

Contents

<i>Site Remediation Reform Act</i>	1
<i>Don't Forget to Review Your Internal Business Agreements</i>	1
<i>Commercial Leases</i>	2
<i>Megan Kral, Esq. Joins Laddey, Clark & Ryan</i>	3
<i>20th Anniversary Party</i>	3
<i>LCR in the News</i>	4
<i>Cases of Note</i>	4

Partners

Richard I. Clark
Thomas N. Ryan
Andrew A. Fraser
Angelo J. Bolcato
Michael S. Garofalo

Of Counsel

Richard A. Stein
Richard T. Sweeney
Michael T. Shivietz
J. Clark Geddis

Associates

Lawrence J. Supp
Lauren D. McFadden
Ursula H. Leo
Ana Linda Day
Victor R. Jusino
Megan C. Kral

Brian M. Laddey
(1944-2007)

Laddey Clark & Ryan, LLP Newsletter provides information of general interest to our readers. It is not intended, and should not be used, as a substitute for consultation with legal counsel. If you have any questions regarding specific issues raised in this newsletter, you may contact the authors directly at: Laddey Clark & Ryan, LLP, Attorneys at Law, 60 Blue Heron Rd., Suite 300, Sparta, NJ 07871-2600, Voice: 973-729-1880, Fax: 973-729-1224, website: www.lcrlaw.com. For additional information contact: Thomas N. Ryan Managing Partner, via phone or email at tryan@lcrlaw.com. This Newsletter constitutes advertising material.

Site Remediation Reform Act

On May 7, 2009, Governor Corzine signed into law the Site Remediation Reform Act (SRRA), a major environmental statute over sixty pages long, which creates in the words of the New Jersey Department of Environmental Protection (NJDEP) "a new world order" for the remediation of contaminated property sites.



By Richard A. Stein, Esq.

As a result of its long industrial history and dense development, the State of New Jersey has more than 20,000 identified property sites on which a hazardous substance has been discharged at some point in time resulting in contamination hazardous to human health. The contaminated sites run the gamut from a leaking homeowner's underground heating oil tank, all the way to former major industrial sites dating back more than 100 years. Prior to the adoption of the SRRA, the NJDEP directly oversaw the cleanup of each and every contaminated site. With over 20,000 identified contaminated sites, the review process by NJDEP was both slow and cumbersome, resulting in long delays in approvals for the various steps required in the cleanup of a property site. The slowness of the process caused frustration for both the public and NJDEP. The property owners suffered economic hardship because they could not sell their properties until the cleanup was complete.

The SRRA completely changes the cleanup process. For each new property site cleanup starting as of November 7, 2009, a property owner must hire a Licensed Site Remediation Professional (LSRP), who will, in effect, replace the NJDEP in both approving the cleanup plan and overseeing the actual cleanup of any contaminated site. LSRPs will primarily be engineers and environmental consultants currently hired by property owners in the cleanup of contaminated property sites. The SRRA creates an independent licensing board that will administer a test to license LSRPs. Pending the creation of a licensing board, the NJDEP will be issuing temporary licenses in

Continued on Page 3

Don't Forget to Review Your Internal Business Agreements

Most business owners are on top of their game when it comes to the day to day operations of their business. While much time is devoted to addressing customer concerns and developing new business, one area that may not be given much thought is what happens if there is a disagreement with a business partner or if an owner decides to sell his or her interest in the business? Often the internal agreement, whether it's a shareholder's agreement, partnership agreement or operating agreement (collectively referred to in this article as "Agreement"), is signed when the business is started and forgotten until there is a problem.



By Angelo J. Bolcato, Esq.

Good planning dictates that business owners periodically dust off the Agreement and take a hard look at the current business operations, the owners' individual situations and goals. Some items to consider when reviewing the agreement include:

1. What happens if an owner dies, becomes disabled, or simply wants to sell his or her interest?
 - a. Is the Company or the other owners required to buy out the interest?
 - b. Can an owner transfer the interest to family members or a third party?
 - c. If the Company or the other owners buy out the departing owner how will the purchase be funded? In the case of death or disability is there insurance? Will there be a payout over time? If the Agreement provides for a payout over time is the time period reasonable given the business' current financial obligations?
2. How will the Company be valued for buy-outs?

