

WEIDENBAUM & HARARI, LLP LEGAL BULLETIN

WEIDENBAUM & HARARI, LLP A LAW FIRM FOR THE NEW MILLENNIUM

W&H On The Home front

W&H welcomes your comments!

We would like to thank all our clients and colleagues who responded to our last newsletter with helpful comments and suggestions.

Please continue to email your comments, questions and suggestions for the next edition to lawyers@whfirm.com.

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Weidenbaum & Harari, LLP has continued its advancement in the legal industry as a "next generation" law firm built on innovative principles and cutting-edge concepts. All of the firm's practice groups are bound by the overriding philosophies of commitment to excellence, dedication to clients, and the achievement of positive results through creative approaches to problem solving.

Our Commercial Litigation Practice Group has continued to recover hundreds of thousands of dollars on behalf of our clients. The aggressive litigation strategy of Senior Partner Jack Harari recently led to a six-figure structured settlement of a construction case filed in New York Supreme Court.

The Corporate Practice Group has completed a variety of complex transactions in a number of industries, including the recent sale of a successful pet product company. Additionally, Senior Partner Barry Weidenbaum recently represented a music composer in the negotiation of theme music soundtrack rights to the up-

coming film production, "Don't Ask, Don't Tell."

The firm was recently retained to initiate a number of "theft of cable" lawsuits in Federal court on behalf of cable television promoters. This potentially high-profile litigation will require the combined efforts of the Technology Practice Group and the Commercial Litigation Group.

We welcome Sami Mir, a graduate of New York University and current law student at Georgetown University, who will be joining W&H as a Summer Associate in the Summer of 2001.

We would also like to welcome back Legal Assistant Maria Kariotis from her sabbatical in Greece, and Special Advisor Gerald Collyer from his extended vacation through Europe and the Western United States.

Weidenbaum & Harari looks forward to further growth and expansion over the coming months. As always, let us know how we can help you!

Important Lien Law Update For Construction Industry

Construction Industry beware! Effective January 1, 2001, Chapter 324 of the New York Lien Law Sections 17 & 18 have been amended by the New York State Legislature.

Previously, mechanic's liens could be extended indefinitely by court order on an annual basis. Under the new law, mechanic's liens can only be extended by court order for "two successive years."

Additionally, Section 18 was amended to provide an initial effective term of one year to properly filed mechanic's liens on public improvements, instead of the six months previously provided.

Members of the construction industry should consult an attorney with questions regarding these important changes.

Starting A New Business, Part I: Forming an LLC

Many of our clients are continuously entering new business ventures, and pose the question, "should we form a business corporation or a limited liability company?" Both entities are among the most frequently formed business entities. In New York, their formation is governed by the statutory framework of the New York Business Corporation Law and the New York Limited Liability Law.

An LLC may be formed by preparing and filing of articles of organization which must be signed by an organizer of the LLC. The rules governing the formation of a limited liability company are very specific, and those considering the formation of such an entity should consult the advice of an attorney prior to formation. Pursuant to Section 203 of the Limited Liability Company Law, the articles of organization must set forth: (i) the name of the LLC; (ii) the county within New York in which the office of LLC is to be located; (iii) if the LLC is to have a specific date of dissolution, the latest date on which the LLC is to dissolve; (iv) a designation of the secretary of state as agent of LLC upon whom process against it may be served and the post office address within or without this state to which the secretary of state shall mail a copy of any process served

upon him; (v) if the LLC is to have a registered agent, its name and address, within New York; (vi) if all or specified members are to be liable in their capacity as members for all or specified debts, obligations or liabilities, a statement to such effect; and (vii) any other provisions, not inconsistent with law, that the members elect to include in the articles or organization.

Within 120 days after the effectiveness of the initial articles of organization, a copy of the articles or a notice containing same must be published once each week for six successive weeks, in two newspapers designated by the county clerk of the county in which the office of the LLC is located. The publications requirement, especially in the New York metropolitan region, can be very costly, and may therefore be a significant factor for a newly forming business.

