News and Upcoming Events
November, 2009

Highlights:
• Henry Seaton to Present Webinar for TCA in December
• Latest Developments in Labor/Management Affecting Transportation
• Owner-Operator Classification Under Attack

UPCOMING EVENTS

Truckload Carriers Association (TCA) Webinar, "Shipper Contract Demands that Cause Problems for Carriers and Brokers" presented by Henry Seaton on December 10, 2009, 12:00 - 1:30 p.m. EST. Your duties and obligations as a carrier or broker are defined by general principles in federal transportation law. That doesn’t stop shippers, however, from demanding contract terms that create greater risks and more liability than you are required to assume or can reasonably insure. In this webcast, you will find out what you give up when your duties and obligations are waived and what to do when a shipper insists:

• On the right to “reject it, crush it, and dump it” and offset the value of the affected freight against your charges.
• That a broker is a “transportation service provider” responsible for its carrier’s safety duties.
• On indemnification for everything, including the shipper’s own negligence, “arising out of” the service you provide.
• That a broker secures its carrier’s release from recourse against the shipper.

Click here to register for the webcast: http://online.km.com/iebms/reg/reg_p1_form.asp?oc=10&ct=0017029&eventid=16274

Click here to buy the conference CD: http://online.km.com/iebms/reg/reg_p1_form.asp?oc=10&ct=0017029P&eventid=16274

Transportation Lawyers Association, Chicago Regional Seminar; January 22, 2010. The focal point of the program will be a litigation theme, and will include panels covering motor carrier safety, owner operator issues, casualty and ethics. There will also be a special panel covering transportation contracts and freight claims. See www.translaw.org for more information.

AirCargo 2010 is Coming! Omni ChampionsGate Resort & Spa, Orlando, Florida - March 14-16, 2010. Please go to http://www.aemca.org/AC_conference/Welcome.html for more information and to register!
LABOR/MANAGEMENT UPDATE

The Teamsters are flexing their political muscle in an attempt to reorganize the trucking industry as the following current events demonstrate:

• Hours of Services Rules Revisited. The Teamsters and safety advocates have convinced the Obama Administration to re-open the hours of service rule with a view to reducing the 11 hour on-duty driving block. Apparently, a deal was made between the Administration and Senator Lautenberg. In return for approving the Administration’s nominee for new FMCSA Administrator, the Administration agreed to reconsider the hours of service. Reconsideration will require compliance with the Administrative Procedure Act and the process could last another 2 years. At stake is the 11 hour rule and the 34 hour restart to which safety advocates and the Teamsters strongly object. See Teamsters Commend Decision to Fix Hours of Service Rule and ATA Responds to FMCSA’s Reconsideration of Hours of Service Regulations.

• Teamsters urge Congress to require GM and Chrysler to hire only union auto haulers. Click here for full article.

Clearly, organized labor hopes to reverse the affects of deregulation and the success of the owner-operator model. Driver safety and global warming belie their true political agenda.

RECENT DEVELOPMENTS IN THE CONTINUING ATTACK ON THE CLASSIFICATION OF OWNER-OPERATORS

• Pac Anchor. In this case the attempt of Attorney General Jerry Brown to prosecute Pac Anchor, a small LA area drayman for mis-classification was trumped by the FAAAA, the Court ruled. Although Superior Court Judge Elizabeth Allen White in People of the State of California v. Pac Anchor Transportation, Inc. et al. ruled that California Attorney General Jerry Brown was precluded by the Federal preemption afforded by 49 U.S.C. 14501 from prosecuting carriers which use owner-operators, the battle is not over.

• With union backing, the Mayors of New York City, Newark and Oakland have been recruited to join the Mayor of Long Beach in an attempt to have the Democratic Congress repeal the FAAAA bar to excluding owner-operators from access to the ports under the Clean Harbors excuse. Click here for more.

• AGs of New York, New Jersey and Montana issue notice to FedEx of misclassification complaint over owner-operators. See Attorney General Letter.

• Hurricane Express v. Arkansas Worker's Compensation Board, 2009 Ark. App. 719. The Arkansas Court of Appeals has upheld a Worker's Compensation Board finding that owner-operators are employees for Arkansas worker’s comp purposes. In applying a modified control test, the Court disregarded control indicia or that contractual control indicia was mandated by Federal Statute and held that a typical lease-purchase agreement “conferred no proprietary interest” upon the owner-operator.

