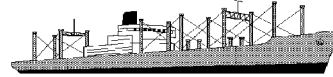
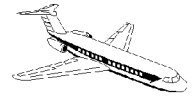




Rollin' On [®]



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YOUR DAY IN COURT, SUMMARY JUDGMENT MOTIONS, DUKING IT OUT, AND MR. GREEN

Everyone has heard the old adage about having his/her day in court. You know, the sort of high noon showdown, where everything gets settled once and for all. Every American's constitutional right, that sort of thing.

It doesn't always work that way, even where both parties are equally determined to duke it out in court. One obstacle along the way could be the filing of what is called a summary judgment motion, or its offspring, a partial summary judgment motion. The purpose of the motion is to avoid trial.

The idea is that the moving party maintains that the other side can't win even under its version of the facts. The other side, so the theory goes, will lose, whether based upon the law or the facts.

Procedurally, the moving party files its legal brief and affidavits with supporting documents. The other side responds in kind, then the moving party files a reply. At that point the attorneys, without their clients, march off to court where, on a scheduled date and time, the attorneys make their arguments. The court has the option of ruling on the spot, which is sometimes the case, or to take it under advisement, which also often happens.

It should be noted that when a judge says that he/she is taking a case under advisement, that may mean that the judge has no clue as to how to rule. Many if not most judges get few transportation cases, although the ignorance factor could arise in any type of case.

For the purposes of the motion only, the judge will assume that the facts alleged by the opposing party are true. The court must decide whether the opposing party has a legitimate claim or defense. On that note, either side, whether the plaintiff (who files the lawsuit) or the defendant (who

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defends against the lawsuit) may file a summary judgment (or partial summary judgment) motion. If the judge grants a summary judgment motion, there will be no trial, or perhaps a very limited trial, which can save a lot of time and money.

In the alternative, the court may deny the motion. A denial may send a mixed message if no explanation is provided. For example, the judge may feel that the opposing party has no chance of winning, yet if a few of the salient facts are disputed, the court is not allowed to grant the motion.

At this point it should also be noted that federal court judges have more power than their state court counterparts. A federal judge may grant a summary judgment motion where the facts are strongly, though not completely, in favor of the moving party, whereas a state court judge does not have that power.

If the motion is denied, the parties must gear up for their proverbial day in court. Thus the parties line up their witnesses and exhibits and spend time getting ready. Their attorneys file briefs which detracts from the time they would like to spend getting ready for trial.

Many trials have one constant witness whose presence is required. That witness always has the same name. Mr. Green. Trials are sometimes rescheduled due to the unavailability of Mr. Green. This is especially true for the defense. Mr. Green's presence may be excused in contingency cases. Lawyers have withdrawn from cases where Mr. Green was unavailable.

On the other hand, if the summary judgment motion is granted, disposition of the case will generally proceed much more

quickly. In fact, a defense summary judgment motion might very well end the case. A plaintiff's summary judgment motion might leave only a question concerning the amount of damages. Either way, your day in court may never happen.

The same idea only different applies for partial summary judgment motions. An order deciding part of the case can still have a big impact, and could lessen the need for Mr. Green's availability.

(I should probably qualify my comments regarding Mr. Green. Many trials proceed without a discussion of the attorney getting paid. However, some cases don't proceed without the prior financial commitment from the client. Certainly, there needs to be an understanding on the part of the litigants of the estimated costs going forward, along with the probability of success or failure. It's just that some attorneys are pretty aggressive about, shall we say, their staying power.)

Cases that are prepared to be tried get settled. Cases that are prepared to be settled get tried.

Even if a summary judgment motion is denied, it can still send a message to the other side that you have a strong case. It may be that the judge sends a message that on the merits, the moving party will probably win. Or lose.

OK, so at this point all summary judgment motions have been denied and you are ready for your long awaited day in court. It's high noon and you're ready to have at it. But by now you may have also learned enough to know that your case, or defense, is not bullet-proof, plus there is a substantial expense going forward. In more than 95 % of the cases, you elect to settle the case. And you never square off at high noon after all.

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.

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