



Rollin' On [®]



An Electronic and Facsimile Newsletter for the Transportation Industry

Volume VII, Issue 1

Copyright © 2001

January 2001

MOTOR CARRIER SAFETY: *The Check's in the Mail*

Just when carriers thought things could not get much worse, they did. (Remember one of the adages on my website: Things are as bad as they can get, but don't count on it.) The Federal Motor Carrier Safety Administration, which was created less than a year ago, has passed a new regulation, the effect of which is that it can yank a carrier's authority without prior notice and an opportunity to be heard. The rule evolves out of situations where carriers have committed some kind of infraction, a relatively easy accomplishment in today's world of ever-increasing regulation.

The scenario is fairly typical. The carrier messes up, gets notified by public servants, and a penalty is imposed. The carrier has no control over the amount of the penalty, which is determined internally, thus raising a due process issue as the carrier is not involved in establishing the amount of the penalty. Although the regulation provides that a carrier may negotiate the amount of the penalty, the FMCSA does not do so.

Another problem is that once a payment plan is established, the FSCSA will suspend a carrier's authority for breach of that payment schedule. A carrier may believe it is in full compliance, but if the gov't records show otherwise, due to posting to the wrong account or not posted at all in view of staff shortages or other reasons, that authority is suspended. Also, a carrier could experience unexpected financial hardship, and having a hearing before losing one's livelihood, as well as impacting the lives of the employees and their families, well, it would be a nice touch

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

to at least allow the carrier a chance to be heard. However, despite receiving objections to the proposed regulation, the gov't is going full speed ahead.

So if you're a carrier and you have stubbed your toe along the line somewhere, and you owe the feds some dollars, be sure to keep your payments current. Also, be sure they always know that you're current. Don't assume anything, a mistake commonly made, as discussed in the two following items.

Cutting Corners

More and more, I'm hearing of persons who are, at the least, careless about ascertaining the status of carriers who whom they are dealing. Related to this problem are the owner-operators who believe they are fully insured through the company they're leased to. Problems can arise where these sort of assumptions are made. Of course, these assumptions can be convenient, especially where life is easier if you've got your head in the sand (using polite phraseology). Issues such as worker's compensation can come up, and then you start getting letters, lawyers start to enter your lives, and other unpleasanties can occur.

Part of the problem, of course, is the fuel crisis. Tens of thousands of carriers, large and small, have gone belly up in the past 12 months, and the shakeout is not yet complete. So one way to reduce costs is to cut corners, especially with worker's compensation insurance. Just look the other way and pretend it's a nonissue.

So get the proof of carrier status, insurance information, and other needed information up front and in writing. You want to keep those pesky attorneys and government types away from your door or mailbox, unless that's your idea of having a good time.

Attorneys Have Problems Too; Or, What Did You Say?

I've owned my 1954 International pickup for more than 25 years. My wife had been nagging, I mean encouraging, me to get it painted, an idea that I resisted for various reasons, such as (1) I use it on weekends to haul yard stuff and (2) the taking-tension-out-of-rush-hour-theory, which is to drive a \$20 vehicle (I drive it to work on bad weather days). True, it had been parked at one point for several years, during which time every creature known to man, and perhaps some not known, made a home in it. At times we would be driving down the road, and little things, objects not clearly identified, from above the liner above would fall down our necks. This would bother her for some reason.

I finally succumbed to this urging and found someone who makes his living painting vehicles for his employer. He agreed to do this on his own time. We negotiated a price, and he told me he would have it for me in April. I made a mistake.

I forgot to ask him which year. When we did our deal in March 2000, and he told me April, I assumed he meant he would have it back to me in April of the same year. I just got it back a couple of weeks ago. Attorneys, like others, get into trouble when they assume things.

That's all for now. Until later, 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