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## THE LEGAL PAD

A NEWSLETTER OF CURRENT BUSINESS AND LEGAL MATTERS

*JULY 2010*

### SUPREME COURT'S RECENT NFL RULING A GOOD REMINDER FOR TRADE ASSOCIATIONS

— BY JIM BECK



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The Supreme Court recently ruled that the National Football League's apparel contract with Reebok is subject to the Sherman Antitrust Act. Believe it or not, this ruling may affect your business.

The Plaintiff, an apparel company, sued the NFL alleging that the league's apparel contract with Reebok violates the Sherman Antitrust Act. The Act provides that "[e]very contract... in restraint of trade or commerce... is declared to be illegal." The antitrust laws are in place to encourage competition and protect against the creation of monopolies that harm the consumer.

The Court determined that the NFL's teams should be considered separate entities for antitrust purposes, such that the apparel company can proceed with its lawsuit. Since each NFL franchise is competing against the others, not only on the field but in terms of apparel sales, the NFL's apparel contract with Reebok is subject to the Sherman Antitrust Act. Note that the Court was only ruling on whether the case should be allowed to go forward, not

whether the contract actually violates the Act.

Many of our clients are members of trade associations or other organizations consisting of separate businesses coming together to work towards a common goal. Like the NFL's apparel contract, contracts entered into by these organizations can be subject to antitrust laws.

(For example, consider a situation in which a group of suppliers agrees that it will not sell materials to a particular business or group of businesses). Although the group may be acting in the best interest of their businesses, such an agreement may violate state or federal antitrust laws, and the group could be subject to substantial fines and other penalties.

As a member of a trade association, it is important to understand that these laws exist. If you are concerned about any of the contracts entered into by your organization or any contracts currently being considered, it may be a good idea to have them reviewed by your attorney.

~ V&S

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## DAVID COCKMAN - NCBA HALL OF FAME INDUCTEE



We are pleased to announce that our friend David Cockman, an attorney with Vann & Sheridan, recently received a well deserved honor – admission into the North Carolina Bar Association's General Practice Hall of Fame. The NCBA Hall of Fame is a highly prestigious institution which typically admits only six attorneys per year statewide. David's official induction occurred June 24, 2010 at the

NCBA's Annual Meeting in Wilmington, North Carolina.

David plays a vital role in Vann & Sheridan, LLP, offering his 50+ years of experience, by providing practical case advice and direction several times per week. He is energetic, insightful, generous, hilarious and always willing to help someone in need. David never seems to mind that, depending on the day, he may serve as a colleague, mentor, father-figure, or friend. He is a blessing to our lives. Congratulations David! ~ V&S

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## "COPYING" YOUR IDENTITY: A LOOK AT THE CONNECTION BETWEEN COPIERS AND IDENTITY THEFT

— BY MARY HELEN PRINCE

When thinking about identity theft, the common culprit, computers, immediately comes to mind. This seems pretty logical considering computer hard drives store data pertaining to every ounce of business and personal information accessed on that computer. If placed in the wrong hands, such knowledge could be an identity thief's dream and an owner's worst nightmare. That is why most computer owners take the necessary precautions and before tossing an old machine, wipe down the computer hard drive to ensure their economic and personal safety.

But according to a 2008 Sharp Imaging survey, what 60% of Americans do not know is that like computers, copiers also contain hard drives. These copier hard drives store an image of every document ever copied, scanned, or emailed by that machine. And just like computers, confidential data can be easily retrieved by others if it is not properly wiped down or overwritten.

Luckily, some copiers, such as those from Konica Minolta Bizhub,

store the data in an encrypted form and wipe the drive area following each print, scan, or fax. Other brands and types of copiers actually possess this ability, but it may be an add-on operation and not part of the default settings. Additionally, all the major copier manufacturers have stated that if their machines do not automatically wipe the hard drives following each use, such packages can be purchased which enable them to do so. Sharp Imaging, for example, has a product which automatically erases an image from the hard drive. It costs \$500.

