LAW OFFICES OF JONATHAN M. COOPER

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INSIDE THIS ISSUE

List of the 10 Most Dangerous Children's Toys of 2010 is Released

For those of you that may not be aware of it, there is a non-profit organization based out of Massachusetts called World Against Toys Causing Harm (WATCH), whose stated purpose is to inform consumers about unsafe children's toys and products.

As part of their campaign, each holiday season they release a "10 Worst Toys list" that enumerates what in their view are the most dangerous toys that are currently on the market.

A .pdf copy of the list, which is hosted at www.toysafety.org, can be found here.

Sometimes, Even New York's Public Schools Admit They Were Negligent

It is indeed rare that a public school, particularly one in New York, will admit they were guilty of negligent supervision. So, as you might well imagine, it must be a real humdinger when they actually admit it.

Last year, 12 year-old Shane Reese was injured when his teachers - who were short-staffed and out of ideas to occupy their students - instructed them to play dodgeball.

But they didn't pick the standard soft rubbery balls used for the game; they gave the students hard soccer balls. The school's negligence didn't end there, though. Apparently, they had six classes totaling more than 100 students crowded into the gym to play the game.

As for the plaintiff - he wasn't even participating in the game: he was sitting it out because he had just received expensive dental treatment.

What happened next shouldn't come as a surprise: despite sitting in the bleachers, he was hit in the head with great force by one of the errant hard soccer balls, which not only injured him, but also destroyed his new dental work.

When a Fiduciary Breaches a Non-Compete Agreement – and Then Lies About It

Reading the appellate court's rendition of the facts in *GoSmile, Inc. v. Levine*, it is clear that the court empathized with the plaintiff, and wanted to allow the plaintiffs their day in court. The sordid details are as follows:

In this case, the defendant dentist founded the plaintiff corporation, which develops and sells tooth-whitening and oral hygiene products, and, he, together with his wife, were the company's sole stockholders, directors and employees. In 2003, they sold a majority interest in the company to investors (the plaintiffs).

At that time, the defendants executed confidentiality and non-

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We strongly encourage the readers of our monthly newsletter to provide feedback about issues they would like to see addressed in our future publications.

To do so, please contact us through our website, www.JonathanCooperLaw.com or via e-mail at jmcooper@jmcooperlaw.com

"The court will not give you wide latitude to conduct a fishing expedition in order to help you pierce the defendants' corporate veil."

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Why It's So Tough to Pierce the Corporate Veil in New York

You may be wondering what valuable, relevant lessons can possibly be gleaned by a small business with a comparatively simple breach of contract matter from the Bhopal disaster (remember that environmental disaster from years ago?).

The answer is, quite a bit.

For one thing, in *Sahu v. Union Carbide*, a New York federal judge recently denied the plaintiffs' request for additional discovery on the issue of the relationship between all the assorted corporate entities that were involved.

Why is this significant?

Because it serves as an important reminder that a court will not give you wide latitude to conduct a fishing expedition in order to help you pierce the defendants' corporate veil; you are going to need a good faith basis (read: competent evidence) before a judge will allow you to pursue these claims, and even then, the judge will keep you on a fairly tight leash in terms what discovery you will be permitted to obtain – and which discovery you won't be allowed to obtain.

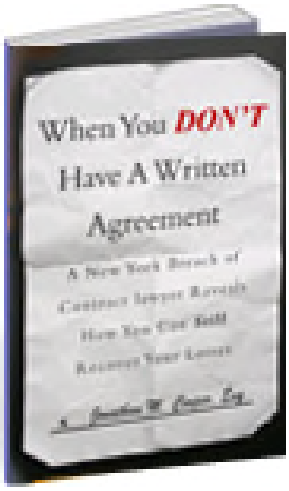
In other words, before you bring a claim asserting that the defendant company was a sham, and essentially the alter ego of an officer or one of the other corporations involved, you had better have some proof to back it up.

As you might well imagine, this kind of proof is not so easy to come by.

When You Don't Have a Written Agreement –

*(How You Can **Still** Recover Your Losses)*

by Jonathan M. Cooper



This **FREE Book,** which explains how you can recover your losses if you've been wronged by someone else's breach of contract in New York, but you didn't memorialize all of the terms you meant to in your agreement, is available for download directly from:

www.BreachOfContractBook.com

When a Fiduciary Breaches a Non-Compete – and Then Lies About It

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competition agreements that granted plaintiff exclusive ownership rights of all intellectual property, and prohibited defendants from using this information to compete with the company. In exchange for a cash payment, the defendants became at-will employees, directors and minority owners of plaintiff, and later sold their full interest in the company and signed an agreement "which contained a broad mutual release of all claims of all kinds, whether known or unknown, that the parties ever had or now had."

As part of the settlement agreement, plaintiff insisted upon – and defendant warranted – that he had neither breached the 2003 confidentiality and non-compete agreement in the past, and was also not in breach of those agreements at that time.

"The defendant used this confidential information to unfairly compete … and then deliberately lied about it in order to induce the defendant to pay him over $3 million."

Later plaintiffs learned that defendant had, in fact, breached his fiduciary duties to the company, and used this confidential information to unfairly compete with the plaintiff by taking this information to help a competitor. In other words, he deliberately lied about (in legalese, misrepresented) his breach of fiduciary duty and breach of the non-compete agreement to the plaintiff company in order to fraudulently induce them into entering into the settlement agreement, and pay him over $3 million.

Although the Court was required to sidestep some general rules in order to reach this result, and allow the plaintiff's claims for breach of contract, rescission and fraudulent inducement to succeed, are you surprised that they did so?

I thought not.

(But if you're interested in the legal nitty-gritty of why, see "How Breach of a Non-Compete Can Sustain Both Fraud & Breach of Contract Claims in NY").

***COMMUNICATION POLICY**: As a general rule, Mr. Cooper does not accept unscheduled phone calls. This policy affords Mr. Cooper the ability to pay closer and more focused attention to each case, resulting in more efficient and effective representation for his clients. Moreover, it avoids the endless and needless game of phone tag played by most businesses and law firms. To schedule a phone call or in-person appointment with Mr. Cooper, please call his office at 516.791.5700.*

How Rampant is Food Poisoning? CDC Estimates Nearly 1 Out of Every 6 Americans Every Year

A few weeks ago, the Centers for Disease Control and Prevention (CDC) issued a statement in anticipation of some new legislation that will broaden their powers to police and regulate the food industry. In their statement, they noted that each year nearly one out of every six Americans is sickened by some form of food poisoning every year.

When you think about that, it is an astonishing number - and, as correctly noted by the CDC, is patently unacceptable.

In the Journal of Emerging Infectious Diseases, the CDC identified the five most common culprits in food-borne disease as Norovirus, also known as Norwalk virus, salmonella, and 3 other bacteria, which were as follows:

1. Clostridium perfringens;
2. Campylobacter; and,
3. Staphylococcus aureus.

Bear in mind, however, that these staggering statistics do not mean, by any stretch of the imagination, that proving a food poisoning case under New York law is easy.

It's not.

(For more information on this topic, please read "3 Avoidable Mistakes That Can Destroy Your Food Poisoning Lawsuit in NY").

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