In addition to considering the legal issues involved in choosing a business entity, we strongly advise our clients to carefully evaluate the tax implications.

Next issue: Starting A New Business Part II: The Formation of a New York Business Corporation.

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Recent Articles Published By W & H Attorneys

- "The Check is in the Mail: Practical Tips for the Collection of Debts," written by Jack Harari, Esq., published in Image Magazine, Vol. 12, No. 5, May 2001.
- "E-Sign Language: Commerce in the Wake of the Electronic Signatures in Global and National Com-

merce Act," by Jack Harari, Esq., to be published in July 2001.

Copies of articles mentioned herein, along with legal references cited within the newsletter are available upon request.
Call us at (212) 832-7400

Wills, Trusts & Estates – Start Planning Now!

Jeff Levine, a Special Advisor to W&H, has extensive experience in Estate Planning, Probate Administration, Domestic Relations and the resolution of Landlord/Tenant disputes. Additionally, he is a member of the New York State Trial Lawyers Association and serves on behalf of the New York County Small Claims Court as an Arbitrator of Civil Disputes.

Mr. Levine is currently writing an article for the firm website on how to avoid probate using living trusts. He con-

stantly emphasizes to clients the importance of an effective estate plan. "As Congress has changed the estate tax laws, it is more important now than ever for individuals to devise and implement an estate plan, for a few steps taken now can avoid the hassles and expenses of probate later."

Look for updates by Mr. Levine on the status of the law in future editions of the W&H Legal Bulletin.

"...it is more important now than ever for individuals to devise and implement an estate plan..."

Commercial Real Estate Tip: Cross-Default Provisions

Senior Partner Barry Weidenbaum continues his work on commercial real estate transactions while building the foundations of the Technology Practice Group. His experience in these seemingly different areas of the law overlaps. "In the current economic climate, a number of dot-com's have overextended themselves financially, resulting in defaults under their commercial leases."

Counsel for landlords should include provisions in the lease to protect the landlord in the event of such defaults. One technique commonly used by Mr. Weidenbaum is strict Cross-default provisions. Cross-default provisions, when strategically placed into leases and related agreements, can save a landlord both time and expense. Many landlords sign several leases or other agreements with a single tenant. For instance, a landlord may sign a lease with a tenant for certain space, and then sign another lease with the same tenant for additional space or for an equipment lease or other financing. In

such circumstances, a landlord can better protect themselves by securing the ability to treat any single default under any one of the leases or agreements as a default under all the agreements. A cross-default provision, which must be inserted into each agreement with the particular tenant, gives a landlord leverage against the tenant in the event of any such default. Such provisions make it easier and less costly to get space or money back if the tenant is in default regardless of which agreement or lease the tenant is in default under. Additionally, the fear of a cross-default gives the tenant incentive not to default under any of the agreements due to the severity of the consequences. This cost-effective protective technique is a priority for all future leases and agreements between a landlord and a single tenant.

Questions concerning real estate or corporate matters should be directed to Barry Weidenbaum, Esq. At (212) 832-7400.

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New York High Court Rules On "No-Fault" Law

In a decision that is likely to substantially narrow the pool of eligible plaintiffs under New York's personal injury "no-fault" law in automobile cases, the New York Court of Appeals unanimously held that only a "total loss" is compensable under New York insurance law.

Under the no-fault law, it is necessary to prove that a "serious injury" is involved. The legislature defined "serious injury" as, among other things, one relating to "permanent" physical loss or limitation.

In *Oberly v. Bangs Ambulance*, 72, the Court held that "to qualify as a serious injury within the meaning of the statute,

'permanent loss of use' must be total," effectively ruling that a loss must not only be significant, but also permanent.

The decision of the Court may therefore prevent injured persons who are otherwise eligible to file suit from doing so.

Questions relating to personal injuries sustained as a result of automobile accidents or other personal injuries should be directed to the firm at (212) 832-7400 or by email to: lawyers@whfirm.com.

W&H welcomes all comments and questions. Call us at (212) 832-7400.
