Rollin' On . . .®

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SHIPPER SKATES; *CONSIGNEE WALKS*

Sometimes things just don't go the way you'd like. Here you are, a carrier with a customer who keeps getting deeper and deeper in the red with you. You keep doing the work, hoping things will get better but conveniently forgetting that volume doesn't make up for unprofitability.

Finally, the customer closes its doors and leaves you hanging out there, way out there. Whether or not the customer files bankruptcy doesn't really matter. In fact, corporations often don't file bankruptcy. Why bother? There's frequently no personal liability. The money can be used to pay some creditors instead of lawyers. If a creditor gets favored, however, other creditors can file an involuntary petition in bankruptcy, but we're getting off the point.

So there you are, having either moved a lot of freight, or brokered it, and your prospect of being paid by your customer just vaporized. You have big bills to pay, and there is a possible domino effect, if your customer's closure or bankruptcy causes your closure.

You start to look around to see who else might be responsible for these freight charges, and you get the consignee in your sights real quickly. After all, the consignee was on the receiving end of the deal, and you remember hearing of court cases or seeing news articles where a consignee has been required to pay freight charges twice, once to the shipper (where the freight charges are part of the purchase price) and then again to the carrier. You also remember the similar scenario that occurred in undercharge cases, where the bankruptcy trustee for a carrier comes looking for either shippers or consignees for the difference between what the carrier charged and what the carrier's tariff provided. Yes, the filed rate doctrine, it's all coming back to you now.

So you do what carriers and brokers do, you hire a lawyer and make claims against those consignees. Although you won't be real popular, you don't really care since they aren't your customers, and more importantly, you need the money. Maybe you've got a tariff that you keep in your office, now that Congress has abolished filed tariffs, which provides that in the event of legal action, that you the carrier are entitled to attorneys fees. Upon receipt of your demand letter, the consignees are less than thrilled, and let's say just a little bit upset. After all, the demand letter has a whole bunch of court cases and statutes and pictures of the gallows which conjure up a whole slew of unpleasant thoughts. Some of the consignees, who believe the demand is off base, nevertheless hedge their bets and settle the claim. But other consignees say, "come get me".

And you instruct your attorney to do just that and the lawsuits get filed. In the situation where the consignee is located in Timbuktu, you receive a motion to dismiss the case based upon the fact that the consignee can't even spell Oregon, let alone ever having done any business there. In the other cases, where the consignee has some sort of connection with Oregon, then the consignee's lawyer files a response that states that the consignee isn't liable. The stage is set and you're off to court.

However unpleasant things may have been up to this point, they are now worse. You learn that the zillion of court cases were all decided before Congress put an end to filed tariffs and the filed rate doctrine. So the judge wants to know who you originally billed, who your original agreement was with, and now you're going after the consignee only because your customer stiffed you?

You also learn that even back in the good old days of regulation, when the filed rate doctrine was alive and well, that consignees weren't liable for freight charges where an "estoppel" defense was available. For example, if the bill of lading was marked prepaid, the consignee could claim reliance upon that representation when the consignee paid the shipper.

Cases that are prepared to be tried get settled, and cases that are prepared only for settlement get tried.

And if the consignee wasn't doing any business in Oregon to begin with, then your case gets tossed out without even reaching these other questions.

Finally, you learn that pursuant to Oregon law, and the law in most states, if a contract provides for the award of attorneys fees only to one side, that provision applies equally to both sides. Now that you've lost your cases and since you were relying upon the attorneys fees provision in your tariif, you have the distinct privilege of paying not only one attorney, you get to pay for two since you have to pay the consignee's attorney. That one always hurts.

That's all for now. Until next time, keep the cargo *rollin!*

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