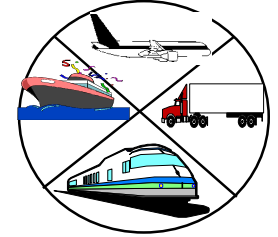


Rollin' On™



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TRANSPORTATION TRIMMINGS

recently returned from the annual Transportation Law Institute, held this year in San Francisco. Since representatives from our beloved Washington-based government made presentations, there was a hope, if not a fleeting expectation, that some accurate sense of what is to come from the current Congress would have been conveyed to those in attendance. Not necessarily. For example, there were no reports that the push to rescind the Carmack Amendment (which provides, among other things, full carrier liability) had any prospect of being revived, as prior efforts to rescind Carmack had failed. However, shortly after my return I learned from one of my clients (it's supposed to work the other way) that, immediately following adjournment of the institute, the ATA had somehow managed to revive that idea and convinced some in Congress to take another look at it. Such a revival would create quite a fuss, as shippers would be infuriated by such a law. If this proposal were to make it through Congress and the President, presumably there would be some post-legislative modifications to existing contracts by affected parties, to assure continuation of the status quo immediately prior to enactment.

ICC - DOT Changeover

The long-awaited demise of the ICC is imminent (the latest budget-

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battle posturing by both parties makes the continued existence of the entire federal government suspect). I had the pleasure of eating breakfast with the General Counsel to the ICC, Henri Rush, at the recent TLI, not because I was anyone special but probably in part because he had nowhere else to sit. Mr. Rush, who I met earlier this year in New Orleans where we were both speaking before a transportation group, informed me that there will probably be a three person board, as opposed to a five member board, that will be established at the DOT to continue some of the ICC's functions, such as resolution of undercharge claims. The six month audit provision of TIRRA will probably be rescinded and replaced with something more along the lines of the 18 months provided by the NRA, thus clearing up an inconsistency (arguably) in the current legislation.

Garbage & Recyclables (and tow trucks while we're at it)

A more interesting subject that we discussed concerns the shipment of garbage and recyclables. Mr. Rush noted that the ICC's prior interpretation of whether the intrastate deregulation laws impacted the shipment of these commodities was somewhat gratuitous, since DOT is heir apparent to these interpretations. The ICC has recently stated that the transportation of garbage has not been deregulated, whereas it states that the transportation of recyclables(ex-

cluding curbside) has been substantially deregulated. A DOT representative at the institute stated that the new legislation will provide that local governments will be able to regulate some nonconsensual towing. When I asked the DOT representative later about the garbage/recyclable issue, he told me that DOT had received "a thousand" calls regarding tow trucks, whereas DOT received "maybe only three" regarding garbage, and that garbage was clearly not impacted by the earlier law. The garbage issue may be a closer call than the ICC and DOT claim it to be. Congress deregulated the transportation of "property": one person's trash is someone else's treasure. As for recyclables, some local governments still regulate their movement, despite the ICC's statement of preemption.

Superior Fast Freight - Update

The "fleecing" of sheep is in full swing. The Washington, D.C. law firm hooked up with a Minnesota attorney and set up shop in Bloomington right next door to Trans-Allied, known from prior undercharge cases and which is handling many or all of the calls. The statute of limitations apparently runs on December 16. No lawsuits have yet been filed. But this group of hooligans is expected to file a slug of adversary proceedings within the month. They don't have to win to come out ahead.

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

Short Bio

Admitted to the bars of the states of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 15 years and emphasizing transportation law, business law and related litigation.