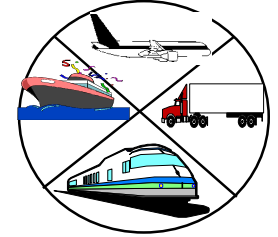


# Rollin' On™ . . .



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## MISSION: *Impossible* ? Undercharge Relief

**C**ongress has passed four major pieces of transportation laws within the past 3 1/2 years: (1) the Negotiated Rates Act of 1993, (2) the law eliminating the vast majority of tariff filings, (3) the law deregulating intrastate economic regulation, and (4) most recently, the ICC Termination Act of 1995. All of these laws, except for the preemption of state economic regulation, contained provisions favorable to shippers in regard to undercharge claims. Yet these claims continue to be asserted, most recently on behalf of Willig Freight Lines, which closed its doors last year.

Most if not all shippers that receive these dunning letters are angry that these claims are still being made. Unfortunately, many of the shippers are not aware of the recent laws that assist shippers against these claims, and they take action that is prejudicial to them. For example, the dunning letters usually provide for a 20% settlement option if the claims are settled within a short period of time. Some shippers opt to settle at the 20% number without realizing that, in most instances, they are probably not required to pay a single cent.

To its credit, the ICC issued some rulings prior to its demise that dovetail nicely with the legislation that was subsequently passed by Congress and signed by President Clinton at the end of last year (the Christmas holidays brought out some temporary harmony in our elected representa-

LAWRENCE R. DAVIDSON  
*Attorney at Law*  
1850 Benj. Franklin Plaza  
One SW Columbia St.  
Portland, Oregon 97258  
(503) 229-0199  
Fax (503) 229-1856  
Internet: [larryd@rollin-on.com](mailto:larryd@rollin-on.com)

tives. Either that or everyone wanted to clear their desks before party time.) Those cases are now on the books and should be viewed favorably by the courts since the ICC was the administrative agency charged with

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**Rollin' On:**  
**Now with its own domain name**

**Rollin' On** has applied for, and has been granted, its own domain name of **rollin-on.com**. The folks at the Internet switches required a hyphen instead of the apostrophe in the name, which was a slight disappointment. But the cows still come home in the evening and the world was still turning at press (fax) time, so I guess the inconvenience is tolerable.

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the enforcement of the nation's transportation laws.

Unfortunately, the courts have not had an opportunity to review, interpret and enforce most of these recent laws, and the undercharge people are making hay while the sun shines. Once the courts have a chance to get involved, the claims should be denied. Meanwhile, as I have commented before, the undercharge collectors do not have to win a single case, since they will make their money on the settlements, not on the court cases. They can lose and still win.

Through a joint defense group these claims can be successfully and economically defended, in the same manner that I've done in prior cases.

## **Risberg's: Update**

As of this time, I have not heard of any lawsuits filed against any shipper or consignee for undercharge claims. Our friends in South Dakota are still saying that they are going to file lawsuits, and that the filings are imminent. As discussed earlier in this newsletter, Congress passed a law late last year that provides defendants with a complete defense to these claims.

Meanwhile, Interstate Audit has reimbursed some shippers for payments made earlier by those shippers, as those shippers qualified as small business concerns under the Negotiated Rates Act of 1993. Interstate Audit should be required to reimburse other payments as well, due to its lack of candor in regard to the new legislation. In fact, the notices that I have seen do not even refer to the new law, and instead includes references to the **old** law.

On a related note, the Harley-Davidson fans will once again soon make their summer sojourn to Sturgis, South Dakota for their annual festivities. Maybe the shippers could arrange for some fringe members of this group to pay a visit to Interstate Audit for an afternoon of tea and cookies, as well as for a candid discussion about undercharges.

Let me know if I can be of assistance to you in any of these claims.

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.

### **Short Bio**

Admitted to the bars of the states of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 15 years and emphasizing transportation law, business law and related litigation.