

ENTREPRENEUR'S ALERT[®]

February 2007 A NEWSLETTER PUBLISHED EXCLUSIVELY FOR THE MEMBERS OF SPIEGEL & UTRERA, P.A. GENERAL COUNSEL CLUB



Larry Spiegel, Esq.

**Understanding
Your Business Is
Our Business[®]**

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As a member of the Spiegel & Utrera General Counsel Club, you are entitled to an advertisement for up to one year on Spiegel & Utrera's website. The ad classifications are Business Opportunities, Franchises, Capital to Invest, Capital to Lend, Capital Wanted and Miscellaneous. Please visit www.amerilawyer.com/clientbulletinboard to enter your advertisement. You may change your ad monthly. Don't miss your opportunity to profit, connect, expose and enhance your business.

Piercing the Corporate Veil. One of the most distinctive features of conducting business in corporate form is that the liability of the owners of the business, and its shareholders, is limited to the amount they agree to invest. Nonetheless, if the corporate form is abused in certain ways, the courts, applying equitable principles, will penetrate through the corporate veil and treat the corporation and its shareholders, or its affiliates, as one of the same for purposes of determining liability or for other remedial purposes.

Growing Your Business In 2007

Very often I ask if I can help clients expand their business and I am always gratified by the assistance I am able to provide. How about your business? Is it successful enough to expand to another location? Many of you have successful micro businesses but, more often than not, are reluctant to add a second location. Based on my communications with many clients, I think that the reluctance to add a second location is because of the experience clients had in a developing the successful initial location.

Believe it or not, location number two will be easier because of your past experiences in developing location number one. Perhaps some of you can remember failing at a business and then later discovering success in another venture. It's similar with the next location but failure is not possible because of the success you have already achieved. Knowing all the pitfalls that occurred in developing your successful business will help to speed along the development of your successful second location.

Some of your businesses do not lend themselves to multi-locations because, for one reason or another, you are already serving a national market. In my experience, that type of business can still expanded through product/service line extension.

Whether your business can be expanded by a multi-location or product/service extension, I would like to help you achieve your goal for 2007.

In reality, very few successful micro businesses are able to grow beyond one location. My 2007 New Years goal is to help as many of you as possible expand your businesses during the year. So, when you have the time, give me a call, anytime day or night, you can leave me a detailed voice mail message at (800) 603-3900, ext. 219 or in the UK at 0800-917-1200 and remember that any communications with me are always protected by the attorney-client privilege and remain confidential.

Sincerely Yours,

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FLORIDA CORP'S AND LLC REMINDER

File your Florida Annual Uniform Business Report before May 1, 2007. The current fee for Florida Corps which file their Uniform Business Reports by May 1, 2007 is \$150. The Florida legislature has enacted a penalty of \$400 associated with filings received after May 1, 2007. The Reinstatement fee for Florida Corporations which file after September 2006 is \$750. The annual fee for Limited Liability Companies which file before May 1, 2007 is \$50. Non-Profit Corps pay \$61.25. File your Uniform Business Report

NOW and take advantage of the reduced fees. When Spiegel & Utrera is your General Counsel, a review of your annual Uniform Business Report is included as part of the General Counsel Club without additional charge. Spiegel & Utrera will also expedite delivery of your Uniform Business Report to the Secretary of State's office in Tallahassee without any additional charge whatsoever. If you have any questions, call your nearest Spiegel & Utrera office.

DELAWARE ANNUAL REPORT

All corporations incorporated in the State of Delaware are required to file an Annual Franchise Tax Report and pay the Franchise Tax. Additionally, the corporation must file an Annual Report. There is a \$25 filing fee for the Annual Report. Annual reports and appropriate remittances must be received (not

postmarked) by the Delaware Franchise Tax Board on or before the due date of March 1. Late filings will receive a penalty of \$100 and interest will be assessed at the rate of 1.5% a month on the tax and penalty until fully paid. Any questions, please contact Renee Veney-Duval at (888) 641-3800.

