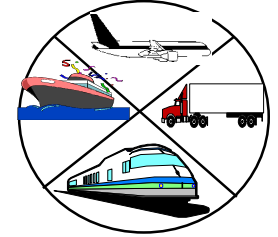


Rollin' On™ . . .



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CONSIGNEE CONSTRAINTS?

It is common knowledge within the transportation industry that a claim for loss or damage to an interstate shipment must be filed against a motor common carrier within nine months from the date of delivery (or when delivery should have occurred), and that a lawsuit must be brought within two years. That longstanding rule has been in the federal statute for "longer than doeth memory of man runneth to the contrary." Freight claims are filed by either the shipper or consignee. Therefore, this nine month/two year maxim must of course apply to both shippers and consignees. But if that were the case, I could stop now and fill the rest of the space with material from Shakespeare, Sports Illustrated or Star Wars. Sorry, but recess time must be postponed, pending the following bulletin.

The fly in the ointment is none other than the Oregon Supreme Court, that august collection of distinguished persons (former lawyers they are, so do we have here an oxymoron?). In a 1978 decision the Court held that consignees are *not* bound by a common carrier's bill of lading, and thus are not bound by the nine month/two year time limitations. In that case, *Lord Electric v. Pacific Intermountain Express Co.* (aka P.I.E.), that illustrious carrier of yesteryear whose bankruptcy trustee dunned over 30,000 shippers [including nuns] for undercharges), Lord Electric purchased ducts and

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raceways from a company located in Pennsylvania. The freight was shipped via P.I.E., freight prepaid, to Lord Electric in Oregon, and arrived in a damaged condition. Lord Electric filed a claim with P.I.E. within nine months but filed a lawsuit more than two years after denial of the claim. P.I.E., having either astute counsel and/or a knowledgeable shipping department, urged the court to dismiss the case, due to noncompliance with federal law, known as the Carmack Amendment. The trial court rejected P.I.E.'s argument and ruled for the consignee.

On appeal the Oregon Supreme Court agreed and affirmed the ruling of the trial court. The Court stated that the consignee did not sign or receive a copy of the bill of lading and did not know its terms. (The Court stated that the shipper used the "recognized" bill of lading, presumably the form published by the NMFTA). Remarkably, the Court explained that Congress assumed exclusive authority over interstate commerce, and invested the Interstate Commerce Commission with power to control rates, rules and regulations affecting the carriage of property in trade from state to state. However, the Court then stated that the controversy was not between the shipper and the carrier, and therefore these regs, etc. did not apply. The final result was that the Oregon Supreme Court applied the law of Oregon on an *interstate* shipment. And since that decision has not been overruled or distinguished to death, it is still the law in Oregon today.

The decision would be more understandable if the shipment in issue would have been an *intrastate* shipment. The decision has been criticized over the years by various authors and writers versed in transportation law. One writer has stated that "the decision should be considered an aberration". Another writer has cited this decision in stating that a common misconception is that if a certain ruling can be found in a court decision, that ruling must be the law everywhere. Suffice it to say that this decision has received little or no support from other courts.

On the Lighter Side. . .

More quotes (first mentioned in the April issue of Rollin' On) taken from insurance forms, where the claimants attempted to be brief in their description of their accidents:

- *An invisible car came out of nowhere, struck my car and vanished.
- *I thought my window was down but I found out it was up when I put my head through it.
- *I pulled away from the side of the road, glanced at my mother-in-law and headed over the embankment.
- *I collided with a stationary truck coming the other way.
- *My car was illegally parked as I backed into other vehicle.

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.

My 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.