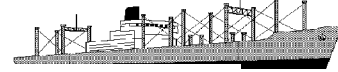




Rollin' On



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RUBBER CHECKS (Not a DOT inspection)

Many of you have had it happen to you. You have a deal with someone, you deliver on your end of the transaction, and then the guy on the other end gives you an NSF check or stops payment. First you try to talk with the jerk, to no avail. You send the obligatory hate letters, which seems to be a waste of time and 32 ¢, as well as a drain on whatever patience remains. As tempting as it is, you scratch the Guito alternative, perhaps not because you're a saint but because the prospect of fine dining and stimulating conversation in a correctional institution is not what you envision yourself doing for the next few years (or more, in the event Guito exceeds his actual or apparent authority, a touchy legal concern in some circles). So what are you gonna do?

You first have to figure out if you have a problem with a person whose foot is on a financial banana peel, or if it is someone who just does not want to fork over the money. For now we will assume it is the second.

The answer is obvious. When you go to bed you pull out your 200 pounds of the Oregon Statutes from your personal library and start reading what the law provides in this area. You discover that you can send a notice to the guy demanding payment. If the letter is disregarded, you then proceed to court where the remedies are good, although there is no ATM machine there that guarantees payment once you prevail. You learn that you are entitled to your attorneys fees if the debtor has not offered a lower \$\$ amount which eventually proves to

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be the correct amount.

You may also be entitled to receive a statutory penalty which is the greater of \$100 or triple the amount of the check, not to exceed \$500 (you can't get too greedy). The debtor can avoid this penalty if he pays up before the hearing. The debtor can also avoid the penalty if he proves at the hearing that the whole thing was caused by economic hardship, whatever the heck that means.

The legislature amended the statutory penalty/attorneys fees provisions in the last legislative session, tweaking some of the provisions and (supposedly) making them easier to follow. Time will tell, but it appears to be an improvement.

The Things That People Do

I had a case recently in which my client was owed \$\$ from a business that was still operating. The business went into a slash and burn mode, getting an attorney and delaying enforcement. However, when we presented the paperwork to the court with all of the bows and ribbons neatly in place, the business took a powder and we got a judgment for the amount owed, costs and attorney fees, both those owed and those expected to be incurred in collecting the debt. We garnished the bank account for the full amount and still nothing, no banko within 90 days which may have required us to return the \$\$\$. It was an expensive delay for the business. But maybe it was the best (or only) credit it could obtain.

Reflections

On this wet Memorial Day weekend, we pause and reflect on those who have passed on from this world, some from natural causes but all too many before their time. Incidents like those recently in Springfield are painful reminders of the violent society in which we live. Not violent as in many countries where there are constant battles on the street and where living is a daily struggle, but violent in what we see in the newspapers, and especially on the screen in our residences. Although TV may not be to blame for violence, it has helped desensitize the populace. You hear it all the time: By the time our children are adults, they will have seen several thousand murders and other acts of violence, most in the name of entertainment. The networks claim that we have the power to control what our children watch, especially now through channel blocks or other gizmos. As long as the public demands violent shows, and it will, we can expect to see more and more violence.

On a related note, those persons who do commit horrible acts need to know that such actions will not be tolerated. The legal system needs to streamline the time from trial through appeal to lights out. The victims, whose feelings run the gamut from sorrow to anger to anxiety to frustration, deserve better. But the system is failing them, and society as a whole, by tolerating the delays and seemingly giving the bad guys more rights than the good guys. Of course we all foot the bill in the process.

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.