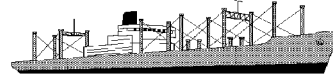




Rollin' On [®]



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HOURS OF SERVICE, CH. 11, LEGAL WRITING, PARENTAL RESPONSIBILITY, & JFK.

Hours of Service: Logbook Lapses

A lot of people are worked up over the new hours of service regulations that will become effective on January 4, 2004, absent a court order or other delay. The drivers will have more restrictions on their driving time. Many people believe that the vast majority of truckdrivers are currently violating the HOS regulations. That number could go up next year. Many of the truckdrivers claim, albeit anonymously, that they can't make a living without violating the regulations. I recently settled a case after opening arguments in a jury case where there was an issue of whether a carrier's practices effectively required a driver to violate those HOS in order to get his job done on time. If you're on a jury and there are implications that a truckdriver is working off the logbooks and the carrier says it ain't so, who are you going to believe?

Ch. 11 Bankruptcy Blues: To manage or not to manage.

As most of you know, Chapter 11 bankruptcy involves a petition for reorganization, which buys a little time by freezing out creditors, and hopefully the company later gets out of bankruptcy. When new management is obtained, about 86 % of the cases succeed. When the same management stays in place, roughly the same % of the cases fail. Let's see, is there a message there? But then again, whose candy store is it?

Legal Writing: What not to do.

When you write a legal brief or memorandum, you need to remember

The Obligatory Disclaimer

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

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that the judges might actually read it. The 9th Circuit Court of Appeals in San Francisco, which is the federal appellate court for many of the western states, issued an opinion the other day that blasts the lawyers who filed the appeal, for extremely poor legal work, in a recent transportation case. The court wondered if the lawyers were using the "spaghetti approach, heaving the entire contents of the pot against the wall in hopes that something would stick". Ouch. The court went on to state that "judges are not like pigs, hunting for truffles buried in briefs". Owww. The court further stated that the court "cannot manufacture arguments for an appellant". If you wrote the brief, you're now crying for mercy.

But there's more. The court went on to state that "however much we may importune lawyers to be brief and to get to the point, we have never suggested that they skip the substance of their argument in order to do so." If the recipient of this opinion has a substance abuse problem, this opinion isn't going to help very much.

Also, if you're the lawyer, what happens when you send a copy of that decision to your client? Remember, more so than judges, the client usually reads what you send. If you don't send a copy, you may have made matters worse, if that is possible.

Throwing rocks at trucks: Parental responsibility

I'm representing an owner-operator who had the misfortune of having a rock thrown through his windshield while driving down I-5. The rocks were

thrown by some minors. There was obviously a real possibility that someone, in the truck or another vehicle, could have been seriously injured or even killed. As it was, the truckdriver was shut down for a week while the damage was being fixed. As you all know, time is money.

Pursuant to Oregon law, parents have vicarious liability (by virtue of their relationship) for up to \$7,500 for the "intentional or reckless" actions of their children. However, parents are liable, without limitation, for their own negligence if they fail to adequately supervise their children. Parents usually have a way of controlling their children. Just think back about what consequences you would have faced had you pulled a stunt like that.

JFK:

As time goes by.

Virtually all Americans who were of school age still remember exactly where they were and what they were doing when they first heard of JFK's assassination on that dreadful day 40 years ago. Meanwhile, the conspiracy theory is alive and well. Time as well has taken its toll. Of the two couples in that car, only Mrs. Connolly is still living. Even the small boy who saluted his father's casket as it was transported down Pennsylvania Avenue has passed on before the rest of us.

And Lyndon Johnson, who won his first congressional race in Texas courtesy of voting, in neat alphabetical order, by residents in a cemetery in his district, succeeded to the presidential office amid a cloud of mistrust, perhaps more so by people within his own party.

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

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.