



# Rollin' On <sup>®</sup>



An Electronic and Facsimile Newsletter for the Transportation Industry

Volume VIII, Issue 5

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May 2002

## NONCOMPETES AND CIVIL WAR TICKETS

### *Noncompetition agreements*

The Oregon Supreme Court has recently issued a decision regarding noncompetition agreements which is, to say the least, quite perplexing. First, the reader should be aware that the Oregon Supreme Court, like the U.S. Supreme Court, only chooses to hear a certain number of cases. It only takes a small percentage, although a better percentage than the U.S. Supreme Court which chooses only around 160 cases per term, during which thousands of cases may be submitted for its review. Pretty bad odds. The US Supremes also go into recess (such a nice word) from roughly July through September, not a bad deal especially when they take so few cases. When someone says they'll take their case all the way to the Supreme Court, they may be surprised to find a de facto blockade at the Supremes' door.

Of the cases the Oregon Supreme Court does take, many of them pertain to criminal matters, while a large number pertain to ballot titles. It doesn't take a whole bunch of cases from the rest of the universe, the civil cases for the people or businesses that pay the bulk of the taxes.

Anyway, in this employment case, an employee of several years of a company was handed a noncompetition agreement and was told to sign it by the employer. Nothing was offered with it, for example, a bonus. In Oregon, for such an agreement to be valid, it must be signed before the commencement of employment (like a prenuptial agreement has to be signed before the ceremony; please excuse

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the analogy), or later on, after a bona fide advancement in the job, like more money (in this instance there is no analogy to a prenuptial, or least I can think of no bona fide advancement during a marriage). Otherwise, the agreement is invalid. Bear in mind that I'm speaking in generalities.

The employee in this particular case says thanks but no thanks, I'm not signing the agreement. So the employer says adios Charlie, you're out the door and on the street, and have a nice day. The Oregon Supreme Court upheld the firing, saying that the statute did not protect the employee against this type of employer conduct. What the Supreme Court did not say, but which is true, is that the employee could have signed the agreement and kept his job. Then later on, when push came to shove over whatever, the employee could have challenged the agreement, and would have (or at least should have) won if the case went to court.

Now there's another rub. To go to court, the employee would have needed an attorney, and attorneys don't come free. How many employees will take on a former employer? Most of those agreements contain an attorneys fees provision, so if the employee can hang in there for awhile, there is some light at the end of the tunnel. Still, it can be a daunting prospect, especially since the employer almost always has more resources.

What's the moral of the story? The old adage has always been, be careful

what you sign. In this case, it was, be careful what you don't sign.

### *Civil War Tickets*

Yes I know, it's hard to think about college football in May, what with the NBA playoffs going on (forever) and baseball season just getting in full swing (too soon). Still, the availability of tickets prompts the subject.

As part of its annual tradition, the Transportation Association of Portland has obtained a block of 50 tickets for this year's OSU/UO game, which will be in Corvallis on November 23. We tried to get more tickets, but we're grateful for what we were able to obtain. TAP will charter a bus for the game. The price for the ticket, trip and some sort nourishment is \$100 per ticket. These tickets were made available to the TAP membership, and a few remain on a first come first serve basis. You will recall that TAP uses this opportunity as a fundraiser for Special Olympics.

If you are interested, please contact Judy Rolan, who is out of the office this week (she probably absconded with the funds collected thus far). Just leave a phone message on her direct line, 503-431-2606, and leave your phone number. Judy will be checking her messages, and you can expect to be contacted in the very near future, say around November 10 (not really!). The money is payable within 10 days, since TAP would rather use your money than its own money.

### *Switch to email*

Just email me your company name and fax number where **Rollin' On** is currently being received, and you'll be switched over.

That's all 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 25 years and emphasizing transportation law, business law and related litigation.