Continued on Page 2

Commercial Leases: An Ounce of Prevention is Worth a Pound of Cure

Minimizing Exposure and the Specter of Litigation Through Attorney Review

The one thing that most people will agree on – especially business owners and operators – is that litigation is costly and a distraction. Just the thought of being “dragged into court” is enough to keep anyone awake at night. However, despite that rather obvious truism, we reside in one of the most litigious societies in the world and the area of commercial real estate is not immune. So, if you own or operate a business and operate, or intend to operate, in a rental space, here is one piece of advice - do not sign your commercial lease until you consult a commercial real estate attorney.

As we all know, the United States is in the midst of a recession and no one is more keenly aware of this fact than the Northern New Jersey business owner. Faced with decreased revenues and fixed or increasing expenses, many business owners and operators have shifted their focus to reining in costs and expenses - a prudent strategy to be sure. However, taking such an approach when negotiating your commercial lease could lead to catastrophic consequences including unmanageable additional rent, assessments and, quite possibly, litigation.

So, how could such catastrophic consequences be avoided when negotiating with a prospective landlord? The answer is quite simple. Prior to executing a commercial lease, have it reviewed by a commercial real estate attorney.

You may ask yourself “but I am a sophisticated, experienced businessman, why can’t I conduct the review myself?” The simplest answer is because although the proposed lease is most often furnished by the landlord’s real estate attorney and is always drafted with the goals of securing the maximum benefit, profitability, and protection for the landlord, the specific goals sought to be attained are usually not obvious. That being the case, you can be certain that the proposed lease, if not properly reviewed and negotiated, could cost your company a lot more than the stated rent and common area maintenance (CAM) charges.

To illustrate the point, here is just one example of a clause that you will most likely find in a standard commercial lease:

COMMON AREAS

“Landlord shall maintain the common areas of the property and in connection therewith shall have the right to expend, in its sole discretion, such reasonable sums as may be required (1) to maintain, clean and keep in good repair (including the making of any necessary replacement) all portions of the common areas... Tenant shall pay as additional rent, Tenant’s share of common charges, being agreed to be 3.2% on

a monthly basis, except Trash, which is divided equally among tenants using dumpster. All Common Area Maintenance Charges (CAM) constitute additional rent. “



By Victor R. Jusino, Esq.

This is a standard, non-negotiable clause, right? Wrong. However, most business owners and operators have come to expect such a clause and ordinarily give it little thought except to confirm their percentage of responsibility. In truth, there is much more to this clause than meets the eye.

For example, the above clause grants the landlord the sole right to expend sums as may be required to keep the property in good repair. What a business owner/operator may not know or expect when he signs a lease that contains the above clause is that the landlord plans to renovate the parking area at a cost of \$300,000. Given the language in the clause, how might your company be affected by the landlord’s intentions?

The short answer is that should the business owner/operator faced with this type of clause fail to limit their company’s financial exposure and liability by reigning in broad language, that single “repair” of the common area could result in an additional rent assessment of \$9,600 and, quite possibly, litigation should the unwitting business owner/operator be unable or unwilling to pay.

While the above example addresses just one issue that may be encountered in a proposed commercial lease, a thorough analysis of the lease as a whole will reveal a number of clauses that will require modification and negotiation. Such an analysis is difficult and painstaking and should be conducted by an experienced commercial real estate professional who knows what to look for and how best to address the potential pitfalls.

That being said, the easiest and most cost effective way to avoid such unexpected exposure, expense, and litigation is to enlist the services of a commercial real estate attorney to review any proposed commercial leases prior to execution. Taking that one simple step could very well help you stay out of a courthouse and save your business hundreds, if not thousands, of dollars during the term of your commercial lease.

Victor can be reached at 973-729-1880, or by e-mail at vjusino@lcrllaw.com.

Don't Forget to Review Your Internal Business Agreements

Continued from Page 1

- a. Is there a set amount in the Agreement, and if so is there a mechanism in the Agreement to update it to current values?
- b. Does the Agreement contain a valuation formula, and if so is it compatible with the businesses’ current operations and/or today’s valuation practices and standards?
3. Since the Agreement was last updated have any of the owners’ responsibilities changed? For example, is the day to day management being handled by one owner but the Agreement still reflects that all decisions have to be approved by a majority of the owners?
4. For closely held businesses it is crucial that the Agreement is integrated with the owners’ estate plans. For example, in a family owned business that is managed primarily by one family member that member will want to make sure that the Agreement addresses who will succeed to management of the business. Also, the Agreement may need to be modified to address lifetime gifting of interests in the company in order to minimize estate and/or inheritance taxes.
5. Does the Agreement include a restrictive covenant and/or covenant not to compete in order to protect the business from a departing owner taking customers and/or starting a competing business? If so, in addition to allowing for a damage claim against the violator, the Agreement can provide for a reduction in the amount that the departed owner is paid for their interest in the business.
6. Does the existing Agreement address who will succeed to management of the business as one or more of the current owners retire?
7. Is owner compensation addressed in the Agreement? If so, does this provision need to be amended? Are there employment agreements between the owners and business? If so, they should also be reviewed periodically.

While the above list is not exhaustive, hopefully it will stimulate business owners to review their existing personal plans and the Agreement. If your review indicates that amendments to the Agreement are necessary our advice is to review the issues with your attorney and accountant in an expeditious manner in order to avoid the unpleasantness of having to address a situation that could have been avoided through some advance planning.

Angelo can be reached at 973-729-1880 or by e-mail at abolcato@lcrllaw.com.



VISIT US ON THE WEB
WWW.LCRLAW.COM
or Call 973-729-1880

Megan Kral, Esq. Joins Laddey, Clark & Ryan



Megan Kral, Esq. has joined Laddey, Clark & Ryan, LLP. Megan will focus on litigation, working within the Estates and Trusts, Commercial Litigation, Employment and Labor, and Personal Injury practice groups.

A graduate of the New England School of Law in Boston in 2008, Kral received the Anne E. Hirsch Award for her dedication and service to the students, community, and profession. Following graduation, Kral moved back home to Vernon Township and accepted a Law Clerkship with the Honorable Edward V. Gannon, J.S.C. of the New Jersey State Superior Court.

Through her new position with the firm, Kral is looking forward to remaining involved in her community.

“What attracted me to Laddey, Clark & Ryan was the opportunity to experience both the challenges and rewards of practicing law in the community where I grew up,” adds Kral. “Working for Laddey, Clark & Ryan, I know that I will be able to continue to grow and develop not only as a successful attorney, but as a respected member of the community.”

Kral is a graduate of Vernon Township High School. She went on to receive her Bachelor’s degree in Classics and Political Science at Siena College in Loudonville, NY. Before graduation she spent 6 months at Oxford University in England studying International Human Rights. Kral attended law school immediately after college.

Megan can be reached at 973-729-1880, or by e-mail at mkral@lclrlaw.com.



Laddey, Clark, & Ryan’s 20th Anniversary Party

Laddey Clark & Ryan went all out on a Sunday afternoon in September, celebrating 20 years of growth and success. Over 200 employees and guests converged under a huge tent erected in the parking lot of the Laddey Clark & Ryan building. Guests were treated to a BBQ lunch, provided by the Homestead Restaurant, music, dancing and cocktails.

“We wanted to make it a fun, memorable and enjoyable event,” said Thomas Ryan, Esq., Managing Partner. “We wanted to show our

gratitude to the community in which we have been so deeply rooted for 20 years. We are excited to service the community with a group of bright and insightful attorneys and a top notch support staff.”

Laddey Clark & Ryan got one of the hottest bands in New Jersey, The Nerds, to entertain their guests. The Nerds are a Jersey Shore favorite, and have played in venues such as the PNC Arts Center and Carnegie Hall. They have been delighting fans for over 20 years. The band played everything from R&B to classic rock and pop.

Site Remediation Reform Act

Continued from Page 1

October 2009 to LSRPs in anticipation of the November 7, 2009 date, when all new cases must be handled directly by a LSRP.

Prior to the adoption of SRRA, property owners could generally wait to clean up contamination on their property until the time that they wished to sell the property to a third party. However, under the SRRA, a property owner is now required to immediately proceed with the cleanup of a property without any prior approval from NJDEP. The LSRP will prepare the cleanup plan, monitor the cleanup of the property site and certify cleanup completion to NJDEP, which will simply screen and file the LSRPs reports.

At the conclusion of the cleanup, the LSRP will issue a document called a “Response Action Outcome” (RAO) which in most instances will take the place of the No Further Action letter formerly issued by NJDEP at the conclusion of a contaminated site cleanup. The issuance of the RAO will conclude the cleanup. NJDEP will randomly audit 10% of the cleanups done by LSRPs to ensure compliance with environmental law.

