



# Rollin' On <sup>®</sup>



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## TRANSPORTATION LAW INSTITUTE: *Let's Rock and Roll*

I just returned from my annual trek to the TLI, a three day event which traditionally flips between the east and west coasts, for updates on what is happening in the legal realm of the transportation community. The topics ranged from motor to rail to water to air to intermodal, involving e-commerce, the effect of the Internet on the industry, NAFTA, the FMSCA, COGSA reform and ADR (alternative dispute resolution). Ethics too, although many may believe that is an oxymoron for a legal program. (I don't attend but claim that I do -- just kidding! I know nothing slips through the steel trap minds of **Rollin' On** readers.) The speakers included some of the chief muckymucks from government, you know, the ones who could be out of a job after November 7.

Here are some tidbits, trends, or trivia, in no particular order. Are **dot.coms** here to stay? They allow direct communication between buyers and sellers worldwide, the internet is open-ended which allows it to grow without limits, the internet efficiently distributes information, and it is free (much information is on line). You make the call. There are legal issues such as freight charges, the use of intermediaries, and good old contract law issues. What's the future of **rail mergers**? With the STB's new rules under consideration, it has to look at what has occurred since the Staggers Act: gateways closed, fewer connecting carriers, joint rates cancelled, alternative routes eliminated, and less favorable treatment of small shippers. What's the problem with **COGSA** as it is? You mean that \$500 doesn't cover the value of the cargo in that

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container? And what's wrong with allowing the carrier the right to claim the negligence of the captain as a defense? For some reason, judges have trouble with this longstanding defense, which lets the carrier off the hook if it can prove the master was negligent. If you're an ocean carrier, you gotta love that defense. Having problems with that **intermodal equipment** lately? This issue is frequently debated with no quick, or long term, resolution in sight. The ATA filed a petition, the USDOT is listening, some states are acting unilaterally, but all in all that's about it.

There was much more, but there were more questions than answers, some of which left the listener in doubt at times. Still, given the fact that the TLI is attended by lawyers, the excitement was extensive and endless.

### Election Day Ruminations

Remember last year when the impeachment proceedings were pending, when everyone knew the votes weren't there to oust the President but the Republicans kept pushing anyway? Their hope was for later dividends. The purpose, most nonpartisans agree, was to tarnish the President with the hope that it would spread to the VP. The Democrats might very well have done the same thing. Undoubtedly, there has been some impact, and even a little could go a long way in what is the closest presidential election in 40 years. (Many of us remember that one, where TV had its first significant impact on a presidential campaign. Remember

how Nixon sweated during the debates? How many votes did that cost him where he won the popular vote but lost the electoral vote?)

Anyway, the Clinton impeachment proceeding was an example of legal proceedings used for purposes other than the matters at issue. It was a forum of unequal parallel, on national TV and covered extensively by the media. The message got out loud and clear. Much of the cost was paid by the taxpayers. In many cases, where the public interest is affected, the litigants would love to get the coverage, since if they can't win the battle in court, they could try to win the war out of court. At the end of the day, that is often the real victory that is sought.

What if the Republicans had gotten what they wished for? Would Gore be unseated? Gerald Ford didn't get elected (we can't say reelected) but then many attribute his loss to his pardon (many claim prearranged) of Nixon. This balancing act may pay off.

### E-Mail Edition

With any luck, this will be the first time I'm also providing **Rollin' On** via e-mail. Although it's very trendy to offer this alternative, the fax part has been easy since those #s don't seem to change as often as e-mail addresses. Anyway, it's in a word document format, and if you want to switch over, please e-mail me your fax #, individual and company names, and whether to keep sending to the fax #.

### Civil War

Courtesy of TAP, 200 fans from the transportation industry are on their way to Corvallis Nov. 18. Rose Bowl time?

That's all for now. Keep the cargo **rollin' on!!**

#### The Obligatory Disclaimer

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

#### Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 20 years and emphasizing transportation law, business law and related litigation