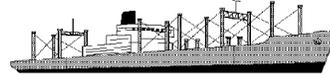




# Rollin' On



An Electronic and Facsimile Newsletter for the Transportation Industry

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## U. S. SUP. COURT, LIABILITY LIMITATION, *ROLLIN' ON* 10<sup>TH</sup> YEAR, AND RAWHIDE

### *United States Supreme Court: Action, Inaction & Changes*

The United States Supreme Court is in session (the Court takes the summers off), so that means that it's fast at work on the 150 or so cases that it will hear this term. There are literally thousands of cases decided around the country each year, which means that there are multiples of thousands of disappointed people since the impact of the cases is often widespread. Yet, if you do the math, only a tiny percentage of those cases are accepted for review by the USSC. Each of the appellate courts will handle thousands of cases. It's pretty good work if you can get the job.

The presidential election will be held during the next term (2004-05), so any festivities that the Supremes (lawyer talk) might consider in that regard should not affect its current term. We all remember that in 2000, the Supremes took the unprecedented step of shutting down the state election process in Florida. Hey, if you've got the votes, even if it's only 5 to 4, you can make hay while the sun shines, as the saying goes, and that action, along with the electoral college vote, is why we have a president who came in second place in the popular vote.

Several years have passed since there's been a change on the court. It's a pretty good bet that whoever wins the presidential election will appoint at least one, and probably more, people to serve on that 9 person court which, as the third prong of our government, carries a big stick. The court can wield power by acting, and by taking a powder on an important case as well.

#### The Obligatory Disclaimer

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

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### *NS, Liability Limitation, and Overland Boats.*

Speaking of the Supremes, one case that they will be hearing concerns Norfolk Southern Railway. NS is appealing an appellate court decision which held that NS could be held fully liable for damage to cargo, with the origin of the shipment in Australia. The ocean bill of lading provided for limited liability, and its "Himalaya" clause extended that limited liability protection to overland carriers. The Supremes granted review, often an indication that the case will be reversed, and invited the gov'mint, through the Solicitor General, to weigh in with an opinion. The gov'mint is siding with NS. (People often ridicule the gov't but then want them on their side anyway.)

COGSA's (Carriage of Goods by the Sea Act) liability is \$500 per package (container in this case), while the damage sustained was \$1.5 million. There were actually two bills of lading issued in this case, one between the shipper and freight forwarder, and another one between the ocean carrier and the forwarder.

### *Rollin' On: 10<sup>th</sup> year*

It's hard for me to believe, but *Rollin' On* is entering its 10<sup>th</sup> year of publication. That was a long time ago, when intrastate trucking was deregulated. A year later, the ICC was sunsetted and the STB sprang to life. Undercharge claims were losing life as the swamp was being drained.

Meanwhile, I decided to trademark the *Rollin' On* name. I even got a domain name at that time, even though

I could hardly spell the word. And I haven't missed an issue yet, although I've bumped up against the deadline several times (like for this issue). But then again, we attorneys are a goofy lot. We seem to interpret deadlines as requiring us to wait until they approach to do our deed. Don't ask me to explain.

**New Fax Number:**  
**503-229-0644**

**Please make a note of my new fax number.**

### *Rawhide:*

#### *Keep Rollin' Rollin' Rollin'*

OK, you older folks, this will date us all. *Rawhide* was on the air from 1959 to 1965. Rowdy Yates then moved on to spaghetti westerns where he continued on his road to fame and fortune, later transitioning into Detective Callahan and Dirty Harry, while directing and acting in other movies as well. His (Clint Eastwood's) *Mystic River* just received an Oscar nomination for movie of the year, while Sean Penn is up for actor of the year for his role in that movie. And we are all wise to heed Callahan's advice, that "a man has got to know his limitations".

If you want to step back a moment in time, you can click on the following link where you can listen to the *Rawhide* theme song. The link takes you to a *Rawhide* website:

<http://www.book-mom.com/RAWHIDE>

While you're at the website, you can brush up on your *Rawhide* trivia. There's a further link at that website that will take you to another website for even more trivia. You never know when it might come in handy. And don't blame me if you get caught singing to yourself.

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

#### 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.