

35 India Street, 3rd Floor
Boston, MA 02110
617-523-0800

Winter 2010

3 Cabot Place, 3rd Floor
Stoughton, MA 02072
781-341-0000

RICHARDSON AND TYLER, LLP

LAUREN R. KILLMAN

JOSEPH M. KLEMENTS

JANE E. PARRY

WELCOME

Richardson & Tyler, LLP is pleased to bring you the 2010 winter edition of our newsletter. This newsletter is to share new matters of general interest with our clients. It is not intended to provide legal advice. Please speak to an attorney before applying this information to your specific situation. If you would prefer to be taken off of our mailing list, please call or email richardsonandtyler@rtlegal.com and let us know.

NEW LEGAL TALENT AT R&T

Jane E. Parry has joined Richardson and Tyler as an associate. With over 16 years experience, she is familiar with civil & commercial litigation, employment law, and trust & estate litigation. We are pleased that Jane adds breadth and depth to our talented legal team, as we help individuals & businesses to achieve their goals through effective legal outcomes.

DOCUMENT RETENTION POLICIES

In the age of emails and electronic documents, is a document retention policy as important as in days past? Yes! The digital age has ushered in new “pitfalls for the unwary.”

- A document retention policy is a misnomer – the policy is actually a document destruction policy that governs how and when a business may purge outdated documents.
- “Document” includes almost everything on your computer and business network, including emails, electronic copies, document drafts and deleted files.
- Proper treatment, storage and destruction of these “documents” are imperative if a business is subject to, or brings, a lawsuit. Otherwise, a business may be charged with willful destruction of evidence, otherwise called “spoliation”, by doing something as simple as overwriting a back-up database.

A clear document retention policy can protect businesses from avoidable liability, cut down storage costs and save legal fees. If you’d like to learn more about document retention policies for your business, please contact killman@rtlegal.com

ECONOMY DOWN - EMPLOYMENT CLAIMS UP

Terminated employees are more apt to sue their former employer. Pitfalls to avoid?

- *Vacation Time*. It must be treated as wages & paid on day of discharge.
- *Exempt (salaried) vs. Non-exempt (hourly)*. Classify employees on “what they do”. Professional, managerial, administrative employees are exempt. All others are non-exempt ... accurately record their hours & pay them. Otherwise, you may be personally liable for wages & mandatory triple damages.
- *Independent Contractors (“1099 workers”)*. Liability arises under wage & hour laws, overtime rules, record-keeping rules, tax withholding laws & worker’s comp laws if you mis-classify a worker. A true contractor is free from your control/direction...provides service outside your usual business...engages in an independent trade, occupation or profession...

Former employees often have little to lose, as they may claim damages *plus attorneys fees*. If you think you are in a “grey area” on these issues, consult counsel first, to avoid heavy liability later.

PERSONAL INJURY – SLIP AND FALL

Massachusetts' highest court may soon make it easier to prove your case if you fell and suffered an injury. For a century, landowners have been

- Liable for injuries from an “unnatural” accumulation of ice or snow.
- Not liable for a “natural” accumulation.

The problem? Judges, lawyers and jurors often *cannot explain the difference!*

The result? Landowners & insurers have defended to the hilt.... Lawyers hesitate to take these difficult cases ... Injured persons have been uncompensated.

In a closely watched case, the Supreme Judicial Court has now asked for comments on whether to abolish this artificial distinction and set up a clearer rule.

When a decision issues, we hope it will make it easier for injured persons and landowners alike to evaluate and resolve these sometimes confusing, contentious cases.

BUSINESS BORROWING & FINANCE

With banks & lenders more cautious than ever, *loan negotiation* is more ticklish than ever for business borrowers.

A *key document* is the *loan commitment letter*. It is the “blueprint” from which the loan documents will be drafted – if you’re going to involve counsel, do so before you sign. Lenders are apt to be more flexible about key terms before you sign, commit to give them your business, and stop shopping with other lenders.

Key points to address in a commitment letter can include:

- Financial terms - amount, financial covenants, and interest rates (how does the lender define “prime rate”?).
- Loan availability – if you borrow against receivables, what receivables are “eligible”? If over-concentrated accounts or affiliate accounts are not counted, loan availability will decrease.
- Prepayment – try to avoid penalties for prepayment if you have high cash flow or cash from other sources such as an insured casualty or property condemnation.
- Escrows – can you avoid escrows for taxes & insurance? If not, will interest be paid on escrows?
- Due on sale or transfer – can you avoid acceleration of the debt if you sell a parcel of realty? Recapitalize the company? Transfer equity to relatives, affiliates, or for estate planning?
- Other debt – may you borrow from other lenders, if you secure better terms, are afforded seller financing for capital improvements, or lease equipment?
- Guarantees – Are personal guarantees required? Can they be limited as to amount, a percentage of the borrowing, or reduced if financial targets are met?

Recommendation – Involve counsel early, address the key points in the commitment letter when the lender is more flexible, and then make sure they are carried over into the final loan documents.

RICHARDSON AND TYLER, LLP

If there is a particular topic you would like to see in our newsletter please email us at richardsonandtyler@rtlegal.com

These materials are offered for information purposes only. Do not act or rely upon any of the information available in this newsletter without seeking professional legal advice. This material may be considered advertising under the rules of the Supreme Judicial Court of Massachusetts.