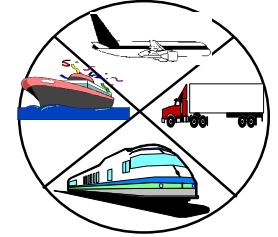


Rollin' On® . . .



A Facsimile Newsletter for the Transportation Industry

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LIEN ON ME (er, . . . I mean you)

It's a nice summer day. You're sitting in your office in the shipping department, latte in hand, feeling pretty good. The head cheese left you in charge of a skeleton crew while everybody else, the smart ones you wonder, go off on their summer vacations. From your new catbird seat, temporary as it is, all is running smoothly, everything in control. After all, you took care of that inventory crisis, the one that germinated on your boss's watch, without so much as a hiccup. You now know for sure that your boss is overpaid and *moi* is obviously underpaid. The imbalance is deplorable, something needs to be done about that after summer winds down.

The phone rings, you instruct someone else to answer it; that prerogative comes with the new territory. Your underling answers the phone, issues a grunt that is supposed to pass for a hello, a period of silence passes that is first annoying and then becomes uncomfortable, and finally an exclamation exudes from your subordinate that would be unacceptable at the dinner table or perhaps even in the locker room. The short version is that you have a load of time-sensitive sale items due in later that day, but the phone call was from the truckdriver who said that he had not been paid by the broker for the last two loads hauled to your facility and that he was holding the current load for ransom for both the current and prior loads.

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.

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The question immediately arises: Can he do that? The answer is crystal clear: Yes and no (only a lawyer would like an answer like that). A carrier has a lien for freight charges for the load that he is currently transporting. This lien evolves from the common law. There has also been some federal statutory support for that lien, although the recent codification of the federal transportation laws, prompted in large part by chipping away at the various regulations, may have removed some of that statutory basis. The Uniform Bill of Lading has also furnished some support for asserting lien rights, although that can be problematical. Finally, state laws, such as here in Oregon, often provide carriers with lien rights.

The applicability of these laws will vary, depending on the circumstances. Federal law applies to interstate shipments and other shipments in foreign commerce. State law applies to intrastate commerce. The bill of lading considerations can sometimes blur the line which is not all that clear to begin with.

The lien is not limited to the freight charges, but also applies to other costs and expenses incurred by the carrier to preserve and protect the cargo, such as storage charges, customs duties, and food for livestock. Payment to prior carriers on interline shipments can also qualify.

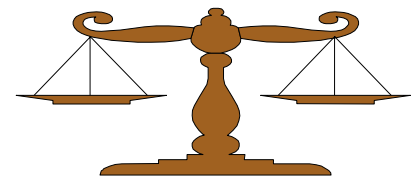
The lien attaches only to the current load; the lien does not reach back to prior loads. (I have heard that California law may allow the lien to

reach back to prior loads in some circumstances, but it seems that law is a little loopy-goopy.) On occasion a trucker will improperly try to hold the load for payment for prior loads, probably under the old saying that "you don't get what you don't ask for". There are other limitations, such as when there is stolen property involved. I suspect that some other considerations may transcend the lien rights in those instances.

So getting back to the present. Since your load is in a barn somewhere, you call your broker (or carrier if there is a problem with an owner/operator. I do not mean to single out brokers. They just provide a good example. Plus they are an easy target.) with the intention of nuking his place of business if he does not immediately free up the load. However, you learn that the broker (or carrier) just went Chapter 7 or 11, or simply closed its doors. So you write the check and take care of the problem. That's what you are paid to do.

And you gradually feel that promise of a pay raise slowly slipping through your hands. After all, the problem occurred on your watch.

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



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.