



What Is A Transportation Contract?

In the last three installments of PARCEL Counsel, we considered six basic rules relating to the process of contracting and, in particular, how these six principles come into play when negotiating a contract for transportation services. In this issue, we will discuss the three types of transportation contracts in use today.

By far the most frequently used contract is a carrier's bill of lading. As used in this discussion, the term "bill of lading" refers to any similar document, e.g., an airbill, intended by the carrier to be what is generically referred to as "the contract of carriage." As an aside, it should be noted that the bill of lading is always issued by the carrier, not the shipper, consignor or intermediary.

While it may be true that the paper form used for the bill of lading may be printed by a shipper, filled out by a consignor or a third party and may even bear the logo of the consignor, it nevertheless remains so that in a legal sense, the bill of lading is issued by the carrier. With regard to motor carriage, the bill of lading is issued when the carrier's driver signs it.

Another very significant point is that while the document issued by the carrier is called the contract of carriage, it is certainly not the entire contract. Virtually every bill of lading or airbill has language such as "subject to the rates, rules and classifications in effect on the date of shipment" or "subject to the terms and conditions of our service guide in effect on the date of shipment" or some similar terminology. These phrases are what lawyers call "an incorporation by reference."

Black's Law Dictionary defines an "incorporation by reference" as follows: "The method of (1) making one document of any kind become a part of another separate document (2) by referring to the former in the latter, (3) declaring that the former shall be taken and considered as a part of the latter and (4) the same as if it were fully set out therein." Thus, the "subject to" language contained in a bill of lading "incorporates by reference" all of the carrier's terms and conditions, tariffs, service guides or whatever.

For many motor carriers, the "subject to" clause will also bring in the terms and conditions of the National Motor Freight Classification (NMFC). For motor carriers belonging to a tariff bureau, the bureau's tariffs are also incorporated. Thus, the single sheet of paper issued by a carrier actually becomes a

legal contract that could be hundreds or even thousands of pages in length... and subject to change at any time.

A final point with respect to a bill of lading is that it also serves as a receipt for the goods. While at one time bills of lading could also be evidence of title, and thus negotiable, for domestic transportation, virtually all bills of lading in this day and age are not evidence of title and are non-negotiable.

The second category of transportation contracts are those called pricing agreements or some similar name. Generally speaking, a pricing agreement is a rather short document — two or three pages in length. The purpose of such agreements is to document individual negotiations with respect to rates arrived at between a carrier and a shipper. While a pricing agreement may contain other negotiated terms and conditions, they generally only relate to rates and pricing. This means that all of the other provisions of a carrier's tariff or service guide will be applicable to any shipments made pursuant to the pricing agreement.

The third category of transportation contracts is an individually negotiated contract. Such documents are generally multi-paged agreements that resemble in appearance customary contracts used in the business world. While the drafting of such a contract is far beyond the scope of this discussion, care must be taken, especially by a shipper customer of a carrier, that the contract clearly specifies that the terms and conditions of the contract will govern all of the shipments tendered to the carrier even though the carrier will still be issuing a bill of lading to serve as a receipt for the goods. In such an event, the individually negotiated contract, not the bill of lading, will be the contract of carriage.

All for now! ■

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