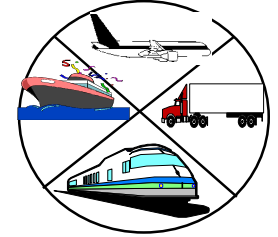


Rollin' On® . . .



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ICC TERMINATION ACT: Effect on Carrier Liability

Although the ICC Termination Act of 1995 (ICCTA) has already been on the books for almost a year, there is still a great deal of uncertainty as to its meaning. Before addressing that issue, let's first go back for a little Transportation Law 201 (since you are a **Rollin' On** reader you have progressed beyond the 101 level).

Prior to the recent deregulation changes, common carriers charged rates pursuant to their filed tariffs (the negative consequences for failure to do so are well known). Those filed tariffs contained rates based upon full liability and limited liability, stemming from the Carmack Amendment, which was itself a codification of common law. In 1995 Congress, having previously eliminated most tariff filings through its prior TIRRA legislation, confronted the released rates issue which had become muddled through the elimination of those filed tariffs, i. e. how carriers could again unilaterally limit their liability through the constructive notice previously provided by tariffs.

The solution was simple: Include in the transportation code a provision that allows a carrier to unilaterally limit its liability. The only requirement is that the carrier must provide to the shipper, on request, a copy of its rates, rules, classifications and practices applicable to the shipment.

The National Motor Freight Traffic Association has recently amended its uniform straight bill of lading to state

The Obligatory Disclaimer

This newsletter is distributed to shippers, carriers and third party intermediaries. It is for informational purposes, does not provide legal advice and does not create an attorney-client relationship.

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that it is subject to the tariffs *in effect*, as opposed to tariffs *on file*. This all sounds simple enough, right?

But what if the shipper prepares its own bill of lading that the carrier has never seen before. Can the driver bind the carrier by signing? Or is it merely a receipt? Conversely, what if the carrier starts using a bill of lading form that the shipper has never seen? Can the shipper's dock employee bind the shipper to terms

Rollin' On: Rewind

A few of you may not have received the September issue of **Rollin' On**, due to . . . well, perhaps operator error. (Not admissible in court.) If you were still able to survive the month and would like to receive the September issue, please give me a call or drop me a note and I will get it to you right away.

that the shipper has never seen?

Some of you have probably seen, or perhaps are using, stickers, rubber stamps or other similar items that get placed on bills of lading or other shipping documents and which state that these various documents serve only as receipts. That may be well and good, but as the saying goes, just because you say it is so does not mean that it is so.

So what impact does the new law have on carrier liability? The answer is not clear; time will tell. In the meantime, ICCTA directed the Department of Transportation to file a

report by the first of next year as to whether any modifications or reforms should be made to the loss and damage provisions of ICCTA. The factors that DOT is required to consider are, in the statutory order:

- 1) the efficient delivery of transportation services;
- 2) international and intermodal harmony;
- 3) the public interest; and
- 4) the interests of carriers and shippers.

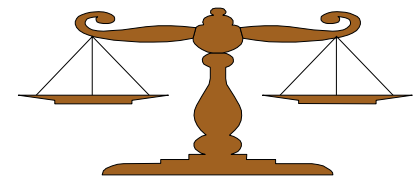
It is interesting that the concerns

Looking for Lawyers: A Clarification

In last month's issue I volunteered to be called in the event that you were seeking legal assistance. You should first call your own attorney if you have one. Although I have not received a phone call regarding this clarification, I wanted to be sure that this was understood.

of carriers and shippers is the last factor listed. DOT is also directed to make recommendations regarding any changes. Don't hold your breath for a report by the end of the year.

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.