from the get-go that the cargo will not develop wings, while at other times the shipper doesn't have a clue. As long as the shipment arrives on time and in good condition, there is no problem. No harm, no foul.

From a regulatory point of view, there is an explainable, though not necessarily understandable, basis for this practice. In the past, motor carriers have been required to obtain ICC (now DOT) operating authority before the carrier was allowed to operate in interstate commerce. To obtain the authority the carrier has been required, among other things, to show proof of PIPD insurance (and in some instances cargo insurance) in the appropriate amount. Motor common carriers were also required to file tar-

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iffs with the ICC. However, quite some time ago Congress also exempted certain motor carriage from ICC jurisdiction. One of the exemptions, which Congress preserved in the recently enacted ICC Termination Act of 1995, is the transportation of property by motor vehicle in lieu of transportation by aircraft because of adverse weather conditions or mechanical failure of the aircraft or other causes due to circumstances beyond the control of the carrier or shipper.

Another exemption that was carried over is transportation by motor vehicle as part of a continuous movement which, prior or subsequent to, has been or will be transported by an air carrier (including a foreign carrier in certain circumstances).

So prior to the Trucking Industry Regulatory Reform Act of 1994 (and until the ICC Termination Act of 1995 for some carriers), motor common carriers were required to maintain proof of insurance and tariffs to transport cargo tendered by the shipper for surface transportation, whereas the same motor common carriers could transport the same cargo for the same shipper with the same equipment from the same origin to the same destination free of ICC regulation if the shipper requested air freight service. (Any interstate vs. intrastate disputes were later generally rendered moot by Congress's elimination of intrastate economic regulation.) The supposed air freight carrier need not show proof of insurance, yet could charge more for an expedited

service while still operating via surface transportation, provided that the carrier satisfied the time restrictions for the shipment.

As of today the situation has not changed much. While tariffs are no longer required for DOT-regulated transportation, operating authority and proof of insurance are still required. But this is not true if you are shipping via air freight, even though your cargo may end up in the same equipment that would otherwise require these legal niceties.

## NEW LEGISLATION SEMINAR *Including Bills of Lading* May 29 , 8:30 a.m. - 5:00 p.m.

As mentioned in last month's issue, the Transportation Claims and Prevention Council, Inc. (TCPC), of Huntington, New York, is holding a series of videotape seminars across the country on the ICC Termination Act of 1995. The seminar will address the new transportation laws, and will also include a discussion regarding bills of lading. The video-tape is of seminars conducted by its executive director, Bill Augello. I will be hosting the Portland seminar. Please call either TCPC at (516) 549-8984 or me for more information. Incidentally, I have been invited to speak again at TCPC's Annual Conference, this year in Atlanta, April 21-24, regarding transportation contracts and bills of lading.

That's all for now. To shippers, carriers, agents and other third parties, keep the cargo rollin'!!

### The Obligatory Disclaimer

This newsletter is distributed to shippers, carriers and third party intermediaries. It is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

### Short Bio

Admitted to the bars of the states of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 15 years and emphasizing transportation law, business law and related litigation.