

**IN THIS ISSUE:**

- ▶ JUDGMENT LIEN REVIVAL  
By: MICHAEL C. PAYNE, ESQ. ....1-2
- ▶ BEST LAW FIRM .....1
- ▶ ATTORNEY NEWS  
NED CHAPIN, ESQ. ....2  
R. CLAY BARTLETT, ESQ. ....2
- ▶ CP2 WELCOMES NEW ATTORNEYS .....2
- ▶ COLORADO TAX ON INTERNET PURCHASES  
By: DANIEL W. JONES, ESQ. ....3
- ▶ NEW CP2 SUPPORT STAFF .....4

# Rock Solid™ NEWS



COAN, PAYTON & PAYNE, LLC IS AN INTEGRATED TEAM OF HIGHLY TRUSTED PROFESSIONALS ORGANIZED TO PROVIDE WORLD-CLASS LEGAL SERVICES. TOGETHER WITH OUR CLIENTS, WE CREATE AND IMPLEMENT ROCK SOLID™ STRATEGIES FOR SUCCESS.

## JUDGMENT LIEN REVIVAL



By: [Michael C. Payne](#)  
[mpayne@cp2law.com](mailto:mpayne@cp2law.com)

Thus far, economic indicators give us hope for a robust 2015. But...do you remember where you were six years ago?

In 2008, our economy had just dipped into recessionary waters, real estate values were plummeting and borrowers were increasingly defaulting on their loans. Those defaults frequently resulted in litigation, with the end

result being a judgment in favor of the bank. Of course, many of those borrowers, turned judgment debtors, had few assets from which the bank could collect. Frequently, banks would simply record a transcript of judgment in the jurisdictions where the judgment debtor resided or owned real property and hope that someday that lien would allow the bank to recover a portion of the debt. Given the current economic climate, that “someday” may be just around the corner...if banks take the proper steps to ensure the viability of their state-court issued judgment liens.

Pursuant to C.R.S. § 13-52-102(1), a recorded transcript of a state-court issued judgment effects a lien upon all non-exempt real estate owned by a judgment debtor and upon any such after-acquired property. However, a judgment lien expires six

years after the entry of judgment unless, prior thereto, the judgment is revived and a transcript of the revived judgment is recorded in the same counties in which the original transcript was recorded. If a bank takes the appropriate steps to revive a judgment and record the transcript of the revived judgment, the bank’s judgment lien will continue for an additional six years from the entry of the revived judgment. In fact, a judgment creditor can undergo this revival process a total of three times (although the third and final period is cut short because, pursuant to C.R.S. § 13-52-102(2)(a), a judgment is deemed satisfied in full after twenty years). This is frequently true even when a judgment debtor has filed for bankruptcy and received a discharge of its personal obligation to repay a debt because enforcement of a judgment lien is an action *in rem*, as opposed to an action *in personam* (which is prohibited following discharge).

If, however, a judgment creditor fails, prior to the expiration of the initial six-year judgment lien, to obtain an order from the court reviving the judgment and then record a transcript of said revived judgment, the judgment creditor’s judgment lien is lost forever. Therefore, it is imperative that a judgment creditor ensure that it is timely applying to the court for an order reviving its judgment. First and foremost, a bank that holds multiple judgments should adequately inventory all judgments and determine the absolute final dates upon which it will need to record transcripts of revived judgments in order to maintain its judgment liens. Frequently, banks will



*U.S. News & World Report* along with *Best Lawyers* recognized CP2 as one of the “Best Law Firms” in Colorado for 2015 in the fields of Corporate Law and Real Estate Law.

Firms included in the 2015 “Best Law Firms” list are recognized for professional excellence with persistently impressive ratings from clients and peers.

The 2015 “Best Law Firms” rankings can be seen in their entirety by visiting [bestlawfirms.usnews.com](http://bestlawfirms.usnews.com).

## JUDGMENT LIEN REVIVAL (CONT.)

rely on the attorneys that assisted with procuring a judgment to identify these dates. With that in mind, it is a good idea to ensure that bank counsel has maintained suitable records and can assist the bank with scheduling the relevant deadlines (or that bank counsel is handling that process).