FMCSA E-NEWSLETTER AVAILABLE

Our firm forwards via email to interested parties the FMCSA bi-weekly newsletter with commentary from Rick Gobbell, our Safety Consultant. To be added to the circulation list free of charge, email us at info@transportationlaw.net.

VIDEOS COMING TO WEBSITE:

In the very near future, the following videos sponsored by Big Truck TV will be available on our website:
Carmack Amendment vs Contract Law:
The Carmack Amendment was put in place to bring order to cargo claims. It stated that the carrier was liable for any damage to the goods, but the carrier also had the right to mitigate those losses as much as possible. But that was 100 years ago. Since then, many shippers have used contracts to undermine the spirit of the Carmack Amendment. Henry Seaton, a transportation lawyer who specializes in cargo claims, discusses what he calls the Reject It, Crush It and Dump It approach many shippers take and what carriers can -- and should -- do about it.

How to Mitigate Your Cargo Claim Losses:
Given that the devil is in the details, what you include in your Rules Circular could save you tens of thousands of dollars. From limiting your liability to avoiding brokers who use the dreaded “offset”, Henry Seaton, a transportation lawyer specializing in cargo claims, discusses the do’s and don’ts of dealing with brokers.

Unlike Wine, Cargo Claims Don’t Get Better With Age: When it comes to fighting cargo claims, time is not on the carrier’s side. Transportation attorney Henry Seaton believes a carrier has less than 24 hours to get their on-hand notice filed to have a chance at challenging or mitigating a cargo claim, so speed is of the essence. Seaton offers valuable advice on how carriers should approach their claim to maximize their chance of a successful challenge.

How 9/11 Changed the Cargo Claims Landscape: After 9/11, there was widespread concern that terrorists might make the nation’s food supply their next target. This fear led to shippers destroying perfectly good shipments simply because their seal was broken. Henry Seaton, a transportation lawyer who specializes in cargo claims, explains how it was through a misguided assumption that they were following federally mandated regulations that many shippers adopted these strict policies, but the Federal Court’s recent Land O’Lakes decision is beginning to correct that assumption.
Elizabeth Osburn and Henry Seaton, along with Co-Counsel Vic Henry of Henry, Oddo, Austin and Fletcher of Dallas Texas, recently prevailed on Summary Judgment on behalf of Landair Transport, Inc. in the amount of $100,509.88. The case involved an indemnification claim under 49 U.S.C. §14706(b). See Landair Transport, Inc. v. Schneider National Carriers, Inc., 2009 WL 3423037 (N.D. Tex.)

John Husk, along with Co-Counsel Sam Hanna of Charleston, West Virginia were successful in obtaining a Motion to Dismiss of Plaintiffs' state law breach of contract and negligence claim ruling for a household goods carrier client based upon complete preemption under the Carmack Amendment of such claims. The Court also denied Plaintiffs' Motion to Remand the case back to State Court. See O'Boyle v. Superior Moving & Storage, Inc., 2009 U.S. Dist. LEXIS 71437 (SDWV 2009).

MISCELLANEOUS

• Gary Schulte Gets Life. Gary Schulte was a serial broker scam artist. Operating as LAF Longhorn, Julio Caballero, Barbarino Express and finally Freight Squad, he bilked at least $3.8 million out of the trucking industry by contracting to arrange freight at negative margins with unsuspecting shippers and then running off with the money. The track record for Schulte-related brokers in the FMCSA database shows that each successive broker was set up several months before the last one disappeared. When carriers finally started to get wise, he filed personal bankruptcy. Imagine the chutzpah. He listed over 35 carriers to whom he admitting owing $3,000,000. A number of large carriers were each owed substantial six figure amounts and decided to pursue him inside his personal bankruptcy.

The Harris County DA's Office which was of no help to the aggrieved carriers nonetheless had a pending indictment against Schulte for unrelated criminal fraud to which Schulte pled guilty. When he did not show up for sentencing on October 2, 2009, the Judge sentenced him to life in prison. Apparently he is on the run.

CHECK OUT THIS MONTH'S CCJ ARTICLE
http://www.transportationlaw.net/articles.html

FOR MORE INFORMATION...
visit www.transportationlaw.net

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