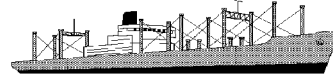




Rollin' On [®]



An Electronic and Facsimile Newsletter for the Transportation Industry

Volume X, Issue 9

Copyright © 2004

September 2004

GOV'T vs. GOV'T, LEASED TRUCKS/ATTORNEYS FEES, AND DEBATE WADERS

Gov't vs. Gov't:

Percentage to taxpayers?

It is sometimes interesting, and if you're a cynic it can be amusing, when one government agency fines another government agency. That just occurred across the river. The State of Washington, through its State Ecology Department, issued a fine in the amount of \$270,000 against the U.S. Department of Energy. The fine arises from the failure of the feds to notify the state that it shipped some radioactive waste from Savannah, Georgia to the Hanford site in the Richland area without the proper manifests.

So you've got the taxpayers in Washington funding collection efforts against federal taxpayers, which includes most of us and of course taxpayers in the state of Washington. Meanwhile, you've got government employees being paid on both sides of the equation. Even assuming that the state collects any \$\$, which is a big assumption, the costs of both funding the collection efforts and defending against the collection efforts will be high. The folks in Washington won't see any difference on their tax burden, while the rest of us can only wonder how much this is all costing us.

Leased trucks:

Attorneys fees provisions

Most people associated with the motor carrier industry know that there are federal regulations which contain mandatory provisions regarding the lease of a truck, usually an owner-operator, by a carrier. These regulations address matters such as settlements, withholdings, security deposits and other such matters. A

The Obligatory Disclaimer

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

LARRY R. DAVIDSON
Attorney at Law
1850 Benj. Franklin Plaza
One SW Columbia St.
Portland, Oregon 97258
(503) 229-0199
Fax (503) 229-1856
E-Mail: larry@rollin-on.com
www.rollin-on.com

few years ago Congress added to the mix by providing in a federal statute, not in the federal regulations (which are promulgated by government employees), that a person may bring a lawsuit, based upon those regulations, against an offending party. Congress further provided that the prevailing party is entitled to an award of attorneys fees.

This is noteworthy since in order to obtain attorneys fees, there must be an attorneys fees provision in a contract, which is frequently not the case, or there must be a pertinent statute, which likewise is frequently lacking. Thus this statute containing an attorneys fees provision is outside the norm. It cuts both ways, so if you're an owner-operator and you believe you've been cheated but you don't prove your case, you will end up paying for the other side's attorneys fees. And vice versa.

Debates:

Get out your high water pants.

We are about to be blessed with another round of presidential debates. We are fortunate that this occurs only once every four years, although the losing voters are out of luck for those four years. Make sure you've got your hipwaders on since it'll get quite deep before they're done.

And the choices, that's something to think about. On the one hand you've got a challenger who can't make up his mind where he stands and who appears to be trying to lose the election. On the other hand, you've got the current commander in chief who in his address to the nation about

a month ago made several feel-good socially-related proposals, all of which required funding and all of which were DOA since there is no funding, due to the unprecedented national debt that has been run up during the past four years. You've even got an egomaniac who is determined to get on the ballot in as many states as possible, even though he doesn't have a prayer of getting elected. But hey this is election time and anything goes.

Meanwhile, you've got the U.S. Supreme Court on deck just in case. In 2000 their nine votes were the only ones that counted since they took the unprecedented action of terminating a state election, this by a group of people who pretend to champion state's rights. Their action handed the election to the loser of the popular vote. The irony is that the swing guy on the 5-4 vote was a black person who by his vote disenfranchised his ethnic group, which had voted overwhelmingly the other way.

And guess what: The winner of this election probably gets to appoint a few new judges to the Supreme Court since some of the current members will be going bye bye. There were no new members appointed during the last presidential term and both sides desperately want to park in the Oval Office in order to control those appointments to this third branch of government. While the presidency is up for grabs every four years, there are no term limits on the nation's top bench. Some of the members have been known to roost there forever. Heck why not, you get the summers off. With pay. It's a nice job if you can get it.

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.