



Biz-Law Briefing

A Practical Journal for Closely-Held
& Family Businesses

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Special Points of Interest:

- What small business owners should know about the Stimulus Act.
- Collections: Know your rights and obligations.
- Now may be a good time to examine Lease Agreements.
- Methods to minimize employee fraud.

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American Recovery and Reinvestment Act of 2009: Large Impact on Small Business

by Gary R. Botwinick & Pauly J. Holandez Esq.

On February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009 (the Act). The Act includes a total of \$787.2 billion in spending and tax cuts, including a number of provisions that significantly impact small businesses. These include the following:

Section 179 Expensing.

The Code Section 179 deduction permitting an immediate write-off rather than scheduled depreciation is increased to \$250,000 for 2009.

Extension of bonus depreciation.

Last year, Congress temporarily allowed businesses to recover the costs of capital expenditures made in 2008 faster than the ordinary depreciation schedule would allow by permitting these businesses to immediately write-off 50% of the depreciable basis of qualifying property acquired in 2008 (after any Section 179 deduction and before figuring out the regular depreciation deduction). The Act extends this temporary benefit for capital expenditures in 2009 (and 2010 for certain longer-lived and transportation property).

Five-year carryback of net operating losses.

The Act allows eligible "small businesses" to elect to carry back net operating losses for taxable years ending or beginning in 2008 for a period of up to five-years. An applicable eligible small business is a taxpayer meeting a \$15 million gross receipts test.

Estimated tax payments.

The Act provides that the required annual estimated tax payments of a qualified individual for taxable years beginning in 2009 is not greater than 90 percent of the tax liability shown on the tax return for the preceding year, as opposed to the prior requirement of 90 percent of the current year's tax

liability or 100 percent of the prior year's liability. A qualified individual means any individual if the adjusted gross income shown on the tax return for the preceding taxable year is less than \$500,000 (\$250,000 if married filing separately) and the individual certifies that at least half of the gross income shown on the return for the preceding taxable year was income from a small trade or business. A small trade or business is any trade or business that employed no more than 500 persons, on average, during the calendar year ending in or with the preceding taxable year.

Qualified small business stock.

Under present law, individuals may exclude 50% (60% for certain empowerment zone businesses) of the gain from the sale of certain small business stock acquired at original issue and held for at least five years. The Act provides the percentage exclusion for qualified small business stock sold by an individual is increased from 50% (60% for certain empowerment zone businesses) to 75%.

Einhorn, Harris, Ascher, Barbarito & Frost

is ready to provide your business with essential legal counsel for both your practical day-to-day questions as well as long-term, complex business planning. Our Closely-Held Business Group is composed of skilled attorneys with experience and up-to-date information in corporate and tax law issues for your planning and litigation needs.

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— PC —



News Of Our Firm

Every new year brings with it the pride of new accomplishments and recognition for both the new and seasoned lawyers in our firm. This year, we are pleased to announce that Ivette R. Alvarez was elected Vice-President of Membership for the Hispanic National Bar Association (HNBA). HNBA is an incorporated, not-for-profit, national membership organization that represents the interests of the more than 100,000 Hispanic attorneys, judges, law professors, legal assistants, and law students in the United States and its territories. Ms. Alvarez was also selected by the Board of Latinas United for Political Empowerment (LUPE) to receive an award on March 24th at the organization's annual "Power of Women" Reception at the Liberty House Restaurant in Jersey City. Ms. Alvarez concentrates her practice in civil litigation with an emphasis on matrimonial and family law.

Also this year, Partner in the firm, Bonnie Frost, was invited to participate in the 6th Annual Meeting of the National Council of Lawyer Disciplinary Boards, Inc. (NCLDB) at the Colonnade Hotel in Boston, Massachusetts. She spoke on the hot topics of Confidentiality and Identity Theft. Attorney Frost, who has participated in over 20 published cases in family law, joined the firm in 1985, and has practiced matrimonial Law, handling divorce, custody, domestic violence, paternity cases, and related matters, including appeals.



Message from the Founding Partner of the Firm

Theodore E. B. Einhorn



Lately, all of us have been concerned about the sad state of our economy and you, as a business owner, are on the front lines when it comes to bearing the brunt of this recession.

