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KNOW WHAT YOU ARE SIGNING

By: James A. Calderwood^{1/}

It is amazing what some people will sign, especially shippers and carriers. Transportation contracts are entered into everyday without the shipper, consignor, consignee, logistics provider who set up the movement or even the carrier knowing what obligations each is assuming.

This is because the contractual agreement for these moves consists only of a bill of lading. Often this bill of lading has been prepared by a motor carrier who supplies the shipper with a stack of these bills of lading. When something needs transported the shipper or shipper's representative calls the motor carrier and says they have cargo to be picked up and delivered. When the truck arrives the shipper fills in some of the blank spaces of the carrier's bill of lading, signs it and gives it to the driver while, at least sometimes, retaining a copy.

This scene is repeated often as shipments are picked up and delivered. Most are transported without a problem, but when a problem does develop and the lawyers get

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called in then the situation often gets very messy as the lawyers and the courts try to sort out who was actually responsible for what.

A classic example of the legal mess created by this scenario was recently before a federal court in Michigan. A large trucking company brought the suit to collect what it claimed were over \$100,000 in unpaid transportation charges. The defendant shipper was a distributor of automobile parts and had been utilizing the trucker for years, sometimes with up to 250 shipments a month according to the court.

In time the relationship turned sour and the lawsuit followed. The only "contract" that existed for the transportation services was the carrier's bills of lading, which had been filled out by the shipper at the time the loads were picked up. One bill of lading for each of hundreds of movements. Under the carrier's standard bill of lading the shipper was entitled to a 68% discount off of the trucker's referenced "tariff" rate which, according to the "tariff", the shipper would forfeit if it did not pay within a certain time period.

The court recognized that the bill of lading was the contract of carriage between the parties. Even though they could have had a more comprehensive contract designed to cover all of the transportation services rendered by the trucker over a period of time the parties had never bothered with one.

The bills of lading all referred to a "tariff" of the carrier. The carrier tried to argue that its "tariff" was somehow a legal tariff that had to be honored under all circumstances. The court rejected this argument, as have other courts, holding that

there no longer are any legally required tariffs for motor carriers (except for the movement of the household goods of individual householders) and held that the so-called "tariff" was a pricing agreement that had been incorporated by reference into the bill of lading.

This is one reason why it is important to know what you are signing. When a bill of lading incorporates a tariff by reference it usually means that it refers to some standard clauses of the carrier and says they are being made a part of the contract of carriage; that is the bill of lading. A shipper signing the bill of lading may not be aware of the consequences, but it is agreeing to all of the clauses in the "tariff". For instance, in this case the referenced "tariff" provided that if the shipper did not pay within 180 days of the date of the move it could lose the 68% discount.

There is no longer any government agency overseeing these "tariffs" and they are not filed with any government entity. This applies to both interstate and intrastate movements. They may contain a wide range of provisions unknown to a shipper, but by signing a bill of lading bearing a reference to such a tariff the shipper may be held to these "tariff" requirements even though the shipper has never read them.

Another problem that often arises with bills of lading, as the automobile parts distributor learned, is that bills of lading are not standard. The days of a uniform bill of lading are long gone and there is no such thing as a legally standard one. It is usually the fine print on the back that varies. Again, each party may want to be aware of what it is agreeing to do.

One rule of law that helped the automobile parts shipper is that some ambiguous wording in the bill of lading and pricing agreement was construed against the entity who wrote it, in this case the trucker. Even though the shipper was held liable to the trucker its damages were considerably reduced because of the confusing language.

Another issue presented by the case is that with the abolition of legal tariffs for motor carrier freight movements state contract law will apply to any disputes instead of a comprehensive federal law. State laws applying to contract interpretation and enforcement may vary creating further confusion in a dispute. Sometimes the party drafting a contract will insert a provision saying the laws of a particular state will apply and the parties can only sue in the courts of that state.

The case of the automobile parts distributor demonstrates the need for all parties to understand just what they are agreeing to and not to assume that some government agency is overseeing these documents and references. They are not.