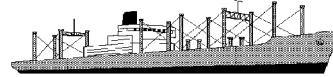
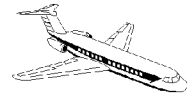




Rollin' On [®]



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NONCOMPETES, FOSSIL FUELS/CLIMATE, AND DIESEL ENGINES,

Noncompetition agreements: Fun for neither side.

Noncompetition agreements are, at best, problematic for both employers and employees. They need to be entered into either before or at the beginning of employment, or when there is a change of employment (for example, the employee receives a raise) in order to be enforceable. Much like the now well-known "prenup" (as in prenuptial agreement) the agreement needs to be signed before the ceremony and the ring and all of that. In regard to the prenup, it's not a good idea to wait until the last minute. That sort of timing kind of takes away from the bliss aspect of the moment.

But back to the noncompete. Way back when, employers had to rely upon such things as common law or trade secret law. The problem there was that those were after-the-fact, cow-already-out-of-the-barn type of scenarios, when the damage had already been done. No proactive course of action was available. The courts required proof that the former employee had somehow used or disclosed information that the employer wanted to be protected.

In 1977 the Oregon Legislature passed a law permitting noncompetition agreements for new hires. The idea was to balance the employers' need against the employee's right to work. Later on, in 1983, the legislature allowed noncompetition agreements to be signed by existing employees if there was a beneficial change to the employee, as discussed above, in order to remove the employer's

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reluctance to promote an existing employee. Until then, a new employee could have restrictions, but the existing employee could not be burdened with new restrictions that were effective subsequent to the date of hire. This status did not help either the employer or the existing employee.

As of this time, the requirements for a valid noncompetition agreement are that, first, the agreement must protect a legitimate employer interest; second, it must be reasonable in scope (time and distance); and third, it must be entered into at the beginning of employment, or upon an advancement for the employee.

Disputes involving noncompetes are frequently, though not always, resolved at the early stages of a lawsuit, if a lawsuit is filed. Typically, the employer gets an attorney and rushes off to court, to get a restraining order prohibiting the former employee from competing against the employer and prohibiting the employee from using confidential information or from disclosing trade secrets. (What are protectible trade secrets is a subject in and of itself.)

At the time of that first hearing, the court usually makes some initial determinations. With that benchmark, much of the rest of the case may fall into place, though that is not always the case. The otherwise normal scenario might instead be followed, where there are depositions and discovery and then when the customers get contacted you're really having fun. After all, customers don't want to get into the middle of anything,

and the parties run the risk of killing the golden goose which might take its business elsewhere.

So it's usually best to avoid the scorched earth approach to litigation in these circumstances.

Fossil Fuels and Climates: Change underway?

There was a recent report that the earth's temperature increased by two degrees during the past century. Yet there was a significant temperature drop from 1940 to 1975, which had some scientists very concerned about a new ice age. Nevertheless, the pendulum has now swung the other direction, to the point that the southern most continent, Antarctica, may continue to melt to the extent that it will raise the global sea level. That could severely impact all infrastructure, to say the least.

And the impact would not be limited to ocean shorelines. The Willamette River rises and falls daily with the Pacific tide, with a five hour differential from Astoria. Any change at the ocean level would definitely impact the rest of us landlubbers.

Diesel Engines: Big changes underway.

The diesel engines being built today are reportedly eight times cleaner than they were a dozen years ago. Yet looking ahead, new rules effective in 2007 will require new diesel engines to be 90 % cleaner than they are today. Nitrogen oxide levels will be greatly reduced by 2010, courtesy of further rule changes.

The other side of the coin is that, due to the long useful life of a diesel engine, the older engines will be on the road for quite some time to come.

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

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 25 years and emphasizing transportation law, business law and related litigation.

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