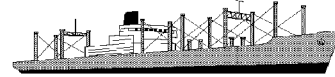




Rollin' On



An Electronic and Facsimile Newsletter for the Transportation Industry

Volume XV, Issue 1

Copyright © 2009

January 2009

LEASED MOTOR VEHICLES, EXEMPTIONS, STIMULUS & JAIL

LEASED MOTOR VEHICLES: Exemption from liability

There was a time when owners of motor vehicles were subject to liability merely by virtue of renting or leasing such vehicles to third parties. The owners were frequently found to be liable for damages or injuries that were caused by negligent operators, where those operators had permission from the owners to operate those vehicles.

This liability would come about through various different laws that the various states passed or otherwise adhered to. The inconsistency, and the exposure, caused costs to go up, which were passed on to the user.

With little notice a while back, Congress changed all of that by passing a federal law that preempted the various inconsistent state laws. You would think that the prospect of such a change would create considerable interest. However, the law was passed with little discussion, and in fact, no hearings were held.

The federal law protects owners who are engaged in the trade or business of renting or leasing motor vehicles. The statute says that "owner" includes (1) a record or beneficial owner, holder of title, lessor or lessee, (2) persons entitled to the use and possession of a motor vehicle subject to a security interest in another person, or (3) a lessor, lessee or bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles. Person is broadly defined to include any individual, corporation, company, limited liability company, and a slug more of types of entities.

There are still some nuances hanging around. The federal law

LARRY R. DAVIDSON
Attorney at Law
1850 Benj. Franklin Plaza
One SW Columbia St.
Portland, Oregon 97258
(503) 229-0199
Fax (503) 229-1856
E-Mail: larry@rollin-on.com
www.rollin-on.com

allows states to set their own limits as to the amount of coverage that is required. As it is, some states require much more than other states, so if you are involved in interstate commerce and operations, be sure that your coverage complies with the limits of the states in which you operate.

Another problem is that the discrepancy in the limits has resulted in situations where insurance companies disagree as to which policy should be primary and which should be subrogated.

The law does not provide everyone with a free pass, as there are still duties that apply. The vehicle must be maintained in good operating condition, and prospective lessees still need to be screened.

There have been constitutional challenges to the law. In most instances, those challenges have been rejected by the courts.

Still, you never want to turn your back on Congress which is back in session, especially when one party – it can be either party – is in complete control of both the legislative and executive branch of government. After all, the third branch is the judicial branch, and if we have to rely upon that branch to balance the three legged stool of government, well that is a scary thought.

YES WE CAN.

Regardless of which side of the aisle one is on, that needs to be our attitude. We all have friends or know people who have lost their jobs or their homes or both. For their sake and everyone else's, we need to be unified.

STIMULUS:

Energy, & lose the jail house key.

While the government was recently handing out money through the front door of many Wall Street and other financial firms, many of those same firms were busy handing it out the back door to themselves and to other employees, in the form of bonuses. That is a difficult picture to embed in the brain: financial institutions hemorrhaging cash while executives stuff their pockets with taxpayer money.

Never mind that most if not all of those financial institutions would have folded without the bailout.

If the government truly wants to stimulate the economy, and get some attention in the process, there is another alternative that is available. It would pay for itself, maybe in multiples.

What you do is, you round up the Wall Street wizards who created this mess and prosecute them for financial misdoings. If the grounds aren't there for criminal prosecutions, like where it's cheaper to throw someone in jail for life instead of spending millions seeking the death penalty – for a low life dirt bag not worth two cents - then you sue them for their civil infractions. Hit them where it hurts.

The guy on main street could not get away with these misdeeds. Wall Street stiffies should be treated no differently.

Sue them for breach of fiduciary duty, negligence and other misdeeds. Those miscreants paid themselves several million dollars a year while their companies were bleeding cash. Throw some people in jail, take their ill-gotten gains and use them wisely, and people will be stimulated and energized.

That's it for now. Until next time, keep the cargo rollin'!

The Obligatory Disclaimer

This newsletter is for informational purposes, does not provide legal advice and does not create an attorney-client relationship

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 30 years and emphasizing transportation law, business law and related litigation