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What To Do When You Get Sued



Things are going well at your business when all of a sudden, a visitor shows up and hands you a Summons and Complaint. Yes, that is a lawsuit. Your day is no longer so great as it was before. What do you do next?

The first thing you should do is consult your attorney. Do not call the other side to try to quickly resolve things. Although you may mean well, what you say could and probably would be taken out of context and used against you. Also, remember, that while your communications with your attorney are confidential and privileged, your communications with anyone

else are not.

Although you will have time to respond to the lawsuit, do not wait until the deadline nears. You may have claims for a counter-suit, which claims may need time to analyze and develop. If your attorney does not handle this type of lawsuit or if you do not have an attorney, seek out one with experience handling the type of lawsuit you are facing.

Your attorney will want to see the lawsuit and your documents relating to the dispute. You should gather whatever documents may be relevant and get a package ready to provide to your attorney. Be sure to also gather up insurance policies. If you do not have them handy, contact your insurance agent. The lawsuit may be covered by

insurance, in which case your attorney and/or your insurance agent can assist you in submitting the claim for insurance coverage.

When you meet with your attorney, provide as much information as you can, including unfavorable information and arguments that the other side can be expected to make. Your communications with your attorney are confidential and privileged. The more information you provide, the better your attorney can assist you.

Structure Law Group, LLP has handled simple and complex civil litigation cases. If you have any questions about what to do if and when you are sued, please contact us.

LLC Update



• Fee Unconstitutional?

In the last SLG Newsletter, we alerted you to the Northwest Energetic Services, LLC v. FTB case. The FTB has appealed the decision that the FTB's application of the LLC fee is unconstitutional because it is really a tax and not a fee. The judge has not yet set a hearing date. Regarding the Ventas Finance I, LLC v. FTB case that we also discussed in the last SLG Newsletter, the briefing has been completed and the judge has not yet set a hearing date. We will keep you updated on both matters.

• Registering Out of State LLCs

In May, the Board of Equalization held that an LLC with no property in California was still subject to the \$800 annual tax and the gross receipts fee because the managing members were residents of California. (Appeal of Mockingbird Partners LLC, May 17, 2006).

Now, the Franchise Tax Board has said that having even a nonmanaging member in California could subject the LLC to California's annual tax and gross receipts fee if the member engages in any activity for profit on behalf of the LLC. (Spidell's California Taxletter, Vol. 28, No. 8, August 1, 2006).

Can Your Former Employees Contact Your Customers?

Under the law, a company's customer list generally qualifies as a trade secret. A former employee can be liable for misappropriation of trade secrets if he or she uses that confidential list to solicit business for anyone else. In other words, if a former employee solicits business from your customers, using your customer list, he or she could be found liable.

The key terms are "using your customer list" and "solicits business." If the former employee purchases a list from a marketing company and some of your cus-

tomers happen to be on the list, that is acceptable because your customer list was not used. Even if no other list was purchased, a former employee can let his or her personal contacts know about his or her current contact information. But the former employee cannot ask for, or solicit, their business. Also, it should be noted that a former employee can reference your company name in an announcement, e.g. "formerly with Company X," provided that it is factually sound.

The above guidelines are

important not only in analyzing the conduct of former employees but also in analyzing the conduct of new hires who may be the former employees of your competitor.

Please contact Mark Figueiredo at (408) 441-7500 with questions regarding your specific situation.

"A former employee can be liable for misappropriation of trade secrets..."



Tax Corner

- **More owners of closely held business can get estate tax relief.** The IRS now says that rental property need not have been actively managed by a decedent to receive estate tax breaks, as long as the decedent owned 20% or more of the firm that manages the property. If business interests make up over 35% of an estate's value, estate tax on the business portion can be deferred for up to five years and paid in up to 10 installments. Just 2% interest is charged on the first \$552,000 of deferred tax and 3.6% on the excess. (Source: The Kiplinger Tax Letter, Vol. 81, No. 15).
- **Reporting requirements for attorney fees change in 2007.** Multiple 1099s will have to be filed if a lawyer is a payee on a check for a client's taxable damage award. The payer must send a 1099 to the attorney for the full amount of the check and also must give the client a 1099 listing the full amount of the taxable damages. Note that if the client is the sole payee on

the check, no 1099 form is required for the lawyer. (Source: The Kiplinger Tax Letter, Vol. 81, No. 15).