But the surveys and polls out there continue to suggest that not only are people unwilling to pay for these additional programs, but most Americans have no idea of the serious dangers posed by copiers.

According to Ira Winker, a former analyst for the National Security Agency and a leading expert on digital security, "You have to take some responsibility and know that these copiers are actually computers that need to be cleaned up."

So where do we go from here? The best way to enjoy the benefits of

having a copier but also maintaining your confidentiality is to remove the copier's hard drive and wipe it prior to return or disposal. However, if your copier is rented, there is a significant problem with this approach since wiping the copier's hard drive removes the copier's operating system, rendering it completely useless. As a result, check with the rental agency prior to initiating the wiping/overwriting process.

What if you are using a rented copier that, unlike those produced by Konica Minolta, does not automatically wipe data after each use and the lessor wants a functioning machine when you return it? In these instances, it is best to purchase the copier from the rental agency and then wipe the disk.

In the end, the best avenue for using a copier and maintaining your privacy is to either rent a copier that wipes data after each job (this avoids the issue of wiping the hard drive and consequently, erasing the copier's operating system) or wipe the data prior to disposal if you personally own the machine. ~ V&S

# THE DO-IT YOURSELF REMEDY: SMALL CLAIMS COURT

– BY RICHARD PROSSER



## OVERVIEW

In this period of economic contraction, everyone is searching for ways to pare down expenses. We understand that litigation costs and attorneys' fees are not immune to these efforts. When every penny counts, you cannot afford to spend good money paying lawyers only to find yourself with an uncollectable judgment.

On the other hand, as commerce slows, collections are taking on new or heightened significance in many businesses. More and more emphasis is being placed on accounts receivable and maximizing recovery on outstanding balances. As new business declines, companies are becoming acutely aware of the integral role of collections in their operations – or for that matter, its role in their continued viability. When you combine this added focus with the tightening of credit, even the smallest of accounts are now matters of considerable importance.

With this in mind, we want to make sure you are aware of all the resources available to you. One such resource is Small Claims Court. Small Claims Court – often referred to as “Magistrate’s Court” – is an alternative means for settling small sum disputes that allows individuals to “have their day in court” without the requisite expense of an attorney.

## ACTIONS SUBJECT TO SMALL CLAIMS JURISDICTION

Small Claims Court is not an option in every dispute. Only certain matters are subject to small claims jurisdiction. In North Carolina, the requirements are as follows:

1. The amount in controversy must not exceed **\$5,000.00**;
2. The only principal relief requested must be **monetary**, or the recovery of specific **personal property**, or summary ejectment (i.e., eviction), or any combination thereof; and
3. The plaintiff must request that the Small Claims Court hear the dispute.

Simply stated, Small Claims Court is available to settle disputes over property or money worth \$5,000 or less. That said; don't be misled by the \$5,000 ceiling. You can bring matters where the true balance exceeds \$5,000 to Small Claims Court; you just cannot assert or recover the excess balance. For example, if you have an outstanding balance of \$5,500, you can still initiate a small claims action; you just have to limit your action to \$5,000 and write off the excess \$500. Also, understand that the \$5,000 ceiling applies to the principal balance and does not include interest or court costs.

## PROCEDURE FOR SMALL CLAIMS ACTION

To commence an action in Small Claims Court, the plaintiff must file a complaint in the office of the Clerk of Superior Court in the county where the debtor/defendant resides – or if multiple debtors, where any one of the debtors resides. Forms for various small claims complaints, as well as summons, are available upon request in the Clerk's Office.

