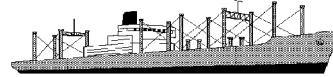
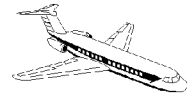




Rollin' On



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DELAY DAMAGES, AND STATUTES OF LIMITATION

Delay Damages:

To recover or not to recover.

I recently concluded an arbitration hearing where the issue concerned the recovery of delay damages. But first the facts, which are somewhat unfortunate for the carrier. The driver, an employee, retrieved the trailer, which had been spotted at the premises of the shipper, who had loaded it with Christmas wreaths, garlands, that sort of thing. Instead of taking off for California with the load, he took off with his girlfriend and didn't get far. Seems he had a drug of choice, and you know he's got that warm cab and all and it's cold outside and the girlfriend is friendly and gee whiz why not have a little fun first. With the assistance of the local police, the driver and girlfriend and tractor and trailer were found the next day, and the police found a different warm place for the driver to stay for awhile, this time however without companionship. Party poopers.

So by now the load is late but the contents are fine. So the carrier owner makes a bee line for the California destination, temporarily overlooking little details such as hours of service regulations and logbooks and little things like that. Can't be bothered all the time with all that bureaucratic stuff. At destination the contents are still in good shape. So the carrier is thinking he just dodged a bullet, or two or three.

However, a few months later the shipper claims that its customer lost some sales, due to the delay in delivery. Eventually a lawsuit is filed and the parties end up in arbitration. The shipper doesn't claim any physical damage to the cargo, just delay

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damages.

This is where the shipper learns a painful lesson. Unless the carrier is given prior notice that certain damages will occur if delivery doesn't take place as scheduled, the carrier is not liable for those delay damages, also referred to as consequential damages. This principle of law dates back to a case from England from the 1850s, and that law still has life.

A common example is the retail store that has a big holiday promotion going on, with a bunch of advertising and what not. If the carrier shows up after the holiday, the retail store could take a big hit. But unless the carrier knows, or in some instances should know what the deal is, the carrier is not liable for damages for being late. If, however, the retail store says, in advance, hey carrier buddy, if you aren't here by such-and-such date and time, you are going cost me such-and-such, then the carrier can take whatever precautions that it may deem necessary.

Like having a driver who doesn't have too many distractions.

January blues:

Keep your eye on the ball.

Many people feel that January is the worst month of the year. The holidays are over, and it's cold and dark outside. That's when those warm cabs come in handy, just as long as you stay focused.

Statutes of limitation:

It helps to know what applies.

Everyone has heard about statutes of limitation. A very common example is the two year statute for automobile

accidents. For contracts, there is a six year statute, which is a long time. As a practical matter, if you are the one who is owed money, there is no percentage in waiting to file, so these statutes become somewhat academic.

But not completely so. Years ago Congress shortened the time for filing a lawsuit for the collection of freight charges, from three years to 18 months. The reason was to help reduce undercharge claims that were filed by bankruptcy trustees, who get another two years, courtesy of the bankruptcy laws. 18 months is a fairly short statute, when compared to most other such statutes.

A local carrier was represented years ago by a law firm in regard to a contractual dispute over freight charges. The amount owed was in the large six figure category, so we aren't talking chump change. The law firm filed a lawsuit after the 18 months had run. In the lawsuit they claimed that Oregon's six year statute applied, but the court disagreed.

The law firm sent a letter to the client, advising the carrier that it may have a claim against the attorney who had first handled the case. The law firm did not realize that other attorneys from that same firm were the original attorneys on the case.

So you can guess what Exhibit A may be in the event a lawsuit gets filed over the missed deadline.

Meanwhile, if there is a malpractice claim against the original attorneys, when does the statute start to run on that claim? Imagine the scenario if the carrier's next attorney misses that statute. Also imagine if you are the carrier.

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

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.

The Obligatory Disclaimer

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