As a practical matter, a judgment creditor should typically commence judgment revival proceedings six months prior to the judgment lien expiration. This is recommended to allow for: (1) difficulties the judgment creditor may have in locating the judgment debtor(s) (who must be served with notice of the judgment creditor's revival application); (2) litigating any disputed issues with regard to the revival application; (3) delays the court may be experiencing in working through its docket or issuing certified transcripts of judgment; and (4) any other unforeseen hiccups in the process.

Once a judgment lien has been revived, a judgment creditor may be surprised to discover that a judgment debtor had been holding out off on a refinance or sale of real property until it was determined whether the judgment creditor would revive its judgment lien. In those circumstances, a judgment creditor will frequently be able to negotiate for a cash payment from the judgment debtor in exchange for net proceeds of the sale of real property (that has likely appreciated in value since the judgment lien was first recorded). Additionally, judgment debtors sometimes forget that a judgment lien has been effected against their interests in real property and they subsequently take title to real property (through purchase, inheritance, a friendly quitclaim, etc.). If that occurs, that title is immediately subjected to the judgment creditor's judgment lien. Therefore, contemporaneous with judgment revival proceedings, a judgment creditor may wish to inspect relevant real property records to determine if its judgment lien has attached to any additional property upon which the judgment creditor could execute in order to satisfy its judgment. Simply put, so long as a judgment creditor takes the appropriate steps to maintain its judgment lien, it may be able to recover an otherwise uncollectable debt in the end.

## Congratulations!

### Edwin S. Chapin, Esq.

Mr. Chapin was appointed to the Aims Community College Foundation board of directors. Mr. Chapin is pleased to have the opportunity to contribute to the future success of Aims Community College.



**Edwin S. Chapin, Esq.**  
[echapin@cp2law.com](mailto:echapin@cp2law.com)



**R. Clay Bartlett, Esq.**  
[cbartlett@cp2law.com](mailto:cbartlett@cp2law.com)

### R. Clay Bartlett, Esq.

Mr. Bartlett was selected to participate in the 2015 Leadership Northern Colorado program sponsored by the major local chambers. Mr. Bartlett was also selected to teach Real Estate Law at CSU for the spring semester of 2015.

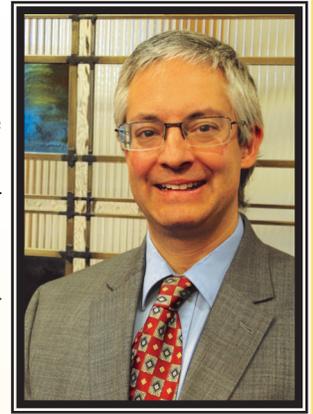
## CP2 WELCOMES TWO NEW ATTORNEYS

### William ("Bill") F. Garcia, Esq.

Mr. Garcia's legal practice focuses on real estate law and business law including purchase and sale transactions, land use and development matters as well as general business and corporate transactions. Mr. Garcia represents both public and private aviation airports in Colorado.

Mr. Garcia was born in Louisville, Kentucky and moved to Colorado in 1981. He attended the University of Northern Colorado in 1990 before transferring to the University of Louisville in 1992. He graduated cum laude with a Bachelor's Degree in Political Science and then attended law school at the University of Denver. Mr. Garcia received his J.D., passed the Colorado State Bar Exam and opened a law office in Greeley, CO, in 1997. In 2006, Mr. Garcia was elected Weld County Commissioner at-Large, a position he held for eight years. He has served on 12 different boards and commissions and is an American, State and Local Government instructor at Aims Community College.

Mr. Garcia has an interest in foreign languages. He speaks Spanish and studies Latin as well as Russian. He also enjoys spending time in the arts of brewing beer. Mr. Garcia joined CP2 in January 2015.



**William F. Garcia, Esq.**  
[wgarcia@cp2law.com](mailto:wgarcia@cp2law.com)

### Steve Suneson, Esq.

Mr. Suneson's law practice concentrates on business law and commercial transactions, including mergers and acquisitions, cross-border transactions, secured transactions, private equity, corporate structure and governance.

Mr. Suneson is a graduate from the University of Colorado (B.A., cum laude, with honors and distinction, 1997) and a Phi Kappa Phi graduate of the University of Minnesota Law School (J.D., cum laude, 2000). He began his career in corporate law and PE at a large international law firm in NYC. He then focused his practice in corporate and M&A law for over a decade at a boutique law firm in Buffalo, NY. Mr. Suneson is rated AV® Preeminent™ by Martindale-Hubbell's Peer Review Ratings and joined CP2 in January 2015.

