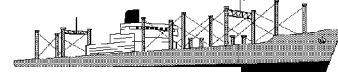




Rollin' On



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CARMACK & ATTY FEES; *Rollin' On Hits Cyberland*

Carmack claims can be peculiar. For the uninitiated, a Carmack claim is, generally speaking, a claim by a shipper against a carrier for cargo loss or damage. All the shipper needs to do is to prove delivery in good condition at origin, delivery in damaged condition at destination, and the amount of the damage. The carrier then has the burden of establishing one of five defenses, to wit Act of God, act of the public enemy, act of public authority, inherent vice, or act or default of the shipper, as well as the absence of negligence on the part of the carrier. Some call this strict liability of the carrier. Technically, that's not true, but the analogy or thought is close.

When there's more than one carrier involved, e.g. an interline shipment, things can get interesting. The shipper has the right to sue the delivering carrier, even if the carrier is pure as the driven snow (a difficult concept during August). The delivering carrier then has the right to seek indemnity, or reimbursement, from the origin or connecting carrier. This right to indemnity includes attorneys fees, which means the carrier gets its attorneys fees but the shipper does not.

I'm involved in a claim where the two part shipment was transported via three carriers, with only one origin carrier. We sued all three carriers although we were not required to do so, but which made sense as it appeared the origin carrier caused the damage. Now the other two carriers are making



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claims against the first carrier, and those claims can include attorneys fees. So if you're the origin carrier and you have to pay the attorneys fees not only for yourself but for the other two carriers as well, you should act quickly to put the whole thing behind you.

In this regard the shipper does need to delivery in good condition at origin, which is not always easy. For example, if the pick up occurred thousands of miles distant, do you have a witness who has personal knowledge of the condition of the cargo? Is that witness available to testify if necessary? How do you get the testimony in? If by deposition, who's going to do it? If by telephone, will the person seem credible and/or will it be allowed.? If in person, who's going to pay and is it worth it?

Still, if you're the shipper and you have an adequate response to those questions, the origin carrier in this example should have a large incentive to settle the case, as the idea of paying for three attorneys, let alone one, is not very appealing.

Rollin' On Website: www.rollin-on.com

The moment has arrived. Finally. I have to admit that I resisted establishing my own website. After all, you can't just create a website and then forget about. You need to keep it current. Also, there has been a huge proliferation of websites, and why did mankind need one more? Finally, I like what I do, which includes sending out **Rollin' On**, but

the idea of having it exposed for the masses, and for the entire legal community, was not very appealing.

Still, it bothered me not to have a website. I had applied for my **Rollin' On** trademark in 1995, and domain name in 1996, which in Internet terms was an eternity ago, and I always imagined that I would be at least current in both my thoughts and actions. So I decided to take the plunge. I addressed the security concerns by establishing a password system. Now, this is by no means fool proof, but it should stop every Tom, Dick and Harry (where are the women?) from looking at what I provide to the transportation community.

Your user name: _____.

Your password: _____.

Please keep these handy.

If you forget them or lose them, just give me a call or drop me a note.

If I have to explain the relevance of my password to you, that dates both you and me. I tried to keep it simple.

I also wanted to include some fun links, like Harley Davidson (no, no relation, just a trendy brandname) or Victoria's Secret, but the wife said no, to keep it on the up-and-up since there will presumably be newcomers to the site. With these pearls of wisdom, of which she has no limits, I pulled the links. So my apologies when you visit the site and have only my mug to look at, which is why I wanted to give the viewer some relief.

That's all for now. To shippers, carriers, agents and other third parties, 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 20 years and emphasizing transportation law, business law and related