

Alaska Towing Association

The Voice of Alaskan Towing Professionals

RE: Alaska Towing Association supports HB 251

Members of the towing industry in Alaska have begun to catch up with our counterparts in other states over the last decade, and many Alaskan towers are now on the leading edges of towing technology and practice. Towing in Alaska presents unique challenges, but our members meet those challenges, and towing entities both large and small provide daily professional support to our emergency services and law enforcement systems.

Unfortunately, the modernization of the towing industry across the state has increased costs for towing businesses almost exponentially in recent years as Alaskan towers have upgraded equipment to meet the demands of newer vehicles, improved response times, procedures and training to enhance public safety, and satisfied an ever-growing list of license and permit requirements from Federal, State and local municipalities.

These costs are of course passed on to consumers. Vehicle mishaps and subsequent towing frequently involves great financial liability for vehicle owners, their lenders, and/or their insurance companies. Alaska Statute AS 28.10.502 offers some measure of protection to towers, providing for a Towing and Storage Lien to be automatically placed on any vehicle lawfully towed and stored to ensure payment for the towers' services. This lien is most commonly applied to abandoned or wrecked vehicles removed from public or private property, or towed from public roadways at the request of law enforcement officials, and stored in secured lots at the expense of the towing company.

However, a court decision in the 3rd Judicial Court has determined that perfected liens supercede a tower's possessory lien based on AS 28.10.391, and this decision has effectively nullified the Towing & Storage Lien. Practically speaking, this means a tower may recover, tow, and store a vehicle at real cost to himself and his company, and then be denied payment, lose possession of the collateral, and have no real recourse for financial satisfaction for his loss. HB 251 will alleviate this discrepancy by prioritizing the Towing and Storage lien.

Most other states, if not all, have long resolved the issue between possessory liens and perfected liens on towed or stored vehicles in favor of prioritizing the tower's lien. The obvious fact of services rendered, and payment due for those services creates a reasonable and lawful expectation of payment. In no way does this financial obligation for services supercede the interest in collateral of a perfected lien. rather it merely prioritizes payment for services rendered.

Alaska's statutory disparity is unfortunate, and presumably unintended, but is a very real and expensive issue for Alaska Towing Association members. Towers respond to thousands of vehicle emergencies every year, and remove wrecked vehicles from Alaska's roadways every day. This kind of towing is an integral part of most small towing business models within Alaska. Each emergency tow can easily cost a tower several hundred dollars in labor, fuel, equipment, insurance and operating costs, depending on services rendered and length of time it must be secured and stored.

If the costs of these services cannot be reasonably recouped on even one vehicle simply because a perfected lien exists prior to the tow company's possessory lien, a financial hardship condition develops.

If towing companies continue to be effectively forced to provide their services for free, the current status quo for providing these services to law enforcement agencies at no cost to the agency may change, and State and local law enforcement jurisdictions may be placed into the position of hiring their own towing contractors or otherwise purchasing towing services.

Alaska has much work to do to improve and enhance the towing industry in our state. It has been largely unregulated and unmonitored for many years. Careful evaluation of the issues within the industry is necessary, and thoughtful legislation is required for the protection of both the public and the small businessmen and women within the industry.

The members of the Alaska Towing Association consider HB 251 one step in this direction. The small change to AS 28.10.502 presented in the bill will help protect industry providers from an effective theft of services. In turn, this will help ensure that the many small towing operators across the state remain in business, and ensure a competitive industry that continues to improve itself to meet the demands of the motoring public and Alaska's law enforcement agencies.

The Alaska Towing Association supports HB 251. If it is passed into law, towers can remain willing and available to respond to that next call from their local law enforcement dispatcher in the dead of night knowing they have the protection of the law to ensure they will be compensated for the service they provide.

Shawn Ross
President, Alaska Towing Association

Alaskan Credit Unions find a Loophole in the Law

Also of interest for those towors who perform impounds, either privately or for law enforcement--There have been multiple instances, both in Anchorage and Fairbanks, where a little known paragraph in the Alaska Statutes (AS 28.10.391) has been used to reclaim liened vehicles from impound without paying the impound fees accrued.

According to a court decision in the 3rd Judicial District, a perfected lien, such as that held by a bank on an auto loan, takes precedence over a towing and storage lien. As such, the bank can claim a vehicle from impound without satisfying the towing lien against the vehicle first.

According to Fairbank's City Attorney, Herb Kuss, the 4th Judicial District Courts wouldn't necessarily come to the same conclusion, and although somebody may have to challenge one of the banks in court, he indicates Fairbanks area towors shouldn't worry about it too much.

At least one Fairbanks towor disagrees, after dealing with the law firm representing Credit Union 1. And the renowned Michael McGovern Law Firm, who has been representing towing companies throughout the US for decades, disagrees as well. McGovern suggested Alaska towors might push for a change in the law to give towing companies priority over money lenders.

