

Rollin' On . . .

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FREIGHT CLAIMS

Yes, There Is A Method Of Resolving Small Claims

Here's the story:

You have a \$3,000 claim against a carrier which denies the claim even though it is dead in the water on liability. Finally, after persistence, the carrier says "O.K., I will pay you 50c on the dollar just to get you out of my hair. I do not care about your business, just go away." You do not want to roll over and leave money on the table, yet legal fees could easily eat up the difference, which the carrier knows.

What are you gonna do?

There is no question that small claims can be a real pain in the derriere. Ironically, claims involving larger amounts can be easier to resolve, since you can take the paperwork to the attorney as the claim amount warrants the expense. The claim does not have to be huge, like the national van lines that I represented (and which will remain nameless) whose driver was enjoying a drive down the "grapevine" on I-5 in Southern California when a passing motorist alerted him to the fact that he had smoke coming out of the back of his van. What the fire did not damage, the fire department did, and the homeowner's insurance carrier wrote out a check for \$167,000 and change, then came looking to

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.

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the carrier for \$200,000 on a subrogation claim. (I have some notable memories from that claim, such as how investigators are not to preserve evidence, as well as how a bored CPA who became a real estate syndicator could, with a straight face, claim that he did not understand the released rates provision of his contract with the van line).

Back to the problem.

Oregon law provides that attorney's fees are recoverable on claims for less than \$4,000, where the claimant made a demand on the other party at least 10 days before filing a lawsuit, and the other party failed to offer an amount equal to or greater than the amount eventually awarded to the claimant at trial. However, the pertinent federal law, known as the Carmack Amendment to the Interstate Commerce Act, preempts state law in regard to the movement of regulated goods in interstate commerce. The Carmack Amendment does not specifically permit the recovery of attorney's fees, instead stating that the shipper is entitled only to its "actual loss or damage".

The apparent purpose of the Oregon statute is to encourage the resolution of small claims. This is obviously a state law remedy. Nevertheless, the Oregon courts, as well as some other state courts, have ruled that this particular state law is not inconsistent with federal law, that the federal law does not preempt this

state law remedy, and that attorney's fees are recoverable.

However, other states have ruled to the contrary and have denied attorney's fees to claimants under comparable laws.

The upshot of the interplay between Oregon law and federal law is that a claim for less than \$4,000 can at times be more cost-effective to resolve than a claim for, let's say, \$5,000. In fact, a claimant can waive off the portion of a claim over \$4,000, file a claim for \$4,000 and seek attorney's fees. This type of complaint will usually focus the attention of the other side very quickly, since most people do not enjoy paying the cost of one attorney, let alone two.

Bills of Lading

The work on the revisions of the Bill of Lading is continuing and is heating up. The American Trucking Association wants to impose a limitation of liability of \$2 per pound. I am on a panel that will speak on this issue at the Annual Conference of the Transportation Claims and Prevention Council, which is meeting in New Orleans, April 2-5, 1995. I will report later on further developments in this regard.

That's all for now. To shippers, carriers and third party intermediaries, keep the cargo rollin'!

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.