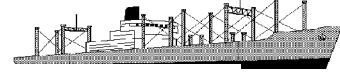




Rollin' On



A Facsimile Newsletter for the Transportation Industry

Volume IV, Issue 3

Copyright © 1998

March 1998

Hazardous Materials: Or Was That Haz. Substances?

If you ever have extra money that you don't know what to do with, just go dump some hazardous substances on some ground somewhere. I just settled a lawsuit involving a building, containing hazardous substances in open tanks, that caught on fire. The fire department disregarded its own signs on the exterior of the building stating that water was not to be used as an agent of extinguishment ("Do as I say, not as I do."), noting, in part, the proximity to I-205. Neither the landlord nor the tenant, who I represented, had insurance coverage of any significance (\$10K, which was gone before the smoke cleared). The 63,000 gallons of water that was dumped on the building became contaminated, along with everything else.

The parties disagreed, naturally, as to the interpretation or application of the risk of loss provisions in the lease. The pertinent Oregon statutes pin liability on any owner, operator or practically any pedestrian who happened to be anywhere near the fire. Everyone, including DEQ, responds to the fire and gets any potential party so worked up and worried about liability that the message is to just hand over a blank check, we'll fill in the amount, thank you.

Since everyone and their first cousin is potentially liable for the whole enchilada, the real question involves how to apportion the loss, or to use the legal jargon, the issue of "contribution", not to be confused with political campaigns or tax write-

.....
LAWRENCE 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: larryd@rollin-on.com

offs. The statutory factors include the degree of involvement and relative culpability, the degree of cooperation and economic benefit derived, the degree of toxicity or hazard, the degree of cooperation, the length of time the facility was owned or operated, compliance with laws and regulations, and there's more. The judge, and not the jury, decides how to allocate the misery. In a recent case a judge tagged one party for 100% of the damage. Since there is little case law, and thus lessened predictability, people get nervous, and settle.

Transportation Timeout

In view of the weather, my caseload or any other flimsy excuse, I have exercised editorial privilege and am going real light in the transportation department for this issue. But so that I do not totally ignore transportation, I will relay a couple of items I learned yesterday at the Transportation 2000 program, which was held at the Hilton and was extremely well attended. Did you know:

1. Portland is the 10th largest trade and distribution center in the U.S., although its population base is much less on a comparative basis?
2. The Columbia/Snake River is the country's largest, and the world's second largest, conduit for wheat shipments?
3. Political candidates love to "ask questions" at these forums?

Background Stuff

From time to time I am asked about my personal background. Well, after my fourth felony conviction . . . Actually, I was born and raised on a farm in the Willamette Valley, graduating from high school with 25 other classmates. I attended college and spent a year in Spain, during the Franco regime. I worked on a survey crew outside of Fairbanks the summer before law school, where we did only road and open range surveys. We did one job out of Healy, near Mt. McKinley (now Denali), where it took us 3 hours to hike to the job site. You guessed it: It was also a 3 hour hike back to the road. But that was one of the most enjoyable weeks of my life.

After law school I returned to Alaska for two years, during which I spent most of my time working for a nonprofit corporation which assisted in getting businesses established in the "bush" areas of the state. I traveled in single engine, U.S. Mail planes, often greeted at destination in a village by a snow machine towing what was basically a box on skis; that was our taxi. I saw parts of Alaska, including above the Arctic Circle, that were off the beaten track, to say the least. Perks included learning the difference in the taste and color of seal oil in Emmonak (Yukon River) v. in Kwigillingok (Kuskokwim River), both served with delicious, frozen tom cod, the competition for which were the Malamutes.

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.