Mr. Suneson was born and raised in Stockholm, Sweden and therefore, is suited to assist Swedish companies in the U.S. He is a member of the Swedish-American Bar Association and the Swedish-American Chamber of Commerce. Additionally, Mr. Suneson serves on the Executive Counsel for the Business Law Section of the Colorado Bar Association (C.B.A.) and is the Chair of both the Financial Institutions Subsection and the International Business Transactions Joint Subsection of the Business Law and International Law Sections of the C.B.A.



**Steve Suneson, Esq.**  
[ssuneson@cp2law.com](mailto:ssuneson@cp2law.com)

# NEW LIFE FOR COLORADO TAX ON INTERNET PURCHASES?

Originally published in BizWest on January 23, 2015



By: [Daniel W. Jones](mailto:djones@cp2law.com)  
[djones@cp2law.com](mailto:djones@cp2law.com)

Soon, the United States Supreme Court will announce an opinion in the ongoing battle between the State of Colorado and the Direct Marketing Association over a five-year-old Colorado sales and use tax law. The decision will create implications for many businesses.

In 2010, Governor Ritter signed into law House Bill 10-1193. This bill, codified at section 39-21-112 of the Colorado Revised Statutes, represents the Colorado Legislature's effort to better

enable the Colorado Department of Revenue (DOR) to collect sales and use taxes from Colorado residents who purchase products online from remote vendors, rather than collecting sales taxes from the vendors directly.

The 2010 law requires considerable, burdensome cooperation from the affected vendors. Under the law, subject vendors (including Amazon.com, for example) must send an annual notice to each Colorado purchaser, by January 31, showing the total amount paid by each purchaser for Colorado purchases in the previous year, including the dates, amounts and category of the purchase and, if known by the retailer, whether the purchase is tax exempt. The notice must inform each Colorado purchaser that Colorado law requires the filing of a sales or use tax return, and the notice must be sent by first-class mail, separate from product shipments, to each Colorado purchaser.

The law also requires the remote vendors to provide to the DOR an annual statement for each Colorado purchaser, identifying each purchaser and the amount purchased during the prior calendar year, by March 1. For remote vendors with more than \$100,000 in applicable sales, the annual statement must be filed "by magnetic media or another machine-readable form for that year." The law establishes a penalty of ten dollars for each purchaser to whom the retailer fails to send the required tax notice and an additional ten dollars for each Colorado purchaser omitted from the annual statement filed with the DOR, "unless the retailer shows reasonable cause for such failure."

Predictably, the law was challenged. The Direct Marketing Association (DMA) sued the executive director of the DOR in June 2010, alleging unconstitutional discrimination against interstate commerce and imposition of undue burdens on interstate commerce. The U.S. District Court for the District of Colorado granted a preliminary injunction to DMA, prohibiting the enforcement of the notice and reporting provisions of the law. In March 2012, the District Court granted DMA's motion for summary judgment against the DOR, concluding that the law's notice and reporting requirements discriminate against interstate commerce and place undue burdens that interfere with interstate commerce. The District Court at that time entered a permanent injunction, prohibiting Colo-

rado from enforcing the notice and reporting requirements of the law.

The DOR appealed the District Court's rulings, and the case went to the 10th Circuit Court of Appeals to decide whether the notice and reporting requirements for remote retailers unconstitutionally violate the dormant Commerce Clause. On August 20, 2013, the 10th Circuit issued its opinion, but did so without reaching the merits about the Commerce Clause violations. Instead, the 10th Circuit focused on a federal law known as the Tax Injunction Act (TIA). The TIA, section 1341 of Title 28 of the United States Code, provides that "district courts shall not...restrain the assessment, levy, or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

The 10th Circuit concluded that the District Court did not have jurisdiction, finding that DMA's action sought to restrain the collection of Colorado state taxes and that "Colorado provides avenues for remote retailers to challenge the scheme allegedly forcing them to choose between collecting sales tax or complying with the notice and reporting requirements. Colorado's administrative remedies provide for hearings and appeals to state court, as well as ultimate review in the United States Supreme Court." The case was remanded to the District Court for dismissal of DMA's claims for lack of jurisdiction.

