



# Rollin' On <sup>®</sup>



An Electronic and Facsimile Newsletter for the Transportation Industry

Volume VI, Issue 1

Copyright © 2000

January 2000

## LIMITED LIABILITY, & a little murder mystery too

The issue of limited liability seems to be the 800 lb. gorilla that just doesn't want to leave the house. Many transportation law battles are fought over this issue instead of liability itself, since the limited liability is usually so low. This limitation is present in all modes: motor carrier, rail, water and air. The basis is frequently federal statutory law, although there are applicable state laws. The limitation can also be based upon common law, the case law that has its origins in England. References to common law are usually to state law, as there is little federal common law.

However, the leading case in Oregon, courtesy of yours truly (I know it's shameless to plug yourself but then someone has to do it and I don't sponsor OPB) is based upon federal common law. It involved a shipment of mushrooms from origin in Oregon, with motor carrier transportation to Canada, for transport by a foreign air carrier to either Europe or Japan. The mushrooms froze, the carrier expressed its apology while issuing its check for 50¢ per lb for \$14 per lb. mushrooms, and the shipper expressed its displeasure. This shipment was ICC-exempt (pre-1996 and pre-nonfiling of tariffs case) since it was ultimately transported by an **approved** foreign air carrier (there were extra hoops to jump through on that one, as USDOT wasn't even sure what that meant). This approved status was critical, since the carrier had no filed tariffs and had the shipment been deemed not ICC-exempt, the carrier would have been fully liable.

### The Obligatory Disclaimer

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

LARRY R. DAVIDSON  
 Attorney at Law  
 1850 Benj. Franklin Plaza  
 One SW Columbia St.  
 Portland, Oregon 97258  
 (503) 229-0199  
 Fax (503) 229-1856  
 E-Mail: larry@rollin-on.com  
 www.rollin-on.com

Although we lost at trial (the judge refused to give me a legal basis) we got the decision reversed on appeal. This case has since been the pertinent governing law in Oregon.

### PNWARS & TAP:

#### Coming to a location near you

This week (Wed.-Thur, January 19-20) will bring the winter meeting of the Pacific Northwest Association of Rail Shippers, to be held at the Greenwood Inn in Beaverton, followed by the annual installation of officers dinner for the Transportation Association of Portland. The TAP membership really screwed up, since they allowed me to assume the position of President. (As I mentioned in its newsletter, I assume that means that I'm supposed to maintain recent national tradition by hiring an intern.)

If you're interested in broadening your transportation horizons, call Archie Brown (541-688-6675), PNWAR's executive director, as PNWARS, as usual, has an excellent program scheduled, including local and national speakers. The TAP dinner also should have its moments, since we've opted to forego a speaker and instead offer the attendees entertainment by a **murder mystery** troupe. TAP is hosting a reception from 4:00 to 5:30 p.m. before the cocktail hour/dinner, so stop by as it's a good opportunity to meet some of your contemporaries, perhaps from a different mode. Of course, have your last will properly signed and notarized before attending the dinner program.

## Alternative Dispute Resolution (& a little more while we're at it)

As I've mentioned in prior issues, I am also available to do arbitrations and mediations. I recently chaired a statewide committee bar association regarding ADR matters. I enjoy serving as a "neutral" as I remove myself from the advocacy role and assume an attitude of objectivity. In that role I get to listen to other attorneys rant and rave, which in turn helps me in my regular practice. ADR is usually a less expensive way of resolving disputes, with more informal procedures.

The advantage to the participants is they would have someone involved who actually knows something about the subject matter, whereas the normal fact-finder usually doesn't have a clue about transportation law.

### There is no substitute for genuine lack of preparation.

It's also amazing how frequently some attorneys, such as insurance defense attorneys, get these cases and don't know a shipper from a carrier. They are retained to do something, and they don't go back to the insurance company and say, jee wiz, give the case to someone else, would ya. That just does not happen, so transportation entities find themselves educating the people who are supposed to be helping them. The insurance premiums and deductibles, which are usually high enough, can increase with an unfavorable result.

That's all for now. To shippers, carriers, agents and other third parties, keep the cargo rollin'!!

### 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