TRADEMARKING

The starting and operating of a new business is a busy time. Many entrepreneurs overlook the necessity of protecting their new business name against infringement. Your business name should be registered on a federal level so as to receive the bundle of rights which are afforded and to prevent potential customer

confusion. Registering your trademark assures that you will retain the goodwill that customers will come to associate with your company's name and its product or services. To register the trademark of your business, please call Natalia Utrera, Esq., at (800) 603-3900, ext. 208.

ADVERTISING

Product purchase cycles are important factors to consider for an advertiser. For example, nearly all people reached by advertising will buy at least one meal out this week but only one in 2,000 is involved in a product in the seven to 10-year product purchase cycle. For example, if you sell furniture, there is definitely a longer product purchase cycle. Advertisers with smaller budgets much decide whether they will reach a smaller number of people with sufficient repetition to be remembered, or reach a larger number of people with less repetition and hope that the impact of the ad is sufficient to overcome the deficiency. Another factor

to consider is the persuasiveness of your message. Many advertisers offer messages with "limited time offers". This may raise the impact of a customer who is currently in the market for the product but it could have the opposite effect on a customer who is not currently looking to purchase that product. The best ads deliver a message powerful enough to be remembered even by people who are not currently in the market for the product or service. With advertising, unfortunately there is no perfect answer but just a number of factors which have to be continually considered and measured.

Tell Over 10,000 People About Your Successful Business For Free. Send us your stories for inclusion in future issues of Entrepreneur's Alert. Spiegel & Utrera, P.A. is committed to delivering professional legal services at extremely affordable prices. But our primary concern is with your business - how did our services help you? Why did you initially choose Spiegel & Utrera, P.A. and what keeps you coming back? Perhaps it's the extensive 'menu' of products and services we offer that allow you to take care of all your legal needs at once. Or maybe it was the skillful and personal customer service you received from Larry Spiegel or one of our other attorneys.

Whatever the reason, we'd love to hear your stories for possible inclusion in upcoming issues of Entrepreneur's Alert and/or as testimonials on our website. In a paragraph or under, describe your experience with Spiegel & Utrera, P.A. and how we've helped you grow your business. Our readers will get to hear about your company and how you've benefited from our services at the same time.

Entrepreneurs, Unite! And help us continue to push the boundaries of value for the benefit of your business.

Careful If You Use An Agent to Deposit Payroll Taxes - The IRS doesn't care if you're swindled by an agent who fails to make the deposit. You're still responsible for the taxes, penalties and interest. Such scams have occurred to a number of small businesses in the USA and the courts are taking the IRS' position in this matter.

Deadlines. When determining a deadline, ask the employee about to undertake the task, what the deadline should be. People are usually much harder on themselves and will set a more aggressive deadline than the boss.

Do you have questions or comments about the topics in this newsletter or a technique, tip or idea to pass along? Please send us the details to P.O. Box 450605, Miami, FL 33245-0605 or fax to (305) 857-3700 or (800) 603-0606, or phone us at (305) 854-6000, ext. 219 or (800) 603-3900, ext. 219.

CALIFORNIA ANNUAL STATEMENT OF INFORMATION

All domestic stock and foreign corporations qualified to do business in the State of California are required to file the Statement of Information annually during the applicable filing period. The applicable filing period is by the end of the calendar month of the corporation's original date of incorporation or qualification to do business in California and the

immediately preceding five months. The Statement of Information form should be mailed to you by the Secretary of State's office prior to you receiving this newsletter. If you have not received the Statement of Information, you may go to the General Counsel Club's website at www.amerilawyer.com/casoi for your statement of information form.

