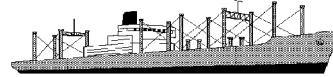




# Rollin' On <sup>®</sup>



An Electronic and Facsimile Newsletter for the Transportation Industry

Volume XI, Issue 1

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January 2005

## ARBITRATION, FLUKES, BRIEFS, ATTORNEYS, PATRIOT ACT.

**Arbitration the AAA way:  
Your contract, the other guy pays.**

Many contracts have references to the American Arbitration Association, where in the event of a dispute the AAA is to appoint arbitrators to help resolve the dispute. Sounds all fine and dandy. However, I've had a couple lately where the company who authored the contract provision will always be responding to, and not filing, for arbitration. The contract provides that the filing party must pay all the front end expenses of AAA arbitration, which are very spendy.

Thus the arbitration process, which one might believe to be balanced, can be very one-sided, and thus abused, by the company which provides for it.

### **Fluke or no fluke: Just the facts ma'am.**

You probably saw where a local passenger transportation company was recently involved in what appears to have been two fluke accidents. One normally would have been not much more than a fender-bender, yet a passenger died when her head struck the asphalt. The other passenger panicked when the vehicle started sliding, prompting the passenger to jump from the vehicle which resulted in her death. The drivers and therefore the company, while probably not blameless (my information is limited to what was in the paper), are facing consequences much higher than what the betting line would have been. In many if not most instances the focus is the actual bottom line, as opposed to what it should have been. The woulda coulda shoulda just doesn't matter.

#### **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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### **Appeal court briefs: Lawyers but not boxers.**

Most of us use a 12 point font in our letters, etc. True, you'll see legal forms preprinted on both sides with fonts that seem to be about 3.whatever in size. Well, the 9<sup>th</sup> Circuit Court of Appeals in San Francisco, which handles federal court appeals for the western states, has rules to remove those types of problems. That court imposes a 14 point font size. True, it avoids the tiny print mentioned above, but that wasn't the driving force, which was the fact that many of the judges, shall we say, are getting long in the tooth. It is hard for them to read even the normal size stuff. A larger print reduces that squinting problem. Also, by mandating wide margins and limiting the number of pages, the court is able to cut down the amount of words that a single brief can contain. Notwithstanding these limitations, the court still receives vast amounts of paperwork everyday.

It's best to keep your work short and focused in any event. A brief that a lawyer may work on for weeks or longer may not receive more than a few minutes attention from a judge. Thus it's a good idea to keep the brief lean and mean.

### **What me worry?**

Every month, except for one summer month, the Oregon State Bar sends out a monthly magazine, much like other trade organizations. One difference is that our membership is mandatory, whereas in many trades membership with associations or trade groups is voluntary. The magazine,

which is called the Bulletin, contains general news, including an obituary page. This month there were four notices, and they caught my eye. Here they are, in the order listed:  
Male, age 55, Huntington's disease  
Male, age 51, homicide  
Female, age 54, alcoholism  
Female, age 77, cancer

They say that our population is aging, but there are daily reminders that many people leave us before their time on this rock comes to an end. Sometimes it's just bad luck or timing, sometimes much more.

### **Emails and Patriot Act: Footers and Confidences**

You see it everyday, the email or fax footer that has a big bold notice about **CONFIDENTIALITY**, how the recipient, if not the intended recipient, is not allowed to use, copy, etc. the email or fax. Meanwhile, after 9/11 Congress passed a feel-good law entitled the USA/Patriot Act or something along those lines. This legislation, which is in effect until 2007, provides that all electronic transmissions may now be read by personnel in federal or state law enforcement agencies.

You have also heard of the Miranda warning, given by law enforcement types, that anything you say may be held against you. Well, sports fans, you don't get Miranda warnings each time you send an email or fax, so be careful what you say. The legislation passed pretty convincingly, due to the widely held desire to protect your family and yourself from harm. But the price that is paid chips away at the very foundation that has allowed our nation to thrive.

That's it 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.