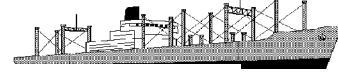




# Rollin' On



A Facsimile Newsletter for the Transportation Industry

Volume III, Issue 2

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February 1997

## INTERMODAL LAWS:

### *Coming to a location near you*

**I** get a little superstitious discussing this topic. I was asked to discuss this topic in May 1995 at a conference in San Diego. I reviewed the proposed regulations which had been scheduled to be implemented in June 1995. About the time that I was getting on the plane the DOT announced that there would be a delay in implementation. As it turned out, there were several delays and the regs never got out of the starting gate.

After much debate and effort on the part of shippers and carriers, last fall Congress amended the Intermodal Safe Container Act of 1992, with an effective date of April 9, 1997. There should be no delays in implementing the new law, since it is a statute passed by Congress and signed by the President, with no regs to follow from FHWA or anywhere else. So ready or not, the shipping community will be required to comply with a new law.

The gist of the law requires shippers to provide a written certification for cargo weighing more than 29,000 pounds. Congress reduced the prior seven part requirement to the following five:

1. The actual gross cargo weight.
2. A reasonable description of the contents of the container or trailer.
3. The identity of the certifying party.
4. The container or trailer number.
5. The date of certification or transfer of data to another document.

A critical element of the new law is that carriers are given a lien for any

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fine or bond that they incur from the handling of an overweight container or trailer. This provision is intended to help make the law self-enforcing, as the cargo will not move if a carrier asserts a lien (which you can bet your bootie they most certainly will). The states are allowed to adopt laws implementing this federal statute, but don't hold your breath waiting for them to do so. State officials can use Oregon's current weight laws, and the truckers have their hands full fighting proposed weight-mile tax increases.

Who are the winners? Certainly the motor carriers, especially the drayage operators, who have claimed economic blackmail on the part of the shippers. The highways, and therefore the taxpayers, are also winners as overweight loads do cause damage. Losers include shippers who stuff containers beyond their legal weight limits. Losers also might include consignees of import freight who have already paid their foreign shippers for the freight, as recourse against out of country violators could be illusive.

### **Warsaw Convention: Alive, But Maybe Not Well**

In a recent case in Multnomah County in which I acted as local counsel for an out-of-state law firm, the plaintiff sought to recover damages beyond the Warsaw limits of \$20 per

kilogram. The lawsuit was filed against a freight forwarder. The plaintiff claimed the forwarder was acting as a shipper's agent, not as an indirect air carrier and therefore outside the protection of the Warsaw Convention. The court ruled the forwarder was an indirect air carrier and therefore protected by the treaty.

It was a tough case in that the lawsuit involved a first time shipper. Yet ignorance of the law is not a defense, and the shipper was charged with knowledge.

Meanwhile, the Warsaw limits of \$75,000 on wrongful death claims is coming under increasing criticism. Even many of the airlines are admitting that the current limits are totally inadequate.

### ***Risberg's Truck Line: Collection Constipation***

Despite the record cold in the Midwest this winter, the collection agency (they prefer to be called an audit company) apparently still has a pulse as it continues to send notices seeking payment for undercharges. Their footing is generally as solid as mush. Hopefully, shippers know that by now and will continue to refuse to pay. The statute runs later this year and you can expect that the heat will be turned up over the next few months, with promises, threats and anything else that could possibly work.

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.