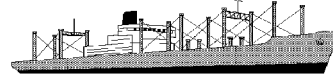




Rollin' On



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CLAIMS, CONTRACTS, PERFECT COURTS AND RIBS

Claims:

Nine months to file, right?

It depends. The federal statute states that a carrier cannot establish a period of time that is less than nine months to file a claim. So if the carrier has nothing in writing, the filing period may actually be longer than nine months. Also, the same statute states that the minimum time provision for filing of a lawsuit cannot be less than two years from denial of the claim. Again, if there is no such provision, the period of time is greater than two years. In this case, there is no general federal statute of limitation, so the state statute would be "borrowed". In Oregon the statute of limitations for contracts is six years, so carriers really extend their pain period if they don't do their paperwork right. And shippers benefit.

Oregon's statute for property loss is two years, so conceivably the period could be much shorter. But since the bill of lading is considered a contract, the longer six year period should apply. Lawyers like to rely upon as many grounds as possible, so if they wait they will lose the "tort" claim.

Contracts:

Leaving nothing to chance.

Well, nothing may not be the right word, but the point is that both shippers and carriers can help themselves out by having written agreements. The federal statute allows the various parties to waive most statutory provisions, other than those pertaining to insurance, registration and safety fitness.

Carriers typically enter into agreements with brokers and other carriers, such as for interline

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shipments. Less common, though still useful, are contracts between carriers and their customers. Some LTL carriers use pricing agreements or similar type of agreements, which would usually involve incorporating their tariffs.

Among other things, the contract can provide that in the event of a dispute, the losing party has to pay attorneys fees to the other side. That frequently focuses attention pretty quickly.

Well begun is half done.
Get it in writing.

Infallible courts always:
As if.

An appellate court recently had a case before it, where both the origin and destination of the shipment were within one state. The court soundly analyzed the case and came to the right decision. However, it made a remark in passing that since both the origin and destination were located within the same state, then the "Carmack Amendment", the federal statute that pertains to transportation law, did not apply. As it turned out, an analysis pursuant to the Carmack Amendment would not have changed the outcome, so the conclusion was harmless.

This case serves as an example of a couple different things. First, judges rely upon the attorneys to provide them with the law. In this case it appears that neither attorney knew that federal law applied, even on intrastate shipments. The other lesson is that, big surprise here, judges make mistakes. A few years ago, the U.S.

Supreme Court accepted appeals on 38 cases from the 9th Circuit Court of Appeals, which covers the western states. The Supremes reversed the court in 37 of them. This statistic is somewhat misleading, in that the Supremes frequently accept appeals where they are inclined to reverse. Still, the obvious point is that there are mistakes in the judicial system.

And also of course, the U.S. Supreme Court is always, always right and never makes mistakes. Many of its decisions are 5-4. So the middle has been very important. The middle has been frequently occupied by Sandra Day O'Connor, who has just been replaced by someone about whom, over time, we will find out where he is generally located.

Cracked ribs:

Now we're having fun.

The worst part is that I can't even claim that they were caused by some glamorous injury. We went skiing at Hoodoo, waiting until after lunch since it was -7 degrees at Black Butte that am. The last run of the day, there we are unloading at the top, the wife and I, there's one more guy on the chair, we're all talking, and then off we go except we get tangled up. If you've been through this before, you know that everything is OK as long as you don't cough, sneeze, breath deeply, laugh, bend over for any reason, blow your nose, want to sleep or care about pain. Other than that, there's no problem. You need to remember not to have your back turned to anyone, especially in groups, to avoid "how ya doing" with the slap on the back.

There's no cure or treatment. All in all, just a whole bunch of fun.

That's it for now. Until next time, keep the cargo *rollin-on!*

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.

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.