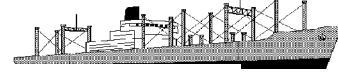




Rollin' On



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DECISIONS, DECISIONS:

Pick your claim and court w/ care

Don't you just hate it sometimes when you have to make a decision, like whether you should attend a certain event that's not high on your excitement chart, whether to wear black or brown shoes on a certain day, or whether to file your lawsuit in state or federal court? I mean, life is going along just fine and then, wham, you've got to make a decision. After all, they say it's human nature to seek a routine, which excludes these disturbing decisions. At least there is some comfort in having to make decisions once in while, as having a scripted life is not an attractive alternative (as many husbands [and wives] know).

So there you are, trying to decide whether to have high noon in state court, or should you travel down the block (rural residents get to travel further) to the federal courthouse? How do you decide? You support both institutions through taxes, so that doesn't help you decide much, especially since you're not entitled to a refund for nonuse, like some kind of worker's compensation premium.

Federal court is probably more expensive. This is ironic, since the federal rules are modeled on "notice" pleading, the intent being to not have any complicated legal mumble jumble stuff and just say enough so that the other side can get a clue as to what it is you're upset about. The problem is that more "discovery" is allowed under federal rules. For example, in federal court you can seek information from the other side through interrogatories, which are written questions to the other side. This is

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not allowed in Oregon. (Too bad for President Clinton, who received interrogatories through the federal system, not that he gave any meaningful answers to them.) Also courtesy of the federal system, you have access to the other side's experts, whereas in state court you get to have your expert lie in the weeds until trial without the other side even knowing what saintly soul you're bringing in.

If you're worried about speed, stay away from federal court since the time to trial is generally longer, and if there's an appeal, it gets worse (un-

Indecision is the key to flexibility.

less you aren't in a hurry, in which case you're in good shape). What kind of jury do you want? In federal court you need a unanimous verdict, which is not true in state court.

But while you're deep in thought as to where to file, remember that the other side can "remove", which means transfer, **your** case to federal court if there is federal court jurisdiction. For example, if the claim is based upon a federal statute or question, the feds may have jurisdiction. Or if there is "diversity", meaning your nemesis is from a different state and there is more than \$ 75K in dispute, the case can end up in federal court.

So when you stand in front of a vehicle in commerce, be sure to know where the vehicle is from, how much damage you want to sustain, and whether you want the jury to have to agree unanimously on your idiocy.

Trust: Not Always

I'm wrapping up a case that can't be concluded soon enough. It concerns a farm family of seven children, whose mother died of cancer. The husband of 43 years had the wife sign a codicil (amendment to will) three days before she died, in which the trustee was changed.

You guessed it: All hell broke loose. Dad remarried within four months, then lied in order to liquidate some of the farm land, then, contrary to the terms of the trust, proceeded to spend the proceeds as if it were his own property.

In order to stop the bleeding, I had to file a lawsuit on behalf of six of the children; that was the only way we could get dad's attention. After a lot of fuss, dad finally admitted that the world was round. We're getting a judgment against dad which will be secured by his property. The attorney's fees will be reimbursed (always a consideration but never assured), and the trust will be protected in the future.

The family's future? Time will tell. A neutral trustee will at least safeguard the interests of everyone (that's the theory). Hopefully, the wounds will heal. I did not see the family unravel; that deed was accomplished long before I was involved. One would hope that they can get it back together, although I'm not betting on it.

The case touched a nerve for me, since I also come from a large farm family. Of course I'm completely normal (am I under oath?).

That's all for now. To shippers, carriers, agents and other third parties, 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 20 years and emphasizing transportation law, business law and related litigation.