Once the complaint is filed, it is combined with a summons issued by the clerk. The summons and complaint must then be served on the debtor/defendant to provide notice of the action. The court will establish a scheduled hearing date upon which the parties must appear to present their case to the Magistrate. On the established date, the parties may present their case and evidence to the Magistrate. After hearing all the evidence, the Magistrate will issue an order or judgment. If the judgment is in favor of the plaintiff, the debtor/defendant has ten (10) days to appeal the decision to District Court. Absent appeal, the judgment can be docketed in the Office of the Clerk of Superior Court. Once docketed, it becomes a lien against the debtor/defendant's property.

## CONCLUSION

When considering a small claims action, it is important to keep in mind that the fundamental purpose of Small Claims Court is to provide individuals access to the court system. Rather than the complicated procedure used in other courts, small claims proceedings are informal and almost – if not entirely – form driven. If you have questions, the clerk's office is intended to be a source of information and assistance, so don't hesitate to ask for help. Another helpful source of information can be found online at [www.aoc.state.nc.us/magistrate/small\\_claims.htm](http://www.aoc.state.nc.us/magistrate/small_claims.htm). And, of course, if you become overwhelmed at any point in the process, you can always employ an attorney for assistance.

We hope this information on Small Claims Court will help you to recover past due accounts. If you have any questions, please feel free to call or contact us. ~ V&S

# DOING BUSINESS WITH THE FEDERAL GOVERNMENT: HOW DO I GET INVOLVED?

— BY CODY LOUGHRIDGE

In 2004, the North Carolina General Assembly funded what is now known as the North Carolina Military Business Center (NCMBC). The NCMBC is a business development organization, under the umbrella of the North Carolina Community College System, designed to help both large and small businesses “identify, bid on and win military and other federal contracts.” In 2008, the Department of Defense allocated nearly \$3.6 billion for projects within the State of North Carolina and NCMBC seeks to help North Carolina businesses obtain those contracts, which in turn helps keep federal funds and projects within the State of North Carolina.

The NCMBC makes its services

available to North Carolina businesses both online and at 13 community college campuses across the State of North Carolina. Once a North Carolina business decides it is interested in enrolling in this free program, the NCMBC is designed to guide the business from the application and qualification process through solicitation and procurement of government contracts. After admission to the program, your business can take advantage of the resources made available through NCMBC and market their products and/or services that they wish to sell to the Federal Government. It is important to note that NCMBC is not limited to large scale construction contractors and labor providers. In fact,



some recent NCMBC contracts included the need for sanitation products, building materials, refuse containers, elastics, heavy equipment parts and services such as catering, health care, clerical work and surveying.

As a liaison between the Federal Government and businesses of North Carolina, NCMBC is a valuable tool that can assist North Carolina businesses in growing their industry presence and their bottom line. If you have any questions about NCMBC, please feel free to contact our firm or visit NCMBC's website, [www.ncmbc.us](http://www.ncmbc.us).

~ V&S

## COLLECTING ACCOUNTS RECEIVABLE IN TODAY'S ECONOMY

— BY JAMES VANN

Most businesses have faced and may continue to face challenges in collecting past due accounts receivable. Being **persistent** generally will increase your productivity in collection and **remaining positive** will certainly help you stay in a better frame of mind!

Statistics support the idea that most customers want to pay their past due accounts. Thus, being persistent in asking for payment generally will result in recovery of the account. The following are a few tips which may help in collecting the accounts:

- Call your customer often to ask for payment; be the squeaky wheel
- Visit the customer for a face to face meeting to ask for payment
- Ask for details from your customer regarding their cash flow
- Use others within your company (the Owner or others) to ask for payment
- Use your Attorney to demand payment in a timely manner. Call on us for help!

Normally, the faster you act on collecting a past due account, the better the overall result will be.

Today, more so than ever, being proactive generally produces a greater result. You may need to make decisions regarding ongoing business dealings with your customer much faster than in the past. Be proactive, persistent and positive!

Please feel free to contact us when we can be of service to you or your business in collecting past due accounts. We will be happy to talk with you to develop a specific plan to attempt to recover what is owed.

~ V&S

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