

# THE Logistics Journal



Transportation  
Intermediaries  
Association

A Publication of the Transportation Intermediaries Association

March 2007

## Things to Note About the 18-Month Statute of Limitation for Claims

By Ronald H. Usem, Esq.

In this month's *Law and Your Business* column, Mr. Ron Usem cites the case of *Emmert Industrial Corporation v. Artisan Associates* to point out the critical importance both of timely billing and of carefully defined contract terms.

*Emmert Industrial Corporation v. Artisan Associates*, 2005 WL 913129 (D. Or.).

**Factual Background:** Emmert, Plaintiff in this case, was an engineering and transportation company that specialized in transporting heavy objects weighing more than 100,000 pounds. Artisan was a broker that specialized in complex transportation projects. In May 1996, Artisan solicited bids on behalf of its shipper (General Motors) for transporting six metal stamping machines from Japan to various locations in the United States. In June 1996, Artisan accepted a bid from Emmert for Emmert to be the "primary carrier." Emmert completed two of the projects and billed Artisan \$4,900,931. Artisan paid Emmert \$4,195,557. Emmert alleges that the payments leave an unpaid balance of not less than \$570,000. It was learned before all of the moves were completed that General Motors did not want to deal with Emmert and, in fact, did not use Artisan as its broker on the remaining shipments. In October 1997, Artisan told Emmert it would not pay the remaining balance, and this lawsuit followed.

**Discussion:** Emmert claimed that Artisan breached the contract by failing to pay the balance remaining on its invoices. Artisan, the broker, claimed that Emmert's claims were barred by the 18-month statute of limitations, 49 USC §14705, for the transportation services. If Artisan was correct, it would

avoid the liability, \$570,000, asserted by Emmert. Emmert argued that the services for which it was seeking payment were not transportation services, and therefore the claims were not preempted by the statute of limitations, 49 USC §14705, but rather the six-year statute of limitations for breach of contract actions in the State of Oregon. The alleged "non-transportation" services for which Emmert sought to collect included preparing route plans, working with civil authorities and highway authorities to obtain proper permits, monitoring bridges, hiring additional personnel, all involved in arranging for the transportation of the presses. The Court cited the definitional section of 49 USC §13102(12) (now 19) stating that the transportation services governed by the 18-month statute of limitations are not limited to the actual movement or shipment of the items. Under the definitions "(a) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumen-

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tality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or agreement concerning use; and (b) services related to that movement, including arranging for, receipt, delivery, elevation, transfer and transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property." The Court went on to cite numerous cases where efforts have been made to impose a more restrictive definition of the meaning of the term "transportation" as used in the statute.

The Court concluded that while Emmert's efforts to characterize their engineering and consulting services outside of the meaning of the word "transportation," they were actually involved in the transportation of goods. Thus, Emmert's argument failed.

The final dispute between the parties involved the meaning of the term "primary carrier," which no one had bothered to define.

Emmert claimed that the term "primary carrier" meant it was entitled to complete performance of the contract. The Court found that the term primary did not mean "exclusive." Thus, the Court concluded that Artisan, the broker, had the right not to pay the remaining balance when it was not obligated to do so under its contract.

Since the 18-month statute of limitations applies to claims against carriers, brokers are reminded that their billing to carriers for brokerage and related services must be made before the 18-month statute of limitations period expires.

The moral of the story:

1. Don't wait to do your billing. The 18-month statute of limitations applies to a broad range of transportation-related services; and
2. Be careful to define terms in your contract which you "assume" everyone understands.

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# Branding Your Business Through an Exhibit Booth

*By Daniel T. Yoest*

**T**he Exhibit Hall at the TIA Convention is a bustling place, with business being conducted, ideas hatched and opportunities gained. During the last 10 years my previous company, CrossRoad Carriers, has always had a booth and the benefits have been immeasurable.

Initially, you look at the cost to consider whether the investment is worth it. What are you getting in return for the cost of the booth and the give away items that you distribute? In reality, it comes down to the question: what does the booth do for you and your company long after the show closes?

The short-term value is getting to meet and greet the hundreds of TIA members and other industry professionals that visit the exhibit hall. TIA is made up of an ingenious group of creative entrepreneurs that are always thinking of new ways to bring new services to their customers. They often stop by your booth to run ideas by you and to come up with ways of bundling their service with yours. Sometimes a new star is born. Other times, they are seeking information to begin slow cooking a new idea, and they remember you when they want to launch it. Also, I have always used our booth to gauge how our employees are doing in getting our message out to the public. Often I have returned from one of our shows to adjust our message or go over the feedback with our sales staff to come up with ways to be more effective.

The long-term benefits are the ones that bring even larger results. Your company often becomes well known with the top leaders of the 3PL industry. You not only support their efforts, but your company is showing them your wares and services. They brand your company as one of the leaders in the industry regardless of your size. In fact, one key to long-term success is presenting your business larger than it really is and having a booth is certainly a quick and easy way to gain name recognition in this business.

Many times this also leads to long-term personal relationships with industry leaders, and opportunities to moderate or participate on convention subject panels with other participants in your field. While you might think that you have nothing new to offer, before you know it you are part of a panel of experts in your field.