



Rollin' On



An Electronic and Facsimile Newsletter for the Transportation Industry

Volume VI, Issue 5

Copyright © 2000

May 2000

INDEMNIFICATION Tweaked Tongue Twister

Indemnification, that just rolls off your tongue, kind of like cold syrup on a winter day. You can just ooze it into your polite conversation, say about the time you're discussing the impact of Feodor Mikhailovich Dostoevski's *Crime and Punishment* on today's society, excluding Czechoslovakia but including Transylvania. So what is it, and who cares anyway?

Indemnification clauses, also known as hold harmless (hold what?; a lawyer must be nearby) clauses, basically means that one person promises to reimburse another person for loss, injury, damage, etc. that the other person might suffer. Now, usually, a person would make such a promise to indemnify someone else if he/she committed some negligence, etc. that resulted in injury. You know, I screwed up, I'm sorry, I'll take care of it, that sort of deal. We can understand those situations.

But what about where a contract contains a hold harmless clause that requires **you** (or your company) to indemnify someone (or some other company) for that someone's own negligence? In other words, you didn't do anything wrong, but that someone else did, and now that someone else expects you to reimburse him or her or the company for his/her misdeed? Is there not something wrong with that picture?

Well, there may be something wrong with the picture, but partly because it wasn't in focus when the agreement was signed (these are usually contractual provisions). Under certain circumstances these clauses are upheld. I'm involved in a case right

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

now where the client unknowingly signed a contract with such a clause, which is now in federal court and involves the competing laws of two states. One of the states allows these be-indemnified-for-your-own-negligence-clauses, while the other state, which forbids such clauses as being against public policy, will enforce them under certain circumstances. You know, a hold your nose type of approach.

Meanwhile, my client's insurance company claims that this contractual indemnity is excluded from coverage. So he is faced with the prospect of paying \$\$ from his own pocket for alleged negligence on someone else's part, that he had nothing to do with, and for which he had no control. Just when you thought it couldn't get any worse, the contract also requires the client to pay the party's attorney fees.

Hours of Service

By now most of you have heard about the proposed hours of service revisions. Suffice it to say that there's a long road ahead before they're implemented, if in fact they are. Reform can certainly be in the eye of the beholder. For example, while longer layovers or time off work sounds good and has warm and fuzzy edges, there are studies indicating that additional idle time can sometimes result in increased substance abuse. From a pure economic viewpoint, reduced driving time will increase the shipping costs. Where are the extra drivers?

Tap Golf Tournament, June 16, Meriwether National Golf Club

The Transportation Association of Portland is once again holding its annual Scholarship Golf Benefit next month. Proceeds are used to fund scholarships for transportation-inspired students. The \$85 price is the same as last year, and that gets you 18 holes of golf (the 19th hole is also available), lunch and dinner. Not to mention a day out of the office on a Friday, all in the name of work. There are raffle prizes, including an all expense paid trip to Hawaii, courtesy of Carolyn Marineau at All About Tours. So come on out, rub elbows (we have to draw the line somewhere) with your transportation brethren, and hit a few balls (and sand traps and water hazards) for the sake of fundraising. As for myself, having been responsible for the tournament the last two years, I have passed the glory on to someone else.

Of Vice and Men

Did you see the story about the 110 year old man, the nation's oldest survivor of World War I (actually the number came later, when someone thought we ought to number these world wars), who lived right here in Fossil (I'm not making any of this up), Oregon and who died recently? Asked why he lived so long, his response was that he never drank, never smoked, and never argued with his wife. The first item can get you into rehab after ruining your body, the second a nice lawsuit but bad lungs, but the third one shows the ultimate instinct for survival.

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

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

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship