Rollin' On . . .®

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INTERLINE TRUST MONEY, BANKRUPT CARRIERS, EXPERTS & FEDERAL CT

Unfortunately for many, motor carriers continue to go bankrupt. The filing of a petition in bankruptcy pits creditors against each other. Everyone knows that the usual outcome is that only a few cents on the dollar, if any, get paid. In fact, many of the filings are what are referred to as "No Asset" cases, which means that the creditors, at least the unsecured ones, get zip.

If you're a carrier creditor, you may have been stiffed by your interline partner, who may have been paid but who didn't get around to paying you. Or you got paid within 90 days of bankruptcy, and the trustee comes after you on a preference claim (***Rollin' On, May 2003, Vol. IX, Issue 5***), which is a whole different ballgame. Anyway, if the bankrupt interline carrier got paid by the shipper or consignee for both its share of the move as well as your portion of the move, you would want to distinguish yourself from the other creditors and try to establish a right to those funds that your former interline partner still theoretically has since it never did pay you.

If we back up for a minute, if the interline carrier has been paid the funds and has not yet filed for bankruptcy, you can make a fairly strong argument that that rascal is holding the funds in trust for you. After all, under any scenario, it would not be entitled to keep those funds for itself. The shipper paid the invoice which contained the charges for the entire movement, from origin to desitination. The interline carrier has the obligation to pass the funds on to you. That's a pretty easy argument.

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But after the petition for bankruptcy gets filed, all bets are off. As a creditor in the same situation as pre-petition, you would argue that those funds are not part of the bankruptcy estate, that they are being held in trust for you and other comparably placed carriers.

The Ninth Circuit Court of Appeals in San Francisco, which is the federal appellate court for the western states, has recently ruled against carriers on this issue. In order to rule in favor of the carriers, the court would have been required to adopt the interline trust doctrine as federal common law. The court considered the federal vs. state law ramifications. The court also noted that Congress had been previously asked to provide a remedy for similarly situated creditors, and Congress had refused to do so.

The winners are the other creditors, since those prepaid freight charges are now considered part of the bankruptcy estate.

Experts:
The battle of the hired guns.

Many cases involve issues for which expert testimony is required. At a minimum, it is an added layer of expense. The expert needs to get up to speed, which costs money. Still, it is an expense that is often unavoidable.

Then there are the disclosure requirements for federal court, where the theme is that there are to be no surprises. All expert witnesses must be disclosed, and therefore the money that you are spending for your expert is now being used for a broader purpose, since your expert's conclusions are being studied by the other side. Contrast that with the practice in state (Oregon) court, where no such disclosure is required, and thus the surprise element is still alive and well.

Federal court:
To go or not to go

You've heard the expression about making a federal case out of something, as in blowing it out of proportion. But when can you literally make a federal case, file a federal lawsuit, out of a particular matter?

Federal courts have limited jurisdiction. For the typical money damages case, there is a $75,000 minimum limit that must be in dispute. Additionally, the parties must be from different states. Sometimes a plaintiff will join a local resident as a defendant primarily to eliminate jurisdiction, since many plaintiffs prefer to be in state court since it tends to be less expensive. For example, there are more pretrial hoops to jump through in federal court. As stated above, there are disclosures requirements in federal court that you don't have in state court.

Also, in federal court the case is assigned to a particular judge upon the filing of the complaint, whereas in state court you frequently won't know who your trial judge is until literally a day or so before trial starts. This means that the state trial court judge will not be as familiar with a case as will a federal judge, which may be beneficial.

An anomaly is that federal courts still have jurisdiction of Carmack cases, which are loss and damage claims, where the damages exceed $10,000. This is an unusual departure from the limited jurisdiction of the federal court. At some point Congress will get around to increasing that limit.

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

Short Bio
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