FAST FOOD RESTAURANT CAN BE SUED FOR INJURIES CAUSED BY RUNAWAY AUTOMOBILE

A fast food restaurant could be sued for not designing its building to prevent a runaway car from crashing through the storefront, a State Supreme Court has ruled. A patron who was eating inside the fast food restaurant was killed when a car crashed through the window near its entrance. The decedent's estate sued the fast food restaurant for negligence, alleging that its failure to exercise due care in the design and construction of the restaurant was a proximate cause of the decedent's death. The estate claimed that the fast food restaurant could have taken steps to prevent such injuries by placing pillars or concrete poles in the sidewalk by the restaurant's

entrance and by designing the restaurant to be bricked more than a few feet above the ground. The fast food restaurant argued that it didn't have a duty to protect its patrons from the threat of runaway cars crashing into its building. But the Court disagreed. The duty of care that a business invitor owes to business invitees to protect them against the unreasonable risk of physical harm is clearly applicable in this case...it is reasonably foreseeable, given the persuasiveness of automobiles, roadways and parking lots, that business invitees will, from time to time, be placed at risk by automobile-related accidents.

Many cases are presented in this newsletter to alert you, your loved ones, relatives and friends about possible claims that you or they may have, but didn't know existed. If you think you, your loved ones, relatives and friends may have a potential claim, please call Larry Spiegel at (800) 603-3900, ext. 219.

WINNER'S CIRCLE

USE CARE WHEN NEGOTIATING A LEASE

Here are a few red flags to look for before signing that lease for your business premises: giving the landlord unlimited authority to pass on increased operating costs, such as property taxes, building repairs or insurance premiums, to the tenant; requiring the tenant to pay any tax increases as a result of the landlord selling the building; allowing the

landlord to terminate the lease for his or her convenience; including unreasonable disclaimers about the building or services provided to tenants; imposing severe restrictions on a tenant's ability to sublet the space; and requiring the owners of a company to make personal guarantees in order to secure the property.

Biz Bits *for you*

S Corporation Election.

Under the Internal Revenue Code, a regular corporation has until March 15, 2007 to elect to become an S corporation. If you desire to become an S corporation, you must take immediate action. If you need more information, call Natalia Utrera, Esq. at (800) 603-3900, ext. 208.

State & Federal Tax Returns. On or before March 15, 2007, every Corporation and Limited Liability Company in the USA is required to file a federal tax return. An S Corporation files IRS Form 1120S, a Regular Corporation files IRS Form 1120 and a Non-Profit Corporation files IRS Form 990 or 990EZ. The filing of a tax return for a Limited Liability Company depends on the Limited Liability Company's filing status as a corporation, March 15, 2007, partnership or sole proprietorship, April 15, 2007. Most states require the filing of State Tax Returns; should you have any questions, please call the General Counsel Club at (800) 734-9900.

When Negotiating, most people who bargain forget the cardinal rule: after stating your initial offer stop talking. Breathe normally, but wait for the other party to speak next. And after they make a counteroffer, continue to hold. Faced with silence, many will immediately start to make the deal better for you.

Real Estate Investors Beware. If you buy and quick-turn or "flip" properties, you may be considered a "dealer" (rather than an "investor") by the IRS. Dealers cannot defer paying income taxes on installment sales. Dealers must pay self-employment taxes on all gains. Dealers cannot depreciate property. If you also have rental properties, the IRS can reclassify all of your properties as dealer properties and hit you with a big tax bill.

COMMERCIAL LANDLORD NOT LIABLE FOR INJURED WORKER OF TENANTS

A landlord that leased a commercial building could not be held liable for allegedly unsafe conditions on the premises that resulted in injuries to a tenant's employee, a State Supreme Court has ruled. The Landlord/Defendant leased the building to a silkscreen printing company. The lease provided that the tenant would have "exclusive control of the leased premises" and the obligation to maintain the building at its own expense. The lease also provided that "additions, repairs, alterations or structural changes" that the tenant wished to make could only be done with the landlord's approval and that the landlord could, at reasonable times, enter the premises and make "repairs and alterations compatible

with the lessee's use of premises." The Plaintiff was the tenant's only employee. He suffered permanent injuries in a fall from stairs leading to the building's basement. The stairs lacked a handrail and were allegedly unstable. The Plaintiff sued the landlord, asserting that the landlord had a duty to alleviate dangerous conditions on the property. But the Court said that a commercial landlord is liability to third parties "only if either (1) the landlord contracted to make repairs and made them negligently, or (2) the defect that caused the injury was in a 'common area', or other area appurtenant to the leased area, over which the lessor had control."

