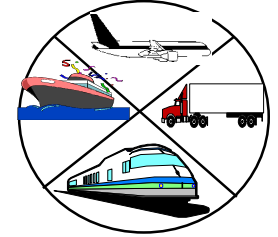


Rollin' On™ . . .



A Facsimile Newsletter for the Transportation Industry

Volume I Issue 9

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SEPTEMBER 1995

INSURANCE: WHO'S ON FIRST?

Here's the situation: You're driving down the interstate on a holiday weekend, perhaps returning from Grandma's house, the beach or some other place your spouse (or significant/insignificant other) had a hankering to visit. Weary from a hectic outing or unfettered boredom, you are minding your own business when some maniac from nowhere darts quickly in and out of traffic and causes a truck driver with an unblemished record (they really do exist) to take evasive action to avoid a horrible accident. Unfortunately, the truck driver hits you and everyone pulls over, except of course the offending motorist.

Since you are involved in transportation, you realize that you should get the MC # for the truck, which is stated right on the door, along with the US DOT # and other miscellaneous information. You of course also write down the name of the company. The truck driver, after expressing his disgust with the now-vaporized culprit, nevertheless assures you that there is an obscene amount of insurance and not to worry.

You contact your insurance agent and once you have diverted him from his concern about the liability of the truck driver, you give your agent the information you dutifully took down. A few days later your insurance agent calls you and asks for the name and policy number for the driver, as the truck company has everyone con-

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vinced that the driver was required to maintain his own insurance and that the truck company's policy was for secondary, not primary, coverage. Of course, you simultaneously learn that the truck driver has decided to change careers and has vanished to parts unknown to become a hairdresser ("Sir, did you say you wanted a flat top or black top?"). The insurance carrier for the truck company has filled this hole by furnishing everyone with the driver's personal insurance information which the driver had been required to keep on file with the truck company. However, the driver's insurance company declines coverage, stating that the truck company's policy was primary as the driver was under dispatch.

So the good news is that there is insurance. The bad news is that you can't get your vehicle fixed because of the dispute.

These disputes occur more frequently than one might imagine. As a general rule, the truck company's

Leaping Lizards!!

In response to my wife's question to our (almost) 5 yr old, our pre-schooler stated "That's not the issue." I did not know whether to laugh or cry.

policy will be primary, since the load was moving under the truck company's ICC authority. However, the truck company and the driver, frequently an owner-operator, can agree that the driver is required to indemnify (reimburse) the truck company from any losses that may occur while the driver is under dispatch. In that

case, while the truck company's insurance carrier should settle up with any third parties that may have suffered injuries, that insurance carrier can look to the driver's insurance carrier for reimbursement (assuming that the driver's carrier is aware of the arrangements). In some instances and in view of the driver's duty to indemnify, the driver's insurance carrier can assume first position and settle directly with the third party. That would simplify a complicated situation.

The arrangement that I saw recently and that should be avoided is where the truck company, in reliance upon the driver's furnishing of a certificate of insurance naming the truck company as an additional insured, fails to maintain insurance on the driver/owner-operator's equip-

Lottery Lunacy

Old English law referred to a lottery as an idiot tax.

ment. In that situation the truck company, through its insurance carrier, has previously made an insurance filing with the ICC, which will usually make it primarily liable, yet has no coverage for the vehicle. So while there may be two policies of insurance, one owned by the truck company and one owned by the driver/owner-operator, the truck company may be uninsured for the accident.

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

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.

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.