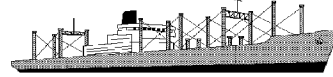




Rollin' On [®]



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ASSIGNMENT OF CLAIM, AND MEMORIAL DAY

Assignment of Claim: Who has the incentive?

Here's the deal. You're owed a bunch of money by someone who in turn is owed a bunch of money. For example, you're a motor carrier who hasn't been paid by the broker who hasn't been paid by the customer, usually the shipper. The broker would like to pay you, except the broker doesn't want to use its own funds. You can't get the broker off the dime since the lion's share of what the broker is owed gets passed through to you, so your interest is greater than the broker's interest, in terms of hard dollars.

So although the broker's unpaid bill to the shipper is larger than your unpaid bill to the broker, you're feeling the hurt a lot more since it was your equipment and personnel who did the work. Plus you keep the whole check instead of passing it through to someone further downstream. Practically speaking, you in fact pass much of it through to your employees or agents who did the actual work.

If we assume that you did not breach the agreement somehow, you have the option of dragging the broker into court. You don't want to do that, since that's the hand that feeds you, except that you're not getting fed lately. But you need some resolution or you may die on the vine, or at least suffer a prolonged dry stretch.

We'll keep talking about the carrier-broker example, but the discussion could apply in other circumstances. Also, assignments occur in other settings, such as when the broker, which normally has no liability for cargo loss or damage, voluntarily pays its

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customer, to keep the customer happy.

One option is to have the broker assign the claim to you. That allows you to chase the shipper for the money. Of course, the assignment comes with warts and everthing else. For example, the shipper might have a problem with the broker, so you'll have to deal with that. More likely, however, is that the shipper would have the problem with you, the carrier, in which case you would likely be involved in any litigation, one way or another, so getting involved at the get-go makes some sense.

Of course, attorneys fees get incurred along the way. Unless there is something in writing between the broker and the customer, and frequently there is not since brokers don't like to make their customers sign agreements, no attorneys fees are awarded. If the shipper has a good claim against the broker, then the shipper would have an attorneys fees claim if it prevailed, so be careful what you wish for.

In this regard, if you're the broker, you need to be careful since the carrier might file the lawsuit on behalf of the broker. The attorneys fees award could be assessed against the broker, who may be thousands of miles away from the lawsuit and blissfully ignorant of any developments in the lawsuit. In a sense the attorneys fee claim is a form of counterclaim.

Also, if you assign your claim, your name still gets mentioned in the court proceedings. Since you may have no involvement or control, you may be uncomfortable about your name getting

tossed around like a beach ball. It's bad enough when you've got your own attorney involved.

On that note, there is a form of control that you could retain, in that you could require, as a condition of your assignment, that your attorney represent you, being the named party, in the case. Thus the motor carrier would be paying for your attorney to handle the case. That may raise your comfort level considerably. The attorney may have some ethical items to deal with, such as client confidences. Remember that the broker and the carrier may have adverse interests. But those issues might be minimal, if they exist at all.

Memorial Day

It's that time of year when, more so in the past than now, tribute was made to our predecessors. Nowadays, the three day weekend, which is the symbolic start of the summer season, takes precedence. Instead of the visit to the graveyard, you see the endless line of vehicles streaming out of town, headed off to distant locations. This exodus is understandable, as workplace demands are ever increasing and tax freedom day, the point in the year when you start working for yourself instead of for the government, is pushed back even further.

A traditional Memorial Day activity involves the rolling out of the older vehicles, such as the Model Ts and Model As. They say that people are attracted to the vehicles in which they were raised. Thus the popularity of these vehicles has waned over the years, as their owners pass on or become incapable of driving.

That's it for now. Until next time, keep the cargo *rollin'1*

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 25 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.