TENANT ASSAULTED IN APARTMENT LOBBY; YIELDS \$2.3 MILLION VERDICT

Plaintiff, 37, was in the lobby of his apartment building when he was attacked by two assailants who beat him with a baseball bat. He suffered an epidural hematoma, requiring a craniotomy and a fractured clavicle. Plaintiff incurred about \$500,000 in medical expenses before trial. Plaintiff also faces an unspecified amount in future medical costs. A grocery bagger at a supermarket, Plaintiff was out of work for about three

months but did not claim lost wages. Plaintiff sued the apartment building's landlord and the corporation that owned the building. Suit alleged failure to maintain a safe premises. Plaintiff claimed defendants knew that the locks to the building's lobby were faulty but failed to replace them, even though several other tenants had been robbed in the building.

Please call our toll free newsletter hotline at (800) 603-3900, ext. 316 any time, day or night, and tell us what you think of this newsletter.

WRONGFULLY CONVICTED MAN AWARDED \$6.4 MILLION

A man who was wrongfully convicted of killing his wife and spent nearly nine months in prison has been awarded \$6.4 million. Plaintiff, now 50, was jailed for his wife's murder in October 1999 after allegedly confessing to the slaying following a 39-hour interrogation by police. Plaintiff was released in June 2002 after DNA testing exonerated

him and implicated a serial rapist. Plaintiff sued the county, arguing that police were quick to accuse him of the murder because he was poor and had a history of arrests, including five assault charges. After a two-week civil trial, the jury awarded \$5.2 million in compensatory damages and \$1.2 million in punitive damages.

Waste Management Company May Be Liable For Not Using Reasonable Care When Hiring An Independent Hauler With An Unsafe Vehicle. A waste management company that failed to check its independent contractors' trucks for insurance and road-worthiness may be liable to the family of a couple killed by a truck with defective brakes, a Court has ruled.

Employee Can Add Separate Terms of Employment to Qualify for Family Medical Leave Act Leave. A car salesman who was fired after seven months on the job can qualify as an "eligible" employee under the FMLA by taking into account five years of prior work for the same employer, a Court has ruled.

Employer Isn't Liable for Employee's "Cyber Threats". An employer could not be liable for an employee's posting of threatening messages on the Internet, even though the employee allegedly used the company's computer system to post the threats, a Court has ruled.

Air Travel Increases Risk of Blood Clots. According a recent study, individuals at a high risk of deep vein thrombosis showed more signs of coagulation after an eight-hour flight than after sitting in a movie theater for eight hours, suggesting that low oxygen levels contribute to the formation of blood clots.

Woman Need Not Return Engagement Ring Where Man Was Legally Married When He Proposed. A woman does not have to return an engagement ring after ending the engagement where the man was still legally married to another woman when he proposed. The Court stated that an agreement to marry is void as against public policy when one of the parties is already married. Thus, the man may not recover gifts given in contemplation of marriage.

Feel free to contact Spiegel & Utrera, P.A. about any serious personal injury such as nursing home abuse or any other matter. The call is **Free**. When it comes to personal injury or nursing home cases you will pay no attorney's fees or costs unless there is a recovery of money. Call Larry Spiegel at (800) 603-3900, ext. 219.

NEIGHBOR RUNS OVER PET THREE TIMES; JURY AWARDS \$54,600

Plaintiff and his family owned a 13-year-old dog. While several members of the family were standing outside, their neighbor, Defendant, drove his truck past the driveway where the dog was lying down and made a shooting motion with his hand. Defendant, subsequently came back and drove the truck over the dog three times, refusing to stop even when the family yelled at him and tried to pull the dog away. When Defendant got out of the

truck, he yelled at the Plaintiff's family and said he had run over their dog because they did not keep him on a leash. Plaintiff had to have the dog euthanized. The Plaintiff's family suffered emotional distress. Defendant was later convicted of animal abuse and served three months in jail. A jury awarded Plaintiffs \$56,400 including \$50,000 in punitive damages, \$6,000 for emotional distress and \$400 for the value of the dog.

