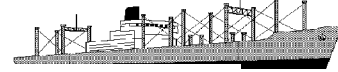




Rollin' On



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FREIGHT CHARGES:

To Collect Or Not to Collect

In the past, carriers have at times been able to look for other deep pockets if they had trouble collecting from their shippers or customers. Cloaked in their tariff security blanket, they could stand high on their podium and claim freight charges from noncontracting parties, stating that discrimination would occur if they could not collect their filed tariff rates. This worked while the tariff rate doctrine was on the books, much to the chagrin of innocent third parties.

This applied to nonbankrupt situations, and the scenario frequently proceeded along the following story line. The shipment was "prepaid", except the shipper never got around to paying. So the carrier went to the consignee, saying that it has this delinquent debt and would the consignee pay it, thank you very much. The consignee kicks, grumbles and swears (admittedly some do this anyway but we'll put those aside for now) since those freight charges were undoubtedly built into the product cost. The carrier says so what, you need to pay and you will like it. Although there was disagreement within the various federal circuits on this issue, many consignees lost their cases and were required to pay what amounted to double freight charges. This has not been popular with consignees and other third parties.

Along comes deregulation and the removal of filed tariff rates, and the situation changes. Now the carrier has more difficulty collecting shippers' double payments, since that warm blanket of tariff filing has disap-

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peared. It is much more difficult claiming double freight charges when the underlying base for that claim is removed. It is important now that the carrier be sure that the shipper or customer is good for the payment, especially if the carrier (or shipper) marks the bill of lading as prepaid. The carrier can no longer rely upon big brother to supply the necessary ammunition against the carrier's own customer. What's the world coming to?

TAP Golf, Friday, June 26

As of press time, there were still a few spots open for TAP's annual scholarship golf benefit, being held again this year at Meriwether Golf Club in Hillsboro. At \$80, it's the best deal in town for a great day of golf, complete with lunch and buffet dinner at the end of your tough day. The raffle prizes are impressive as well: an expense paid trip for two to Hawaii, picnic table, fishing trip on the Columbia, a TV and a stereo. And TAP guarantees good weather. If the weather goes south on us, you get your money back when a woman is elected president of the U. S. or the Ninth Circuit Court of Appeals (in San Francisco, which covers the western states), has a reversal rate of less than 50 % (last year 38 out of 39 of its cases were reversed by the U.S. Supreme Court), whichever comes first. Unless TAP in its sole discretion determines otherwise. And all that other legal mumbo jumbo.

Superior: Anything But

At a hearing held last month, the bankruptcy judge for the Superior Fast Freight cases deferred on requests for sanctions against Superior, pending referral of the matter to mediation. Many shippers want to go for the jugular, or worse.

Time Warp

We've all had our months from hell. This is my month. I am the chair of a statewide bar committee that is compiling a book of arbitrators and mediators, for use by attorneys and their opposites, normal society. We should be wrapping it up, but organizing attorneys is like herding cats so there are logistical difficulties (that's my transportation tie-in).

Then there's the Transportation Association of Portland which honored me by selecting me as chairperson of the annual scholarship golf benefit on Friday, June 26. Although I would like to believe that my selection was due to being thought of in some positive light, however minimal, it was probably due to missing a meeting.

Then my wife gets involved and schedules a one week getaway starting June 29, meaning that I get to push four weeks work into three. I try to get *Rollin' On* out during June since it is dated June. And for good measure, we have some construction activity scheduled on the home front that has taken unexpected turns and time. Somewhere in there I am reporting to the office to do what it is that I do, if I can remember what it is that I do.

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.