

MICHAEL L. PISAURO, JR. LLC

UPDATES

INSIDE THIS ISSUE:

The Summer Has Been a Busy One 1

What to Do when Your Employee Takes your Customers 1

2010 Continues to Keep NJ in the Fore-front 2

Can You go to Court alone? 3

The Consumer Fraud Act 4

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THE SUMMER HAS BEEN A BUSY ONE.

A lot has occurred since my last newsletter. At the end of June, Frascella & PISAURO, LLC's lease ended at 100 Canal Pointe so that was a good time to make some changes. I moved my office from Canal Pointe Blvd. to the Shoppes at Pennington and changed the firm's name to the Law Office of Michael L. PISAURO, JR. LLC. These changes are reflected in the firm's new website (www.pisaurolaw.com) which includes both the NJ Businesswise and Greenpages-NJ blogs where you can find information about issues affecting NJ businesses and the

environment. I continue to practice in the areas of environmental, business, and real estate law as well as litigation.

Back in May I was nominated by the Governor to sit on New Jersey's Site Remediation Professional Licensing Board which was set up by law last year as part of the overhaul of clean-ups of contaminated property in New Jersey. My nomination is pending approval from the NJ Senate.

In addition to my blogs and newsletters, I will be posting informational videos. The first video planned is an overview of the litigation process in NJ courts. Addi-

tional videos are in the works and will be rolled out during the year. If you have an idea for a topic that you would like to see me address please let me know and I will do my best to respond in either a blog post or an informational video.

October 2010 marks my seventh year since I began my own practice. To celebrate this milestone as well as this new beginning I will be hosting an open house for all of my past clients and friends. Please keep October 8, 2010 from 10 a.m. to 7 p.m. open. Take a few minutes to stop by, see the new place and catch up. I look forward to seeing everyone there.

-Mike PISAURO



WHAT TO DO WHEN YOUR EMPLOYEE TAKES YOUR CUSTOMERS

One of your most valuable employees has just left your company and you have learned that the employee will be working for a competitor or is setting up their own company to compete against you. Too late you realize that you really should have had them sign a non-compete agreement. While under your employ they had access to all of your trade secrets, your client lists, your price structure, everything about your business. What do you do if you

suspect that they may have accessed your files and may have taken this information with them when they left? This information is invaluable to your business and is information that your competitors do not have. It has taken you years to put it together but now it has helped your newest competitor get off the ground running. Are you out of luck? Is it too late to do something now?

Third Circuit, Bimbo Bakeries USA, Inc. v. Botticella, reminds us that maybe all is not lost. Even if your employee did not sign a non-compete or a non-disclosure agreement, you may, in fact, be able to prevent them from working in competition against you. In this recent court case, an employee engaged in some questionable activity immediately after accepting a job with his current employer's competitor but before he noti-

A recent court case from the

(Continued on page 2)

EMPLOYEE LEFT - CONT'D FROM P. 1

fied his current employer and before he left the company. Even prior to these actions he had been privy to information that was considered, by his employer, to be "trade secrets." He knew how to make the nooks and crannies made so famous by Thomas' English muffins. The former employer filed suit against the employee and his new employer and sought a preliminary injunction alleging that that there was substantial likelihood of the former employee disclosing the trade secrets to the new employer. The Court agreed and granted the preliminary injunction. And, according to a New York Times article, the former employee eventually lost his new job because the new employer could not afford to keep the job open until the case was completed.

While this is a Pennsylvania case, New Jersey and Pennsylvania have a similar treat-

ment of trade secret law. In NJ, a "trade secret" can be any formula, device or compilation of information. Restatement of Torts. As customer lists are a compilation of information your customer lists may be considered a trade secret under New Jersey law.

Similar to Pennsylvania law, NJ courts have not required an employer to show that the trade secret was actually disclosed or used by the former employee/competitor. The former employer must merely show that "there is a sufficient likelihood of 'inevitable disclosure' of its trade secrets to a competitor [] to show 'irreparable harm' not adequately remedied by money damages. . . ." Osteotech, Inc. v. Biologic, LLC, 2008 U.S. Dist. Lexis 17718. If an employer can show that there is "substantial threat" that the former employee will disclose trade secrets and meets the

other standards for a preliminary injunction a Court may prevent the former employee from working for the new employer or at least limiting the scope of that employment. The Court will weigh a company's right to protect its trade secrets against an employee's right to earn a living and to use their general knowledge and skill.

The lesson to take from this recent case and its predecessors is that, while it is preferable to have your employees sign non-compete and non-disclosure agreements, you may still be able to prevent an employee from using your trade secrets and other proprietary information in competition to you. The barrier to receiving the relief you seek is higher than it would be with agreements in place, but it is not insurmountable.

