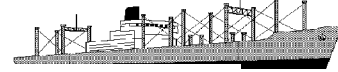




Rollin' On



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SOMETHING ABOUT DEFENSES: MUST BE USED TO WORK

There is one thing about legal defenses that is true in other aspects of life as well. And that is, if you don't use them, they don't do you any good.

I have a client (new, so that we know who we're talking about later on) who got involved in a dispute about a damage claim. There was an issue regarding loading and the whole deal about SL & C (shipper load and count for the uninitiated) which by itself was an interesting issue. But in this business there are interesting things and then there are the things that matter which, remarkably enough, are what clients want their lawyers to focus on (those darn clients, sometimes they just won't let you have any fun at their expense).

Anyhow, this particular load was hauled on an intermodal chassis for subsequent movement by rail and then on to the ship. As fate would have it, the damage occurred while under the control of the motor carrier, inasmuch as the bands broke loose and off went the load. So now you're the motor carrier and you say, gee wiz, it never did that before (just like when I was growing up and always had to hear my father say, when something went haywire and us kids would say it never did that before, he'd respond, "that's what the man said when his horse died, it never did that before").

So the client asks himself, whose responsibility is it? I mean, he doesn't get paid much to pull the chassis, he can't afford the loss. Still, being blessed with the privilege of paying handsome insurance premi-

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ums each year, he contacts his insurance carrier about the claim. The insurance carrier responds by saying that there is just this teeny weeny little problem about having a list of policy exclusions longer than the history of a buddy's former girlfriend, and sorry, Charlie, no coverage. (Like Mark Twain said about banks, they'll only lend you money if you show them that you don't need it.)

Sparing the reader some details, a long time passes and finally a legal claim is made by the shipper. The client goes off to a local attorney and says here's my problem, what should I do? The attorney proceeds to prepare a response that would probably be adequate in any other, nontransportation setting. Only thing is, this is a transportation setting. The attorney's focus is on the SL & C issue (remember I told you it was interesting) and that issue is fully though painfully developed since he didn't know anything about SL & C.

Again, there was this little tiny detail: the statute of limitations had passed, as the shipment was governed by COGSA (Carriage of Goods by Sea Act, which just kind of rolls off your tongue). Yes, even though there was motor and rail and water activity, COGSA can apply. But the thing about defenses such as the statute of limitations is that they don't do you any good if not used, which occurred here. It's not like, oh well, I'll use it some other time, maybe I'll need it more at that time. No, it will be just as good later, probably even

better since it would have been dusted off and actually gets better with usage. The lawyer didn't assert the defense in time and now we'll try to undo the damage. (I have oversimplified, and there are always ifs, ands or buts (lots of buts in the legal world) but you get the picture.)

What goes around . . .

Jimmy Hoffa promised quite some time ago that he was going to clean up the Teamsters. The thought was, yeah sure, let's all hold our breath. Well, as it turns out, he has hired a former federal prosecutor to assist him. This guy helped take down the mob family that has been linked to the disappearance of Hoffa's father. So give credit where credit is due and let's hope he succeeds. Of course, Hoffa is probably also motivated by the fact that Hoffa also wants to get the federal government, which has been overseeing the union since 1988, off his back.

Champagne Alert: False Alarm

Although my wife and I don't drink a lot of champagne, we do indulge ourselves once in a while. So I was at first concerned when I heard there would be a shortage of the stuff by the end of the year, due to all the hoopla regarding the change of the millennium. But my fears were allayed when I further learned that there would be a shortage of only the better bottles, and that there should be plenty of the less costly (i.e. cheap) variety, meaning there should be no impact on us. That's a load off my mind.

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 litigation.