MATCHMAKER FAILED TO INTRODUCE CLIENT TO WEALTHY MEN; JURY VERDICT OF \$2.1 MILLION

Plaintiff, 60, paid \$100,000 to hire a matchmaker who guaranteed introductions to wealthy men. Dissatisfied with the results after several unsuccessful matches, including an introduction to a man who was in a relationship and a rancher who planned to declare bankruptcy, Plaintiff paid another \$25,000 for a consultation on presenting herself to and interacting with wealthy men.

The matchmaker then introduced her to a retired firefighter but no millionaires. Plaintiff sued the matchmaker, alleging defendant failed to introduce her to men fitting the specifications she had guaranteed. Plaintiff claimed Defendant failed to properly screen the men to whom she introduced Plaintiff and failed to keep records of her clients.

HOMEOWNER MAY BE LIABLE FOR IMPROPER GUN STORAGE

A homeowner, Defendant, had a duty of care to prevent a person with a history of violence and mental instability from having access to a gun stored on the premises, a State court has ruled. A young man shot and fatally wounded a police officer during a foot chase. The shooter, who had a history of violent behavior and mental problems, had obtained the handgun from the home of the defendant, who lived with his father. The Defendant's father owned a large gun collection, which he stored in the defendant's basement. Defendant had allowed the young man to have a key to the home and permitted him full access to the property, although she had not given him permission to take any gun from the collection. The officer's estate filed a lawsuit

against the defendant. Initially the trial judge awarded a summary judgment on the question of liability concluding that the homeowner owed no duty of care to the police officer. But the State Supreme Court disagreed allowing the case to go to trial. The Court said that a homeowner who permits guns to be stored on their property and allows unsupervised access to that property by a person known by the homeowner to have a history of violence and mental instability, has a duty of reasonable care to ensure that the guns are properly secured. This duty is owed to a person, such as a law enforcement officer, shot by the person granted unsupervised access because the officer is a foreseeable victim of the alleged improper firearm storage.

March 15 Tax Calendar.

Regular corporations, S corporations and LLC's electing to be taxed as a corporation on a calendar year must file their 2006 returns. LLC's electing to be taxed as a corporation and S corporations must provide shareholders with copies of their Schedule K-1. This is also the final day to elect S corporation status for 2007 for a calendar year corporation that was in existence prior to 2006.

Corporations and LLC's Wanted. Spiegel & Utrera clients are looking for aged "for profit" corporations, "not-for-profit" corporations and LLC's. Especially needed are "for profit" corporations with favorable unemployment compensation ratings or favorable workman's compensation modification experience ratings and aged 501(c)(3) non-profit corporations with favorable letters of determination issued by the IRS. Please contact Larry Spiegel at (800) 603-3900, extension 219 or in the UK at 0800-328-3100 for further information.

Employee Theft. It appears employees are willing to walk off with just about anything but the top three items are office supplies, 15%; money, 14%; and merchandise, 11%.

When It Comes To Estate Planning, Florida Is The Place To Be. People are flocking to the Sunshine State in greater numbers than ever seeking asset protection and a decrease in taxes.

Did You Know that becoming the exclusive U.S. distributor of a foreign product can be a great way to secure your businesses' success?

WANTED: Does your business operate a successful single location? If so, would you consider expanding? I can show you the way. Contact Larry Spiegel (800) 603-3900, ext. 219 or in the UK 0800-328-3100.

Actual resolution of legal issues depends upon many factors, including variations of facts and State and Federal laws. This newsletter's accounts of trials, verdicts and settlements of others is not intended to illustrate the experience of Spiegel & Utrera, P.A. in the areas discussed; but, rather to provide insight into legal developments and issues. Spiegel & Utrera, P.A. makes no representation as to its involvement in any of the cases or matters discussed herein. The results in one case do not necessarily indicate the quality or value of any other case. Lawrence J. Spiegel, Esq. is responsible for the contents of the newsletter.



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