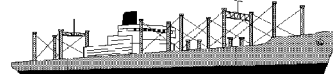
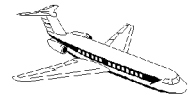




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CF PREFERENCE CLAIMS, MISNOMERS & ROAD TRIPS

CF Preference: A Misnomer

There are some kinds of preferred treatment that you can just do without.

The situation is all too common. You wait forever to get your money on a past due account. Finally the check arrives, and it actually clears. You're a happy camper.

Then your debtor, past tense, files bankruptcy. A few months later, you receive a letter from the trustee in bankruptcy, informing you that you are required to send the trustee the money that you received from the debtor within 90 days of the bankruptcy filing. You're outraged. How can that be?

Courtesy of Congress, that's how. That's the way the bankruptcy code is written. The idea is to treat all unsecured creditors equally. After all, the counter-argument is that several unsecured creditors did not receive any payments. Why should you be entitled to keep the money when there are some unsecured creditors who are owed larger amounts on older debts who didn't have the good fortune of being paid anything? This way, you get the same % as anyone else, although many times the % is very little or even nothing, on the no asset cases.

The bottom line is that it's a tough deal. In hindsight, if you have to give it back, you would have probably been better off not to have received the money in the first place.

As everyone knows, Consolidated Freightways filed bankruptcy several months ago, on Labor Day weekend, an irony not lost on the employees. Prior to its bankruptcy filing, CF apparently made payments on past

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due debts. I've learned from a very reliable source that CF will soon be filing preference claims – and we're talking a huge number – of preference claims within the next several weeks. I could pass along the name of the attorneys but I'll pass for now and when you see who it is, you'll know why. If you received payments from CF within 90 days of its bankruptcy filing, or roughly after June 1, 2002, you may receive a letter demanding the return of the \$\$.

I'm going out on a limb here, but I'm guessing this will be an unpleasant experience for you. You will go home and want to kick the dog (definitely a no-no) or yell at the kids (likewise off limits) or berate your spouse (that's OK, it comes with the territory, for better or worse, that sort of thing). But none of that will do you any good.

To be sure, there are defenses against this type of claim. For example, if a payment is made in the ordinary course of business, the law says that you keep your money. Or if "new value" was given, you can tell the trustee to take a hike. But for the most part, you're stuck. In that case, the trustee will sometimes negotiate a settlement. That saves the trustee attorneys fees, although that gives the trustee more time to hammer the other recipients.

Sometimes there's a minimum amount that must be at stake (for example, and this is only an example, \$1,000) in order for the trustee to deem it worth his/her while. Even in those circumstances, the trustee may still send a demand letter, following the old

adage that you don't get what you don't ask for.

Whatever you do, you should check with an attorney before you take any action regarding this type of issue.

Road trips:

Back to the future

Last weekend my wife and child, and a friend of hers, were returning from Central Oregon on Memorial Day. Pretty typical stuff. Half way home, without warning, the friend says "I don't feel very good". Any parent knows that means to IMMEDIATELY PULL OVER. However, the timing was just perfect since there were those concrete barricades that you see on the shoulder, leaving us about 3 ½ inches of room. Sure enough, less than 10 seconds later, "please pull over". If we had five more seconds, we would have made it. Instead, the side of the vehicle had a whole new look, a Picasso without the bright color.

My lovely bride then told me the story of when she was a young child, on a road trip with her family. Hot day, station wagon, no a/c, all windows rolled down, a typical 1950's or early 1960's type of deal. Her brother, in the front passenger seat, gets sick but successfully launches his offering out of the window. Unfortunately, the re-entry through the back window was equally successful where she was sitting. Those kinds of experiences really help foster a tight bond between siblings. As if. The setting was ripe for murder.

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'*!

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.

The Obligatory Disclaimer

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