- **Payroll Taxes.** The District Court of New York recently held that an employer remained liable for unpaid taxes and is not excused from penalties even though a manager embezzled the funds. (Lanco Inns, D.D., N.Y.). The Spring issue of the SLG Newsletter discussed that individuals in a company can be held personally liable for these taxes, interest and penalties.
- **Celebrity Goodie Bags.** The IRS is now insisting that presenters and nominees for Oscars, Emmys and Grammys pay tax on goodie bags they receive at the awards shows. The value of the 2006 Oscar gift bag was estimated at over \$100,000. In the future, the IRS wants these celebrities to get 1099s for these goodie bags.

If you have any questions regarding the above changes, please contact Tamara Pow at (408) 441-7500.

Halloween...Where Did It Begin?

Halloween. A time for children to dress up and go trick or treating for candy. A time for pumpkins to be carved and ghosts and goblins to come out from the shadows. But have you ever wondered how these traditions began?

The roots for Halloween germinated centuries ago during the Celtic celebration of the dead. The Celtic celebrated Samhain, the Lord of the Dead, on November 1. On the Eve of Samhain, it was said that the spirits of those who had passed during the year were out roaming around. In order to protect themselves from the evil spirits, people would paint their faces and dress up in wild costumes as a disguise. In order to allow the good spirits into the house, people would carve turnips and pota-

toes and place them in front of their front door. Faeries also came out on the Eve of Samhain and went from door to door begging for food for the hungry.

When the Roman Catholics conquered the Celts, they tried to extinguish the celebration. The Roman Catholics created All Saints Day or All Hallows Day on November 1 to celebrate the saints, hoping that this would stop the celebration of Samhain. Instead, witchcraft was born and people believed that the devil and his followers were out on All Hallows Eve, October 31, which became a night for superstitious beliefs. Over the years

the name for All Hallows Eve was shortened to Halloween.

Through the years, the Europeans brought the tradition of Halloween with them to the United States. The first recorded Halloween celebration in the United States was in 1921. Carving potatoes and turnips evolved into carving pumpkins. Going door to door for food turned into going door to door for candy. Dressing up is still one of the most important parts of Halloween. Even though Halloween's roots originated in death and darkness, it is now a night for fun and celebration.



Real Estate

- **Covenants Not to Compete.** The Madera County Superior Court recently held that a Covenant Not to Compete, between two real estate investment development partners who agreed not to build, develop, or operate a warehouse without including the other partner, was unenforceable as a matter of law. The Court of Appeal affirmed the ruling, explaining that there are only two situations in California where a Covenant Not to Compete may be enforceable: (1) in the sale of a business, including goodwill, and (2) where a partner agrees not to compete in anticipation of dissolution of a business partnership. (*Kelton v. Stravinski* April 20, 2006).



Reminders and Other Items of Note

- **End-of-Year Planning.** If you want to dissolve an entity before year-end, the appropriate paperwork must be filed with the Secretary of State by December 31, but we recommend filing as soon as possible.
- **Note:** If an entity is formed during the last two weeks of the year, it will not incur taxes for 2006.
- **S Corporation Audits.** Many more S Corporations will be audited this year. The IRS is completing 1,200 audits of 2003 S corporation returns, and 3,800 line-by-line audits for 2004. Agents are looking for companies paying little or no salary to owners in order to minimize employment taxes. (Source: Kiplinger Tax Letter, Vol. 81, No. 16, August 11, 2006).

Please contact our office at (408) 441-7500 if we can be of any assistance with the formation or dissolution of an entity.

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Dates to Remember

October 9	Columbus Day - some courts and government offices closed
October 31	Halloween
November 18	Mickey Mouse's Birthday
November 23–24	Thanksgiving - courts and government offices closed
December 25	Christmas - courts and government offices closed
January 1	New Year's Day - courts and government offices closed

Did you know?

- Ice cold watermelon is less nutritious than watermelon served at room temperature.
- Grapes explode if heated in the microwave.
- Almonds are members of the peach family.
- The muzzle of a lion is like a fingerprint—no two lions have the same pattern of whiskers.
- Charlie Brown's father was a barber.
- Pumpkins were once used as a remedy for snakebites.

We appreciate your referrals!



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