Controlling costs is an extremely important factor in business decisions, and your concerns about the cost of legal services are justified. Since 1961, our firm has grown to be a mid-size law firm of choice for many area businesses and for the past 48 years, we have and will continue to offer reasonably-priced, personalized, cost-effective legal services. No matter what your business focus is this year, there are important legal issues that, if handled properly with adequate legal advice, can help protect your interests now and in the future when the economy gains momentum. Staying competitive while simultaneously improving the bottom line is a challenge every business faces, and the attorneys in our firm can help; not only because of our knowledge and experience in the law,

but because of our firm's stability, longevity and success. We assist entrepreneurs in choosing the proper business structure and we are equipped to handle complex agreements, employee compensation issues and a myriad of other issues affecting your business. We can also guide you with regard to compliance with recent regulatory changes that will affect you, as employers, in terms of matters involving your employees. Doing business in New Jersey is challenging and the attorneys in our Business Group have the experience and knowledge to guide you through the day-to-day changes in the regulations and statutes which affect your business in the most efficient and cost-effective manner possible. We look forward to discussing and working with you concerning issues confronting you as a business owner in these difficult times.

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Recession Woes: Breached Contracts And Soaring Accounts Receivables

Timothy J. Ford, Esq.

If you are a sole proprietorship or small business, then in the past six months, you have seen your income decline and accounts receivables and breached contracts skyrocket. Although your volume of business may be steady or even increasing, you may be struggling to collect from clients or clients may ask to extend further lines of credit, often unsecured. So how do you decide when and how to collect from clients?

The Fair Debt Collection Practices Act is a federal law that governs consumer credit protection and debt collection practices. The New Jersey Consumer Fraud Act provides an extremely broad definition of a "consumer" transaction and defines specific means by which you can pursue debtors.

Although the FDCPA and NJCFA apply primarily to "consumer" transactions, it is vital to determine the legal distinction between a "consumer" and "retail" transaction, and evaluate from whom you seek to collect the debt. A commercial or "retail" debt is generally regarded as a debt for goods sold or services rendered in a business transaction. Conversely,

"consumer" debts are generally for personal, household or family purposes.

Fortunately, the law does not govern every action to collect a debt or seek money from a client. You must meet the legal definition of a "debt collector" in order to be subject to the Act. Mistakes made due to a misunderstanding of these definitions may be costly and the advice of legal counsel is crucial!

What do you do when your client has breached a contract?

First, you must determine whether a legally binding contract was formed. Next, you must determine whether it has been breached. Once your client has breached the contract, your next questions are: What are my legal rights and how can I collect from my client? Your choices may include negotiating a resolution for this breach or filing suit to collect. Contact the experienced business attorneys at Einhorn Harris for legal assistance.

In order to maximize the effectiveness of your collection efforts and to understand your rights and obligations, contact Andrew S. Berns, Esq. or Timothy J. Ford, Esq.

Tenants' Survival Guide In A Depressed Market

by Jason R. Rittie Esq.

As the economy continues its downward spiral, tenants are feeling the strain on business and cash flow, which makes it difficult to make lease payments. As a tenant, you have options. Now may be a good time to examine existing lease agreements to determine if there is an early termination provision, which would allow you to "buy out" the remaining term of the lease by paying a few months rent. Also, examine whether the landlord is currently in breach of any of its lease obligations, which may allow you to terminate the lease or seek other concessions.

A Tenant's Options

There are numerous options available for tenants in seeking relief from a landlord. These include, but are not limited to:

- *Temporary or permanent reduced rental payments;*
- *Free rent or holiday periods;*
- *Substantial tenant improvement allowance upon renewal; and*
- *Limiting or capping common area maintenance charges and real estate increases.*

Finally, this is a good time for you, as a tenant, to examine certain provisions in the lease agreement including security deposit amounts,

personal guarantees and assignment and sublet provisions.

