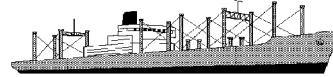




# Rollin' On <sup>®</sup>



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## BILLS OF LADING, Editing, and Punishment

### *Bills of Lading:*

#### Still going after all these years.

More than 10 years has passed since Congress eliminated the filing of tariffs by common carriers with the Interstate Commerce Commission. This change in the law allowed shippers to avoid being bound by onerous provisions found in the bills of lading. But before we get into that, let's take a look behind us, down the road that brought us to where we are today.

I meet people from time to time who were not in the transportation business 10 years ago and who have no knowledge about the former ICC, tariffs, common carriage and the filed rate doctrine. This is not a criticism, just a fact. They have never heard of undercharge claims and so they have no idea how it feels to pay a carrier the negotiated rate, only to have a bankruptcy trustee in a state 2,000 or 3,000 miles away send you a letter demanding payment of the difference between the negotiated rate and the filed tariff rate. And then to find out that many bankruptcy courts upheld those claims.

One of the legal documents that existed those many years ago, and still exists today, is the bill of lading. The typical bill of lading started off with the words "Received, subject to the classifications and lawfully filed tariffs in effect . . ." It further provided that "Shipper hereby certifies that he is familiar with all the terms of the bill of lading terms and conditions . . ." etc. This language was a codification, a paraphrasing of sorts, of the fact that courts frequently held that shippers had constructive notice of what was on

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file with the ICC in Washington, D.C. Of course many shippers had no such knowledge, but the common carriers were required to file them and the ICC was technically supposed to approve them.

So common was this practice that many shippers had their own preprinted bill of lading, complete with this magic language. Technically, the carrier was obligated, and for that matter is still obligated, to issue a bill of lading, but anyone could provide the form of bill of lading.

When Congress passed the Trucking Industry Regulatory Reform Act in 1994, much of this practice became obsolete. Instead of filing with the ICC, carriers are now required to keep their tariffs on file in their office and make them available upon request. Shippers have options, such as entering into contracts with their carriers. Or shippers may use their own form of bill of lading, although that may not necessarily be the controlling document.

However, many carriers continue to use some variation of the old form of bill lading. Some shippers still supply their own form of bill of lading with the preprinted language quoted earlier. In many respects that is like a condemned person furnishing the rope for his/her own hanging. After all, that form provides that the shipper is both familiar with, and fully accepts, the terms and conditions of the bill of lading. Thus, in a deregulated world that provides options to shippers, many shippers continue to bind themselves through their own acts.

This practice is not confined to small shippers. I have seen large corporations that continue to use this old language on their shipper-furnished bill of ladings. Congress may have changed the law, but it didn't change the transportation departments.

Incidentally, the uniform bill of lading is found in the National Motor Freight Classification. Many shippers have never heard of the NMFC. This uniform bill of lading is allowed to be used only by members of the NMFTA.

Anyway, after more than 10 years following the change in the law, the transportation departments of the various shippers, both large and small, should get up to speed with what the law now provides. Otherwise, they could face problems that they have brought upon themselves.

### *Editing:*

#### Less is best.

I recently put the finishing touches on a brief that I filed with the Oregon Supreme Court. Oral argument before the court is coming up next month.

Less is best. You need to convey your thoughts in the fewest possible words. You don't want to be on the receiving end of an Abraham Lincoln quote:

"He can compress the most words into the smallest idea of any man I ever met."

### *Cruel and unusual:*

#### Having it both ways.

The United States Supreme Court has previously ruled that it is unconstitutional to impose capital punishment upon mentally retarded persons.

However, it is still legal to elect them.

That's it for now. Until next time, 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 25 years and emphasizing transportation law, business law and related litigation.