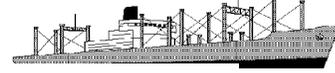




Rollin' On



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Undercharge Undoing: STB to SFF: Are You Kidding?

As some of you know, the Surface Transportation Board ruled earlier this month that the successors in interest to Superior Fast Freight have no legitimate claim for undercharges. While most people with blood in their veins knew that this conclusion was the only proper conclusion that could be reached, it is still comforting to have the federal government make a decision that comports with such common sense. Although an appeal of the decision is probably guaranteed, this decision is a big blow to those who prey on _____

Eeks!

Rollin' On is rollin' late

I have just returned from a one week hiatus out of the office, the first full week that I have taken since hanging out my own shingle 2 1/2 years ago. Frankly, in retrospect I realize I should have done it earlier as personal time is precious.

intimidation and a reluctance to get involved in the legal system (the latter probably the result of good instincts).

In its ruling the STB relied heavily on sworn statements of two former high level SFF employees (the statements were prepared by yours truly for the lead attorney; you learn to plug yourself). The employees, one the former director of pricing and the other a former national accounts representative, testified that SFF held itself out as a freight forwarder and not as a motor carrier. SFF's own documents refuted the common carrier as-



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sertion. For example, SFF's freight bills referenced its freight forwarder number. The auditors' response was that SFF was using "old stationery", even though seven years had passed since SFF claimed it got out of the freight forwarding business. The auditors had other problems, including the statement on the original bankruptcy petition that "SFF is composed of two divisions . . . freight forwarding. . . freight pickup and distribution".

At this point the auditors are basically arranging the deck chairs on their personal *Titanic*. There are not too many people who will throw them a liferaft.

To Burn or not to Burn

You probably noticed that the owners and fire department allowed the Woodburn Fertilizer plant to burn last Sunday, instead of throwing water on it and thus causing extensive contamination, which would have been a bigger nightmare. Contrast that decision with a decision made in a case I am handling where a few months ago the City of Portland Fire Department threw thousands of gallons of water on a burning building containing liquid hazardous materials in open tanks, despite the department's own signs on the building not to use water to control a fire. Maybe the big city folks can learn something from their country neighbors if they refuse to heed their own warnings.

Risberg's: Countdown

The deadline for our South Dakota friends to file lawsuits for undercharges is September 1. You can expect a flurry of last minute demands with close out bargain prices. You can also expect the usual sales pitches, that the undercharges are due and owing and must be collected, you know, an honor thing for the bankruptcy court and all of that nonsense.

What you won't hear is that they returned money to some shippers due to their failure to inform shippers of their rights provided by the Negotiated Rates Act of 1993 (NRA). "Without any admission of liability" and as "a gesture of goodwill" and their desire to "fully and fairly inform customers of their rights" (do you feel sick yet?), the auditors agreed to return monies paid to shippers who were not informed of the small business exemption and the 20% settlement option. What is not clear is what happened to the money they collected for the interline portion of the various shipments, as they admitted they had neither forwarded that portion to the linehaul carrier nor refunded that portion to the shipper.

One report reflected that 160 shippers (out of how many?) paid \$25,118 of the total billed amount of \$30,691. Several paid 100% of the amount claimed, including a private carrier which was billed \$1,888! If you have a pulse you could settle for a fraction of that amount.

That's all for now. To shippers, carriers, agents and other third parties, 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.