- Mike Pisaura

For a preliminary injunction an employer must show that there is sufficient likelihood of "inevitable disclosure"

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2010 CONTINUES TO KEEP NJ IN THE FOREFRONT

You would think that, after the Gulf oil spill/disaster, the Federal Government would use this opportunity to move the country forward on renewable energy and addressing global warming. But you would be wrong. Congress is not going to address these issues in any meaningful way, at least not prior to the fall elections. Fortunately, the EPA and the States aren't going to sit on their hands and wait to follow Congress'

example.

NJ, in particular, has recently enacted or passed out of the legislature, several bills that improve NJ's standing with renewable energy. One example is the newly enacted Offshore Wind Economic Development Act which creates incentives for the installation of offshore wind farms. It also provides incentives—but for the location of manufacture and assembly of wind

turbines and associated equipment. The law creates a separate Offshore Wind Renewable Energy Credit, similar to the Solar Renewable Energy Credit (SREC), and allocates a portion of the overall renewable energy portfolio requirements to offshore wind farms. The goal is to create a market for at least 1,100 megawatts of electricity from offshore wind farms (the amount set in the State's Energy Master Plan released at the end of 2008).

The bill also provides incentives for eligible wind farm facilities, including manufacturers of wind farm equipment. These facilities can also obtain low

In order to meet the goal of 1,100 megawatts of renewable energy from Offshore Wind, the State has created the OREC



(Continued on page 3)

CAN YOU GO TO COURT ALONE?

If you are a partnership, corporation, or limited liability company, you cannot represent the business in Court. All business entities must hire an attorney to represent the business in Court, with few exceptions. This is a requirement set out by the New Jersey Supreme Court in the Court Rules. R.1:21-1.

That means that, if your partnership, LLC or corporation is owed money from a customer, you, as an owner of that company, cannot file a lawsuit in Court. That also means that if your company is sued, you, as

an owner of the company, cannot file an answer on the company's behalf. If you do file a complaint or answer on behalf of the company, and, for some reason the Court allows it, you could spend months—if not years—in litigation just to have the judgment voided by the other side because your company was not represented by an attorney.

As I noted above there are a few limited exceptions to the general rule. One of the exceptions applies in cases worth \$3,000 or less and which could have been filed in

small claims court. There are two exceptions that apply to municipal court. In all of these exceptions the company could be represented by an authorized officer or employee. Lastly, a partner of a general partner, not a limited partnership, can represent the business in summary actions for possessions of property.

- Mike Pisaurro

If the claim is for more than \$3,000 you cannot represent your business in court if it is an LLC, Partnership or Corporation

RENEWABLES IN 2010— CONT'D FROM P.2

cost financing and a tax credit for 100% of its capital investment. To qualify for these incentives, a wind farm must meet certain requirements – one of which is the employment of 300 people.

In addition to this, the Senate passed A1052 which would require the state to prefer biofuels when purchasing fuels as long as the price for the biofuel is less than or equal to the cost of standard fossil fuels. Given the controversy surrounding biofuels and their true cradle-to-grave impact on the environment, the bill requires that the biofuels be derived from sustainably grown and harvested crops or non-recycled organic wastes, (i.e. cooking oil, sewage) as well as algae.

S2126, which was recently passed by the NJ Senate,

would define, as a permitted use, wind and solar facilities on former quarries and landfills. This bill helps bring these abandoned and scarred properties back to productive uses. The bill also tries to insure that these facilities do not further degrade the environment by requiring them to use previously disturbed land and to not permanently or adversely impact ecologically sensitive lands

Both A1052 and S2126 are waiting on the Governor's desk for his signature to enact them into law.

Earlier this year P.L. 2010 C. 4, was passed into law removing the requirement to include the space taken up by a solar panel from the calculations used to determine the amount of impervious cover under various laws. These laws include:

the Highlands Act, coastal regulations, etc. Furthermore, the area of solar panels cannot be used to calculate the total impervious cover for various land use applications under the Municipal land use law.

These are just a few examples of the many ways in which NJ is leading the way as a renewable energy champion. Several other bills are currently working their way through the legislature.

- Mike Pisaurro

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THE CONSUMER FRAUD ACT CAN REACH PRINCIPALS AND OWNERS OF COMPANIES

Recently, the Appellate Division confirmed that employees and principals of a company can be held liable for violations of the consumer fraud act. In Allen v. V and A Brothers, Inc the Plaintiffs alleged that the company, its principals and its employees violated the consumer fraud act by failing to comply with certain regulatory sections. These violations included not having a written contract; failure to obtain final approval before accepting payment and failure to obtain Plaintiffs' approval on changes.

The Court reasoned that the

Consumer Fraud Act required liberal application to protect consumers. The CFA defines "person" as "any natural person or his legal representative, partnership, corporation, company, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate," NJSA 56:8-1d.

Prior case law has found, based upon the definition of Person under the Act, a principal of a company liable for the affirmative actions the principal took to violate the act. The Court in Allen reasoned that

there was no reason to treat affirmative acts and regulatory violations differently under the CFA. An owner of a company can be liable for their violations of the CFA's regulatory requirements.

- Mike Pisauero

Remember I have moved and I have new contact information. Please update your records.