Avoid Penalties from Failure to Return Repossessed Vehicles

By Michael Traison

The Hudson River may appear a bit wider today, as a recent decision of the United States District Court for the District of New Jersey makes clear, at least with respect to the interplay between a vehicle repossession by a lender or lessor and the filing of a subsequent bankruptcy petition by the borrower or lessee.

Depending upon which side of the river the case is on, failure to return the vehicle could result in damages, actual or punitive because of a split of opinion in different circuits. Differences between circuits can be resolved by the ultimate court in our country. We can look forward to a possible United States Supreme Court decision resolving the conflict.

The decision in *Denby-Peterson v. NU2U Auto World*, No. 17-9985 (D.N.J. Nov. 1, 2018), which affirmed a New Jersey bankruptcy court ruling, reviews the clash between the majority rule in some circuits, including that for the Second Circuit, which includes New York, regarding the issue of damages. The lesson: proceed with caution and react promptly.

The filing of a petition under federal bankruptcy law creates an immediate injunction or stay of any actions against a debtor and property of the debtor's estate outside of the bankruptcy case.

While, on the one hand, it is well recognized that state law normally governs what happens when a vehicle is repossessed, when there is a subsequent bankruptcy filing the debtor/trustee may demand return of the repossessed vehicle, claiming it is property of the estate (created by the filing of bankruptcy). Mere refusal to return it is not the answer.

Short of returning the vehicle, the best remedy is to file a motion to lift the stay to proceed with your state court remedies. Even if you lose, it's less likely that damages would be assessed. In the circuits following the majority ruling, including New York, simply refusing can lead to sanctions.

Michael H. Traison is a partner at the law firm, Cullen and Dykman, LLP, specializing in restructuring and insolvency, commercial law and international law.