Good News for Tenants

Also, there is some good news for tenants. The depressed economic market also provides opportunities for "mom and pop" one-off specialty retailers to obtain space in unique centers and malls and other desirable premises that landlords would not otherwise be willing to rent to such "small" retailers. Landlords need to fill space in order to make and sustain cash flow. Further, if a tenant is thriving in this economy and thinking about growth, opportunities to expand a tenant's existing space or relocate to a larger premises, at favorable rents and terms, are abundant. Although renegotiating leases is a great opportunity, it can be quite complex. Landlords who have financing in place on their existing buildings may need to seek lender approval for any such lease modifications and the negotiation itself can be problematic. Don't wait until the lease expiration date approaches or the business fails. Allow sufficient time for lease renegotiations and seek appropriate advice from legal professionals.

Attorney PROFILE

Andrew S. Berns, Esq.



Andy is the Chair of the firm's litigation practice. The litigation practice includes

Commercial, Personal Injury and Workers' Compensation cases as well as other forms of business litigation including employment matters.
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Attorney PROFILE

Gary R. Botwinick, Esq.



Gary chairs the firm's Trusts and Estates/Taxation Group. He joined the firm in 1998, becoming Partner

in 2001. His career began in the IRS Manhattan District Counsel Office, where he tried civil cases before the U.S. Tax Court.

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Attorney PROFILE

Paulyn J. Holandez, Esq.



Paulyn joined the firm as an Associate in 2008 in the Trusts & Estates/Taxation Group. In 2007,

she completed an externship with the Internal Revenue Service District Counsel's Office, where she conducted tax research in preparation of cases for litigation before the United States Tax Court.
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Attorney PROFILE

Timothy J. Ford, Esq.



As an Associate with the firm, Tim practices in the areas of Complex Commercial

Litigation, Employment and Corporate Law. He is a recipient of the American Bankruptcy Institute's Medal of Excellence.
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What to Do if You Suspect Employee Fraud

Part II (continued from Volume 2, Issue 2)

By Michael R. Ascher, Esq.

In the previous issue, we discussed why employers do not take adequate precautions to prevent employee fraud. Now we will consider what you can do to minimize fraud. Although there is no absolute methodology or foolproof method to prevent employee fraud or theft, you can minimize the potential fraud by employing one or more of the following methods:

- 1. Conduct regular reviews of internal controls.
- 2. Conduct surprise audits.
- 3. Provide fraud training for managers and executives.
- 4. Require job rotation.
- 5. Institute mandatory vacation.
- 6. Publish and have employees sign a "Code of Conduct."
- 7. Conduct internal and external audits.
- 8. Regular review of accounts payable and receivable.
- 9. Monthly review of checking accounts.
- 10. Regular review of employee internet activity.

In the event that you uncover a potential case of employee fraud within your business, do not delay. There are specific protocols to be undertaken. With the assistance of counsel, you can avoid costly litigation trying to re-coup losses generated by employees.

It is amazing how many employees feel a sense of empowerment, especially when they work for a company which has experienced a high degree of success. Oftentimes, such employees feel they are under compensated or are not adequately recognized by their superiors and they act in a passive-aggressive manner and devise schemes in an effort to obtain the compensation to which they feel they are entitled. Others may encounter temporary financial difficulty and convince themselves that their fraud is merely a temporary matter that they will pay back the minimal amount of money that they initially steal. However, once they discover that they have not been detected, they often turn to long-term stealing that can wreak havoc on a small business. Unfortunately, most dishonest employees feel they will either be able to repay the sums taken or are confident that their efforts of concealment will be successful. Schemes often last for years and can be extremely costly to a business. Along with lost revenue, there always exists the possibility of customer loss.

If you suspect that you have been victimized by an employee, contact Michael R. Ascher, Esq. immediately and in your response, undertake measures to re-coup losses, avoid litigation and protect your company's reputation. There are proven techniques for response in the event fraud or theft is uncovered. Learn them and protect your business.

Attorney PROFILE

Michael R. Ascher, Esq.



Michael applies his extensive trial experience gained as a Deputy Attorney General in the

Division of Criminal Justice and as Assistant County Prosecutor, and his thirty years as a criminal defense attorney, to his work on significant cases on both the trial and Appellate level.

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Attorney PROFILE

Jason R. Rittie, Esq.



Jason practices in the area of business law, including contracts, asset sales

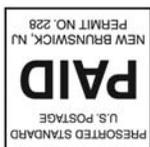
and acquisitions, stock sales and acquisitions, and business formations.

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