To that end, two local towors, Mark Davis of Interior Towing & Salvage, and Liz Griswold of Gabe's Towing, have opened discussions with their local representative to discuss changes to AS 28.10.502. Their suggestions center on the idea that lienholders should have a reasonable but limited amount of time to reclaim their property, and that they relinquish their possessory rights after that time limit has expired.



Jermain Dunnagan & Owens, P.C.

LAW OFFICES

3030 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503-4097

TELEPHONE (907) 563-8844
FAX (907) 563-7322
E-MAIL info@jdo.ow.com

WILLIAM K. JERMAIN, PBI.
CHARLES A. DUNNAGAN
BRADLEY D. OWENS
RANDALL G. SIMPSON
HOWARD S. TRICKEY
GARY C. SLEEPER
SAUL R. FRIEDMAN

DIANE F. VALENTINE
W. MICHAEL STEPHENSON
ANDRENA L. STONE
EUGENIA G. SLEEPER
MARK P. MELCHERT
SARAH E. JOSEPHSON
MATTHEW SINGER

RAYMOND E. GOAD, JR.
MICHELLE L. BOUTIN
CHERYL MANDALA
DAVID A. NEBBETT
GREGORY F. DORRINGTON

SERVING ALASKANS SINCE 1976

June 18, 2009

Elizabeth Griswold
Gabe's Towing
P.O. Box 84452
Fairbanks, AK 99708

VIA FACSIMILE: (907) 456-6768

Re: Paul Arnette

Dear Ms. Griswold:

This law firm represents Credit Union 1. It is my understanding that Gabes Towing is in possession of a 2006 Harley Davidson motorcycle, VIN: 1HD1FCW106Y610090, license 5433RS, registered to Paul Arnette. My client holds a valid perfected lien on the vehicle, as shown by the enclosed copy of the title.

In understand that you have refused to release the vehicle to my client unless my client pays all towing charges and storage fees claimed by your company. I am writing to advise you that under Alaska law, my client, as lien holder on the vehicle, is not required to pay you towing and storage charges in order to take possession of the vehicle. This issue was addressed in a lawsuit Credit Union 1 filed against Aurora Towing in 2004. In the case, the court held that a towing and storage lien is subordinate to a perfected lien such as that held by the Credit Union in this case. A copy of the court's order is enclosed.

Although my client is not required to pay any towing and storage charges in order to take possession of the vehicle, it is nevertheless willing to pay a reasonable towing charge, and for five days of storage, at \$25.00 per day. If this proposal is not acceptable to you, I will recommend to Credit Union 1 that it file a lawsuit against your company, making the same claims it made in its lawsuit against Aurora Towing.

I would encourage you to discuss this matter with your attorney, and have him or her contact me as soon as possible to discuss this matter. **Also, please take notice that if you sell the vehicle over the objection of Credit Union 1, Credit Union 1 will hold you responsible for the full value of the vehicle.**

001 21, 11:32A



Model: Lexmark 7100 Series

STANT T

SENT TO

PAGES

11:32A

Jermain Dunnagan & Owens, P.C.

LAW OFFICES 4665763

3000 A STREET, SUITE 300
ANCHORAGE, ALASKA 99503-1097

TELEPHONE (907) 593-6844
FAX (907) 593-7322
E-MAIL info@jdoak.com

WILLIAM K. JERMAIN, Ret.
CHARLES A. DUNNAGAN
BRADLEY D. OWENS
RANDALL G. SIMPSON
HOWARD S. TRUCKEY
GARY C. SLEEPER
SAUL R. FRIEDMAN

DIANE F. VALLENTINE
W. MICHAEL STEPHENSON
ANDRENA L. STONE
EUGENIA G. SLEEPER
MARK P. MELOMERT
SARAH E. JOSEPHSON
MATTHEW SINGER

RAYMOND E. GOAD, JR.
MICHELLE L. BOUTIN
CHERYL MANDALA
CAROLINE P. WANAMAKER
PETER A. SANDBERG
DAVID A. NESBETT

SERVING ALASKANS SINCE 1978

October 6, 2008

Shawn Hess
S & S Towing
PO Box 58550
Fairbanks, AK 99711

Dear Mr. Hess:

This law firm represents Credit Union 1. It is my understanding that you are in possession of a 2002 Dodge Ram, VIN 1D7HU16Z52J161935 owned by Jessica Heath and Trish Kelly. My client holds a valid perfected lien on the vehicle, as shown by the enclosed copy of the title to the vehicle.

I understand that you have refused to release the vehicle to my client unless my client pays all towing charges and storage fees claimed by your company. I am writing to advise you that under Alaska law, my client, as lienholder on the vehicle, is not required to pay you towing and storage charges in order to take possession of the vehicle. This issue was addressed in a lawsuit Credit Union 1 filed against Aurora Towing in 2004. In this case, the Court held that a towing and storage lien is subordinate to a perfected lien such as that held by the credit union in this case. A copy of the order is enclosed.

