



# Rollin' On <sup>®</sup>



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## JURORS & LOGBOOKS: But No French Buffets

I recently settled a case involving a motor carrier, owner-operator and the irksome topic of noncompetition agreements. I represented the owner-operator who I felt was getting a bum deal since the carrier had, in my opinion, previously breached the agreement, thus "excusing" my client from obligations otherwise imposed by the contract. It became apparent to me early on that I was not dealing with the typical driver when the driver described the comments of the owner of the carrier as "disingenuous". Now, I don't mean to disparage truckdrivers, but I believe it is a fair statement that many drivers' vocabulary is not this extensive. In fact, the carrier was attempting to use the driver's smarts against him, stating that the driver (again, the owner-operator and therefore a self-employed businessman) fully understood all of the nuances of the noncompetition agreement.

Well, the date for the two day jury trial finally arrived and we set off to do justice. One of the first things that happens is that the lawyers are summoned into the court's chambers and asked if there is any possibility that the case could settle. At that point in the litigation, as the good lawyer that I am, I normally say that, yes, it could if the other side would just be reasonable. Of course it's always the other side's fault. (Mirrors are conspicuously absent from judge's chambers.) Some judges dispense with this colloquy and plunge into the case, lest they miss their Tee (or other) time.

The next thing is that the lawyers and the clients, who have been sitting

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in the hallway corridors wondering if the judges and lawyers are sequestered because they don't want to share the donuts, parade into the courtroom. (Actually, it's a very stressful time for people since most don't go through this ordeal very often.) Soon thereafter, a dozen potential jurors are brought into the courtroom, along with another dozen or two since many of them will be excused from jury duty for various reasons. Some are doozies, and if you ever want off of a criminal trial, just say that you think the defendant is guilty and you'll be gone in a heartbeat (I am **not** suggesting you say that).

At this point we start what's called voir dire, which is not a french buffet but is a questioning of the jurors. This is a real treat for the jurors. First they get summoned to go to the courthouse for something like \$10 or so a day, then they're asked questions by lawyers they don't know in front of people they don't know, at least with any luck they won't know anyone. In our case the carrier's attorney asked them about any experiences they had with noncompetition agreements, trucking companies and truckdrivers. The theory is to find out about any prejudices, bad experiences, etc. but the objective is also to put a good slant on your case before you even start it.

After the carrier's attorney was finished it was my turn to converse with the jurors, who by now are wondering who's on trial. I asked them about watching trucks drive down the road, familiarity with driver's logs and hours of service. I wanted to plant the idea that this carrier expected performance

that could only be achieved by violating those standards, thus threatening the driver's livelihood and perhaps having unsafe operations.

We then broke for a late lunch which must have given the carrier indigestion as they returned to the courthouse with a generous offer, one that we earlier said would work.

### Fairy Tales (As told at the TAP Installation Dinner)

Traditional intro: "Once upon a time"

Ending as told by a truckdriver:

"And that ain't no b\_\_s\_\_."

### Dial M for Murder

The Oregon Court of Appeals decided a case this week which involved a wife who, as the case summary stated, "shook, slapped, and scratched her husband with the intention of making him speak to her". The court affirmed her conviction for harassment. However, the court reversed the conviction for assault in the fourth degree, since the scratches and scrapes were unnoticed by the husband, were not accompanied by pain, and did not result "in the reduction of one's ability to use the body or bodily organ for any period of time".

Now I know lots of women who have a firm desire to smack their husbands to get them to listen to them, but I don't know many who feel it's worth the effort, and I certainly don't know any who are willing to go to jail over the issue.

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