

Trucking Undercharge Claims

By Tom Junge, Iowa Field Director

Are attorneys or collection agencies for bankrupt trucking companies still attempting to collect “undercharged” freight bills from you?

Many dealers at our town meetings indicated that they have received letters or bills regarding Midland, H & W, Consolidated and other trucking companies requiring discounts to be repaid on 1999 or 2000 freight bills.

In 1993, the U.S. Congress passed the Negotiated Rates Act of 1993. The Act specifically states that if the person the undercharge claim is brought against is a small business under the Small Business Act, the respondent is not liable for the undercharge.

Most dealers will be able to claim this small business exemption. Small is defined as:

SIC 5083	Farm & Garden Machinery and Equipment – under 100 employees
SIC 5084	Industrial Machinery & Equipment – under 100 employees
SIC 5082	Construction & Mining Machinery & Equipment – under 100 employees

While a few bankruptcy courts have ruled that the Negotiated Rates Act does not apply to bankrupt trucking companies, the majority of courts have found that it does apply.

The draft letter shown below can be used to inform collection agencies or auditors that your dealership qualifies as a small business.

Draft Letter to Send to Auditors of Bankrupt Trucking Companies

(Name of Auditor or Trustee for trucking company)

Audit Company address

RE: Undercharge claim of (date). Invoice No. _____

Dear Auditor:

I am writing in response to your letter of (date) regarding freight claims for shipments with (shipping company) truck lines. Our business qualifies as a small business under the Negotiated Rates Act of 1993 (49 U.S.C. 10701) and is therefore not liable for the difference, if any, between the filed rate and the actual rate billed and paid.

Sincerely,

Mr. _____
Implement Dealer