LAWRENCE R. DAVIDSON
Attorney at Law
1850 Benj. Franklin Plaza
One S.W. Columbia Street
Portland, Oregon 97258
(503) 229-0199
fax (503) 229-1856

Rollin' On…

A Facsimile Newsletter for the Transportation Industry

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Inaugural Issue

As many of you know, after several years with a local law firm I have opened my own office at the Benjamin Franklin Plaza in Portland. The transportation industry has certainly undergone changes, several in regard to deregulation. I felt that it was time for me to move along and become deregulated as well.

Over the years I have assisted many of you with your legal matters, many of which involved transportation while other matters involved various business-related matters. I am continuing to do the same work that I have done for many of you over the past several years.

The following is my first step into this endeavor. Please excuse the format, style and content (did I leave anything out?) while I adjust to life in my new office and my life as the author of this effort.

Deregulation

By now deregulation is almost considered yesterday's news. Congress passed the law, known as the Federal Aviation Administration Authorization Act of 1994, in such a hurry that the various states that opposed the law did not have much of an opportunity have any meaningful impact in the decision-making process, although it was not for lack of effort. This past summer many representatives from various states, including representatives from both the motor carrier industry, as well as from the various public utility commissions, traveled to Washington, D.C. for the purpose of testifying in opposition to the proposed legislation. However, on the day of the hearing these various representatives were not allowed to testify until late in the day, by which time only the subcommittee chairman, Representative Rahall, who was also opposed to deregulation, was present. All of the other representatives, with perhaps one exception, had left for home, their favorite watering hole, or to other parts unknown (assuming they had shown up for the hearing in the first place). The resulting scenario was almost comical: people who were adversely affected by the proposed legislation found themselves testifying to a single person who was in the minority and who supported their position.

Obituary
Interstate Commerce Commission
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Regardless of how people may have lined up, either for or against the proposed legislation, no one wants to see the process handled in this fashion. It gave more credence to the old adage that law is like sausage: you don't want to see it being made.

The pace with which deregulation was passed has resulted in several rough edges and several unanswered questions. One of the primary questions that will need to be answered is the extent to which the laws regarding deregulation apply to intrastate traffic. For example, federal law requires common carriers to provide at least nine months to file claims for cargo loss and damage, and at least two years from the date of denial of the claim to file a lawsuit. Many states, such as Oregon, have comparable laws on the books as well. However, the new federal legislation prohibits states from enforcing their laws regarding liability of carriers, yet does not replace those laws with any federal legislation. The question arises, can a common carrier operating in intrastate commerce limits its claims filing period to a period less than nine months? Can a common carrier require that a lawsuit be filed within six months of the date of denial of the claim; can a common carrier even

preclude the filing of claims and require that a lawsuit instead be filed within a limited period of time? These are some of the questions that will need to be sorted through in the weeks and months ahead.

Bills of Lading

The other law that Congress passed that has greatly impacted the transportation industry is the Trucking Industry Regulatory Reform Act (TIRRA), which, among other things, eliminated the filing by carriers of their individual tariffs are now, with a few exceptions, an item of the past. In view of this development, proceedings are currently under way to amend the Uniform Bill of Lading that is incorporated in the National Motor Freight Classification. Obviously, references by bills of lading to filed tariffs are, in most instances, meaningless since as of August 26, 1994, all individual tariffs on file with the ICC became null and void. (On January 1, 1995, the states could no longer regulate, among other things, the rates of carriers, meaning that the intrastate tariffs on file with the various state agencies also became unenforceable by the states as of that date). I have been requested by Bill Augello, Executive Director of the Transportation Claims and Prevention Council, Inc., to be a member of an *Ad-Hoc* Committee of carriers and shippers to revise the uniform bill of lading. Bill has also requested me to be a panel speaker on this issue at the Annual Conference of the TCPC in new Orleans April 2-5, 1995. I will pass along more information in this regard as it develops.

Side Bar
The I.C.C.:
Here Today, Gone Tomorrow

In his State of the Union Address Tuesday evening, President Clinton referred to the Interstate Commerce Commission by name when he called for the reduction of government spending and regulation. Although there are no definite plans as of this time, there is widespread speculation that some of the ICC's functions regarding motor carriers, such as insurance matters, will be transferred to the Department of Transportation. Disposition of other ICC functions, such as resolution of udnercharge claims, is undetermined as of this time.

More details will be furnished as they become known.

U.S. Supreme Court Rules for the Shippers and Against Transcon on the Late Payment/Loss of Discount Issue

In a unanimous nine-zero decision handed down January 10, 1995, the United States Supreme Court held that the ICC could obtain a court injunction barring bankrupt carriers such as Transcon from enforcing the loss of discount provisions in their tariffs if they violated the ICC credit regulations. In ruling favorably for the shippers, Justice Kennedy, writing for the Court, held that Transcon violated three of the ICC credit regulation requirements: its bills did not advise shippers of the consequences of late payment; revised bills were not issued within 90 days after the expiration of the authorized credit period; and damages were applied by a bankruptcy trustee on an aggregate basis instead of only to the nonpayment of original, separate and independent freight bills. Justice Kennedy stated that although the ICC's power to regulate is not without its limits, nevertheless the ICC had appropriately exercised its enforcement authority, citing two reasons for this conclusion. First, the Court stated that an injunction is a proper remedy that could be utilized in the proceeding to prevent the bankruptcy trustee from seeking to collect payment from shippers. Second, the Court held that where a carrier fails to notify a shipper of the consequences of late payment, the appropriate remedy is to bar collection of the charges that the bankruptcy trustee sought to collect.

In conclusion, the Court stated that federal law expressly authorizes the ICC to promulgate credit regulation, and at the same time also gives the ICC the power to seek a federal court injunction requiring a carrier to comply with its credit regulations. The Court stated that the injunctive relief sought by the ICC was both necessary and appropriate to effect the enforcement of its credit regulations.

That's all for now. To shippers, carriers and third party intermediaries, keep the cargo rollin'!

Larry Davidson in an attorney admitted to the bars of the states of Oregon, Alaska, Florida, and Massachusetts. Larry has been practicing law for over fifteen years and, emphasizes transportation law, business law and related litigation.