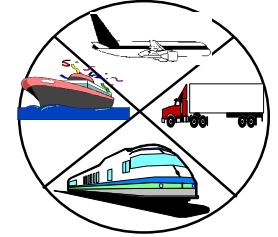


# Rollin' On™ . . .



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## SHIPPERS AND CARRIERS: TIME TO TANGO?

**N**ow that the dust has settled from Congress' third major change in transportation laws in as many years, things are starting to settle down, right? As the *Hertz* ads say, not exactly. Shippers, carriers and third parties are still sorting through what Congress has wrought. In view of the blank slate approach to the latest revisions, it could take awhile for the changes, both intended and unintended, to sort themselves out. One of the most important issues concerns carriers' limitation of liability.

Since memory of man runneth not to the contrary, carriers have been allowed to limit their liability, provided that shippers are provided a reasonable choice of rates, including a full value option. This was the common law in old England, and was carried over to the thirteen colonies and forward from there. In fact, although most interstate transportation has been regulated by Congress since the 19th century, there has always been certain traffic exempted from the jurisdiction of the Interstate Commerce Commission. This traffic has been, and continues to be, governed by federal common law. I recently argued, and won, such a case before the Oregon Court of Appeals (*Rollin' On*, February 1995).

Before the enactment of the Trucking Industry Regulatory Reform Act of 1994, carriers could limit their liability by merely tucking their rates, rules, etc. in their tariffs and file them

### 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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with the great white father in Washington, D.C. Through the legal niceties of constructive notice and the filed rate doctrine, shippers from Topeka to Timbuktu were charged with knowledge of these tariffs. TIRRA arguably changed or at least confused the status quo, since most carriers no longer were required or able to file their tariffs with the ICC, thus contradicting the terms of the Uniform Bill of Lading which referred to filed tariffs. With the aid of the ATA,

### *Nostalgia isn't what it used to be.*

Congress came to the rescue of the carriers by adding a provision in the ICC Termination Act of 1995 that allows carriers to unilaterally limit their liability, subject only to the requirement that they furnish a copy of their rates, rules, etc. to shippers upon request.

I am not suggesting that this is always a one-sided deal for the carrier. There have been innumerable instances in which a shipper has tendered a valuable shipment to a carrier, without disclosure of the extraordinary value of the shipment, in order to obtain a lower rate. The shipper then would file a claim for full value, which doesn't make any sense.

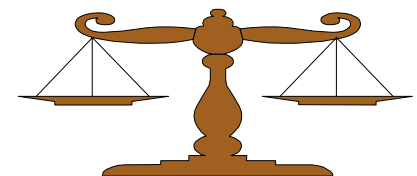
Another option is still available to the parties, as Congress has retained the Carmack Amendment which allows shippers and carriers to agree to limited liability, or so-called "released rates". Such an agreement should usually work better, as the parties

know right up front what the costs and risks of transportation are for any particular movement.

## NEW LEGISLATION SEMINAR Including Bills of Lading May 29, 8:30 a.m. - 5:00 p.m.

The Transportation Claims and Prevention Council, Inc. (TCPC), of Huntington, New York is holding a series of seminars, via videotape, cross the country on the The ICC Termination Act of 1995. The seminar will address the impact of the new laws on shippers, carriers and third parties, and will include a discussion regarding the use of bills of lading. The videotape is of seminars conducted by its executive director, Bill Augello. I will be hosting the Portland seminar here in the Benjamin Franklin Plaza, across the street from the Marriott. Please either call me or TCPC at (516) 549-8984 for more information and registration. Incidentally, I have been invited to speak again at TCPC's Annual Conference, this year in Atlanta, April 21-24, regarding transportation contracts and bills of lading.

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



### 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.