Although my client is not required to pay any towing and storage charges in order to take possession of the vehicle, it is nevertheless willing to pay a reasonable towing charge, and for five days of storage, at \$25 per day. If this proposal is not acceptable to you, I will recommend to Credit Union 1 that it file a lawsuit against your company, making the same claims it made in its lawsuit against Aurora Towing.

I would encourage you to discuss this matter with your attorney, and have him or her contact me as soon as possible to discuss this matter. Also, please take notice that if you sell the vehicle over the objection of Credit Union 1, Credit Union 1 will hold you responsible for the full value of the vehicle.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

CREDIT UNION 1,)
)
 Plaintiff,)
)
 v.)

AURORA TRANSPORTATION)
 SERVICES, INC., d/b/a/ AURORA)
 TOWING and ANTHONY NIXON,)
)
 Defendants.)

) Case No. 3AN-04-3419CI
) Consolidated with
) Case No. 3AN-04-8295CI

CREDIT UNION 1,)
)
 Plaintiff,)
)
 v.)

RUSTY'S TOWING & RECOVERY,)
 INC.,)
)
 Defendant.)

ORDER RE: SUMMARY JUDGMENT

The summary judgment question is whether a lien on a motor vehicle arising from AS 28.10.0371 - 0391 has priority over a towing and storage lien arising from AS 28.10.502. The parties have moved for cross-motions for summary judgment.

The facts necessary to resolve the summary judgment motions are not in dispute. Mr. Nixon purchased a 1998 GMC Sonoma, and Credit Union 1 is the lienholder. Mr. Nixon

was charged with various misdemeanors involving driving offences that resulted in the Municipality of Anchorage impounding his vehicle. The Municipality, through the Anchorage Police Department, directed Aurora Towing to tow and store the vehicle. There is a contract between the Municipality and Aurora for towing and storage services.

The contract between the Municipality and Aurora Towing provided that the registered owner of the vehicle is responsible for paying the towing fee and storage fee. Mr. Nixon failed to pay the towing and storage fee, and the total amount owed as of December 6, 2004 was over \$1500.

The question before the court is the priority of the two lien interests. AS 28.10.391(a) provides that:

The filing of the application and documents under AS 28.10.381 and the issuance of a new certificate of title are constructive notice of any liens or encumbrances against the vehicle described in the certificate to a creditor of the owner, or to a subsequent purchaser or encumbrancer. However, a lien or encumbrance on a vehicle for labor, material, transportation, storage, or similar activity, whether or not dependant on possession for its validity, is subordinate only to a mortgage, conditional sale contract, or similar lien or encumbrance properly filed on or before the time that the vehicle is subject to, or comes into possession of, the lien or encumbrance claimant for the labor, material, transportation, storage, or similar activity.

The plain language of this statute states that a transportation and storage lien is subordinate to Credit Union 1's perfected security interest.

There is a separate statute that provides for possessory liens in AS 28.10.502(a), stating that a person "who tows, transports, or stores a motor vehicle, has a possessory lien on the vehicle." In addition AS 28.10.502(d) decides how money is to be distributed from the sale or auction of the vehicle. The money shall first be applied to the payment of costs and expenses of the sale and secondly to the lawful charges of the person having a lien on the motor vehicle under 28.10.502. Next the proceeds from the sale shall be distributed to the registered and legal owner or lienholder entitled to the remaining proceeds.

Although the two statutes appear to be in conflict, they are not, and can be harmonized by a reasonable interpretation of the statutory language. In *Decker v. Aurora Motors Inc.*, 409 P.2d 603, 607 (Alaska 1966), the court found, based on very similar statutory language, that a mechanic's lien was subordinate to a prior recorded security interest.¹ In this case, this court concludes that

¹ *Becker* relies on the former AS 28.10.516, which was replaced in 1978 upon the passage of the current AS 28.10.391.

the Aurora towing and storage lien is subordinate to the Credit Union 1 lien. The express language of AS 28.10.391(a) leads the court to this conclusion. AS 28.10.502(d) is not inconsistent, because it applies to unperfected lienholders. To adopt Aurora's proposed lien priorities would negate the language in AS 28.10.391(a) by placing Credit Union 1's perfected lien in a subordinate position to Aurora's unperfected lien. The language of 28.10.391(a) clearly states that a storage or mechanic's lien is subordinate to a previously perfected lien.

Therefore, Credit Union 1's Motion for Summary Judgment is granted and Aurora Towing's Cross-Motion for Summary Judgment is denied.

DATED Sept 19/05 at Anchorage, Alaska.



Sen K. Tan
Superior Court Judge

I certify that on 9.19.05 a copy of the above was mailed to each of the following at their addresses of record:

G. Sleeper C. Bauman L. Wells

M. Lucas
Judicial Assistant