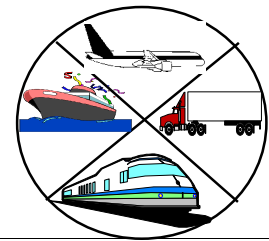


Rollin' On . . .



A Facsimile Newsletter for the Transportation Industry

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DEREGULATION - FALLOUT

Congress passed the law prohibiting the states from economically regulating their intrastate motor carrier traffic during August 1994, almost one year ago. That law had an impact on the motor carrier industry long before its effective date of January 1, 1995 as the industry attempted, first, to fully appreciate its impact and, second, to adjust to the changes, both intended and unintended, that the legislation would bring about. The transportation community wondered what the future might bring.

The future has arrived, especially for one long time Oregon company. Risberg Truck Line, a Portland-based LTL carrier that has held Oregon PUC authority since 1949, terminated operations last Friday. Many people in the industry believe that several more closures, mergers, consolidations and bankruptcies will inevitably follow.

Meanwhile, further deregulation is proposed, such as maritime reform and a corresponding revamping if not elimination of the Federal Maritime Commission. The Interstate Commerce Commission of course is scheduled to be deep-sixed in the immediate future although the process is turning out to be more complicated than was originally anticipated, which makes one wonder how much anticipation actually takes place on the Eastern shores. In any event the theme is to allow the marketplace to do its work and that the

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efficient operators will survive. The consequences can be harsh.

A question that arises concerns the extent of permissible federal preemption. How far can Congress go in removing the power of the states to regulate activities within their own borders? At what point will a court declare that Congress has overstepped its authority?

In a decision a few weeks ago, the United States Supreme Court ruled that the federal government could not legislate within what distance firearms may be carried in relation to a school. The Court ruled that the scope of the Commerce Clause, a provision in the United States Constitution upon which Congress had relied when enacting the law, was limited and that Congress had exceeded its authority. Also, in an earlier air decision this year, the Court considered the issue of American Airline's retroactive modification of its rules regarding the use of frequent flyer miles. American had unilaterally limited the number of seats available for frequent flyers and had also imposed some blackout periods during which the frequent flyer miles could not be used. The Court ruled that Congress had preempted state consumer protection laws when it passed the Airline Deregulation Act of 1978, which regulates the carrier's rates or services. However, the Court also held that the state law breach of contract claims could proceed, even though they pertained to rates and services, stating that these claims were based upon the carrier's self-imposed undertaking. The Court has

thus allowed some state law to apply to certain preempted disputes.

BILL OF LADING - ADD. FALLOUT

Work on the uniform bill of lading continues. The ICC has rejected some NMFTA proposals regarding references to tariffs as it is concerned about references to non-filed tariffs. Meanwhile, the demise of the ICC's banana peel footing is imminent, so this chapter in transportation history could be continued with the DOT. And on a related topic, the ATA's pro-posal to limit carrier's liability to \$2/lb. is getting a lot of heat from shippers.

THE INEVITABLE FALLOUT: WHERE'S MY CHECK AND YOU MIGHT DO WHAT?!

The situation is fairly typical: you hammer on a past due account until

I can now also be contacted via the E-mail address stated above.

you finally get paid. But then a bankruptcy petition gets filed within 90 days of the payment and you receive a notice from the trustee stating that you are required to return the money, file a claim and get paid like the other unsecured creditors (i.e. frequently little or nothing). In some instances certain defenses are available, but don't count on it.

That's all for now. To shippers, carriers, agents and other third parties, keep the cargo rollin'!!

The Obligatory Disclaimer

This newsletter is distributed to shippers, carriers and third party intermediaries. It is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

My Short Bio

Larry Davidson is an attorney admitted to the bars of the states of Oregon, Alaska, Florida and Massachusetts. Larry has been practicing law for over 15 years and emphasizes transportation law, business law and related litigation.