



Rollin' On



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Carmack, Tracks and Mergers; Some Dust Too

This is one of those months when nothing in particular is foremost on my mind. Actually, I'm in a holding pattern from a two day trial in federal court where we litigated issues involving the movement of solid waste and recyclable materials in interstate commerce. The post-trial brief is almost finished, and then it's sit and wait time (nonjury case) while the judge makes his decision.

In the meantime, some other items are looming around, and so let's take a look. (Around here we refer to Peeping Toms, whereas in Alaska such individuals are referred to as Tom Tukaluks.)

Bills of Lading

Congress, in its infinite wisdom, deregulated the transportation of property pursuant to the Federal Aviation Administration Authorization Act of 1994, more affectionately known as the F4A, effective January 1, 1995. This law was passed during the prior summer at about the same time that Congress, again knowing no bounds to its infinite wisdom, removed the tariff filing requirements for common carriers (I'll spare you the name of that act).

However, one thing that Congress did not change was to replace all existing transportation-related personnel in the industry with new personnel. So shippers and third parties proceeded to use their personnel who in many cases still utilize bills of lading that refer to lawfully filed tariffs, there being hardly any remaining that are actually filed with the great white father in Washington, D.C. Carriers now

LARRY R. DAVIDSON
Attorney at Law
1850 Benj. Franklin Plaza
One SW Columbia St.
Portland, Oregon 97258
(503) 229-0199
Fax (503) 229-1856
E-Mail: larry@rollin-on.com
www.rollin-on.com

instead maintain those tariffs in their offices, with a duty (arguably) to disclose those tariffs to their shippers only upon request. The utilization of those standardized bills of lading can thus unwittingly harm the interests of shippers and intermediaries.

Another One Bites the Dust

I'm not referring to the song from *Queen*, but instead to Silver Eagle Company, a longtime Oregon LTL company. Several hundred employees were all of a sudden out on the street. It's a shame to see a business fold, and Silver Eagle is no exception. The good news is that many of these good folks were finding jobs elsewhere.

STB Stops Merger in its Tracks

At the risk of ruining a reputation for not seeing a merger it didn't like, the Surface Transportation Board, that illustrious successor to the illustrious Interstate Commerce Commission, last Friday said that it was putting a moratorium on rail mergers for the next 15 months or so. This will not only anger the BNSF and Canadian National, but also the shippers who are now addicted to mergers and who want more mergers before getting adjusted to the prior ones. The STB really blew it on this one. Now these shippers undoubtedly will fall into some false sense of stability (everything being relative). Fortunately, these recent merger proponents are reviewing their legal options and legal action may be on the way. Ironically, the ICC approved the UPSP merger over the objection of many U.S. agencies,

including the Justice Dept, and so does the STB now go to DOJ with a plea for help?

Carmack & Interlining

Don't you just hate it when your carrier delivers damaged goods and says, sorry Charlie, but the damage occurred through the courtesy of the origin carrier which is located 2,673 miles away and that's where you have to go to make your claim? Well you can tell your carrier, sorry Charlie, but you're it, you pay me and then you have to go back upstream and collect. The Carmack Amendment provides that the consignee can sue the delivering carrier at destination irrespective of where the damage occurred. You feel better already; just hope it's not Silver Eagle.

Yucca Mountain Yuckiness

Both houses of Congress, again utilizing their infinite wisdom, just passed a law that would open the door for the shipping of thousands of tons of nuclear waste to Yucca Mountain, just 90 miles outside of Las Vegas. As previously reported here (*Rollin' On, October 1999*), nuclear power plants across the country have vast amounts of this waste stored on site, and the feds were supposed to get rid of it a long time ago. President Clinton has promised to veto the law over concerns that it would impede the establishment of radiation standards for a permanent disposal facility.

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