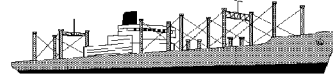




Rollin' On [®]



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FOREIGN JUDGMENTS: To Collect or Not to Collect

Foreign Judgments:

From Sister States, that is.

If you're involved somehow in the movement of freight in interstate commerce, whether as a carrier, shipper or third party, at some point in time you may run into collection matters involving a state other than where you are located. For example, as a carrier, you may get stiffed on freight charges by a shipper or customer in another state. Or your driver may become involved in a not-at-fault accident where your loss is partially or wholly uninsured. If you're a shipper, you may suffer a cargo loss or damage in a state by a carrier which does not operate in your state. If you're a third party, well who cares (just kidding!), you could have some version or the foregoing, plus a myriad of others.

Let's skip the lawsuit part and assume that you were able to file in Oregon since there were sufficient contacts with Oregon, meaning that Oregon had jurisdiction (***Rollin' On, Vol. VII, Issue 12, December 2001***). The deal is that the other side either let it go by default, or there are no assets to be found in Oregon. By necessity, you now must venture outside the state's boundaries and look for assets in another state.

Most states have enacted a version of a uniform act called the Uniform Foreign Money-Judgments Recognition Act. This law allows you to "domesticate" (no, it's not a form of spousal abuse) in a different state, commonly referred to as a sister state (includes all states, as there are no brother states). The procedure is to file the judgment in the sister state,

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where you hope to locate assets. After you file the judgment, there is a waiting period, which varies by state, before you can execute, while the judgment debtor is given notice of what's going on. Of course, this provides an opportunity for the judgment debtor to hide any assets, but that's the way it works.

One asset that is difficult to hide is real estate. If you are fortunate enough to have a judgment debtor with real estate in that person's name, you have better chances of collection since the judgment debtor would need to convey the real estate to some person in order to remove that person's name from the title. That can be awkward or difficult, especially if there is a mortgage or other indebtedness against the property.

As an aside, I remember an occasion when an attorney-friend of mine was taking a deposition of someone who was represented by other counsel. During a break and in a casual moment (yes, some deponents can relax during breaks), the conversation drifted to vacations and vacation homes and the deponent volunteered that he had a vacation home and also graciously volunteered the city and state. You guessed it: The deponent in that case had the misfortune of having a judgment issued against him, which he did not pay. So a proceeding was commenced in that other sister state, and in lieu of losing the vacation home, the judgment debtor paid off the judgment. Loose lips sink ships.

Anyway, if you locate real property in another state, you can have the court issue an order for the sheriff to execute on the property, which means that the sheriff will put it up for sale, duly publicized, at which time any person can bid for the property. You as the judgment creditor can bid your judgment. Whoever buys the property takes it subject to your judgment, as well as any other encumbrances.

But there can be other preliminary issues that get in the way. For example, most or all states have homestead exemptions that allow homeowners to retain a certain equity in their residences that are exempt from execution. Some states take the

Marshmallows anyone?

A law professor of mine once went with a friend to repossess an automobile. They were very courteous by first calling the vehicle owner who said the car was outside his residence, ready to be picked up. As these two were approaching the house they observed a large fire, which was burning what was left of the vehicle.

exemption to an extreme and effectively disallow foreclosure on residential property. You may recall Bowie Kuhn, the former commissioner of major league baseball, who fled his state of residence and relocated to Florida which allowed him to retain his residence, worth around \$1,000,000 if memory serves me correctly, notwithstanding six digit or larger claims against him. There may have been a bankruptcy involved. In any event, Florida was then and probably still is a favorable state, among others, to take up residence if you've got money tied up in your residence.

That's it 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.