Clearly, the DOR would prefer to litigate this matter in Colorado state courts, rather than in the federal courts, so the 10th Circuit's ruling was a victory for the DOR. However, DMA petitioned the United States Supreme Court for relief. Because the 10th Circuit's decision is contrary to decisions in similar cases from other federal Circuit Courts of Appeals, and differs from the Supreme Court's leading precedent, the Supreme Court agreed on July 1, 2014, to hear DMA's appeal. The Supreme Court will decide "whether the TIA bars federal court jurisdiction over a suit brought by non-taxpayers to enjoin the informational notice and reporting requirements of a state law that neither imposes a tax nor requires the collection of a tax, but serves only as a secondary aspect of state tax administration."

The Supreme Court heard oral arguments in this case, known as *Direct Marketing Association v. Brohl*, on December 8, 2014. If the DOR prevails at the Supreme Court, it will mean that DMA must fight Colorado's law in Colorado courts, where the DOR may have an advantage. It is certain that businesses around Colorado should be attentive to how this case is resolved. Further, State governments around the nation likely are anxious to see how the Supreme Court rules regarding Colorado's legislation, with an eye toward repeating such legislation in other states if Colorado's scheme is successful.

Stay tuned; businesses around the United States may be affected by the outcome of this case.

## WELCOME NEW CP2 SUPPORT STAFF

Rita Watson



Ms. Watson joined CP2 in November 2014 as a paralegal in the Fort Collins office supporting the estate planning practice group. Ms. Watson holds a Bachelor's degree and a Paralegal Certificate. She brings 20 years of legal experience to the firm.

Kaylee Starke



Ms. Starke joined CP2 in November 2014 as a legal assistant in the Fort Collins office assisting attorneys and paralegals with serving client needs.

John Garland



Mr. Garland joined CP2 in December 2014 as the firm's marketing coordinator to assist with PR, advertising and marketing campaigns, as well as administrative duties in the firm's Greeley office.

Katie Beargie



Ms. Beargie joined CP2 in January 2015 as a paralegal in the Fort Collins office supporting the corporate and real estate transactions team. Ms. Beargie holds a Bachelor's degree in accounting and has multiple years of legal experience.

## Contact CP2

*Our offices are conveniently located throughout Colorado, giving you easy access to our trusted team of legal professionals.*

### Greeley

5586 W. 19th St., Suite 2000  
Greeley, CO 80634  
(970) 339-3500

### Denver

3500 Republic Plaza,  
370 17th Street  
Denver, CO 80202  
(303) 861-8888

### Fort Collins

103 W. Mountain Ave.,  
Suite 200  
Fort Collins, CO 80524  
(970) 225-6700

### Attorneys

**K. Michelle AmRhein**  
**R. Clay Bartlett**  
**Faith Betz**  
**Edwin S. Chapin**  
**G. Brent Coan**  
**Kay L. Collins**  
**William F. Garcia**  
**Daniel W. Jones**  
**Jacob W. Paul**  
**Michael C. Payne**  
**Brett Payton**  
**Peter B. Scott**  
**Steve Suneson**  
**Walter A. Winslow**

## Practice Areas

- [Agricultural Law](#)
- [Airports](#)
- [Banking Law](#)
- [Business Law](#)
- [Business Succession](#)
- [Canadian Practice](#)
- [Commercial Litigation](#)
- [Creditor Rights](#)
- [Elder Law](#)
- [Employment Law](#)
- [Estate Planning](#)
- [Immigration Law](#)
- [Intellectual Property](#)
- [Natural Resources](#)
- [Oil and Gas Law](#)
- [Probate Litigation](#)
- [Real Estate Law](#)
- [Tax Law](#)
- [Wealth Preservation](#)

This newsletter has been prepared by Coan, Payton & Payne, LLC for general informational purposes only. It is not, nor is it intended to, constitute legal advice. The information provided in this newsletter is not privileged and does not create an attorney-client relationship with CP2 or any of its lawyers. This newsletter is not an offer to represent you. You should not act or refrain from acting based on information in this newsletter.

The name of the lawyer responsible for this newsletter is G. Brent Coan, Esq., who can be contacted at [gcoan@cp2law.com](mailto:gcoan@cp2law.com).

Visit us at [www.cp2law.com](http://www.cp2law.com)

© Copyright 2015, Coan, Payton & Payne, LLC