For those property owners whose cleanup is currently under the supervision of the NJDEP, the property owner may opt-in to the SRRA by hiring an LSRP to take over the cleanup of the property site or the property owner may continue under NJDEP supervision. However, as of May 7, 2012, all property owners currently under NJDEP oversight, will be required to hire an LSRP to take over the cleanup of their property site if their cleanup has not been completed by that date.

While the SRRA is expected to substantially simplify and accelerate the cleanup of contami-

nated property sites, the law contains a number of provisions that the property owner must be aware of. Under the SRRA, the LSRP is guided by a strict code of conduct, which begins by saying “a Licensed Site Remediation Professional’s highest priority in the performance of professional services shall be the protection of public health and safety and the environment.” The law makes the LSRP equally responsible to both the private property owner and the general public. An LSRP is required by law to report any environmental contamination that the LSRP becomes aware of to NJDEP anywhere in the State of New Jersey, whether the LSRP has any connection to that property site or not. While the LSRP will issue the RAO to conclude the cleanup of a contaminated property site, anyone can petition the Licensing Board for an investigation of any cleanup made under the direction of any LSRP. Upon petition, the NJDEP will conduct a thorough audit of the LSRPs work on that particular site and if errors are found, the RAO previously issued is in effect nullified. Any third party purchaser of that property site would then be subject to a requirement to remediate any remaining contamination on the site or be subject to suit by NJDEP.

If you own a property with known or suspected contamination, or if you are considering buying or selling a commercial property, enlisting the aid of an experienced Land Use or Commercial Real Estate Attorney will help you navigate the “new world order” created by SRRA. Laddey Clark & Ryan works closely with clients, their engineers and environmental consultants in proceeding through the maze of environmental law to a successful conclusion and we are available to help you navigate through this “new world order.”

Richard can be reached at 973-729-1880 or by e-mail at rstein@lclrlaw.com.

LCR In The News

Managing Partner, **Thomas Ryan**, served as the Master of Ceremonies at the Medical Needs Foundation Spirit 5K Run on October 25, 2009. The Spirit 5K has raised over \$1M for individuals suffering financial distress due to illness and serious injury. Ryan was a founding Trustee for the Foundation and currently serves as its General Counsel. The Medical Needs Foundation's website can be found at www.mtnlakes.org.

Richard Clark has been appointed to the Morris –Sussex Chancery Mediation Group by new Chancery Court Judge Deanne Wilson in Morristown. The group is composed of senior members of firms dealing in equity cases including business disputes and ownership issues. The mediators serve as volunteers to assist the court and the public in resolving disputes short of protracted litigation. Mr. Clark is the only Sussex County representative on the Chancery committee.

Michael Garofalo recently presented a seminar

to the New Jersey County Tax Board Association at the Association's 38th annual meeting in Cape May. The seminar, entitled "Subdivisions: Start to Finish," presented municipal tax assessors with the legal procedure for creating new residential and commercial building lots and the implications for determining initial tax assessments. Garofalo is a frequent speaker before the New Jersey County Tax Board Association which provides continuing education seminars to municipal tax assessors and members of county boards of taxation. The County Tax Board's website is www.njactb.org.

Thomas Ryan will be speaking on Commercial Litigation at a Continuing Legal Education Seminar offered by the New Jersey Institute for Continuing Legal Education (www.njicle.com). The title for the seminar is "Transactional and Litigation Pitfalls in the Sale of Residential and Commercial Real Estate." The seminar will be held on January 14, 2010 at the New Jersey Law Center.

Lauren McFadden recently took a step out of the courtroom and into the limelight of show

business. On September 16, the New Jersey Law Journal produced its fourth biennial Celebration of Lawyers in the Arts at the New Jersey Performing Arts Center in Newark. The all-lawyer production of the 1961 Tony award-winning musical comedy romance, "Bye Bye Birdie", featured more than 50 lawyer-actors, dancers and orchestra members. The evening benefited the New Jersey Volunteer Lawyers for the Arts, Inc., a 501(c)(3) organization that provides free legal services to artists and arts organizations. McFadden played the role of Ursula Merkle. The New Jersey Volunteer Lawyers for the Arts website can be found at www.njvla.org.

Angelo Bolcato and Legal Administrator **Robbin Dolan** have both recently published articles. Angelo's article on obtaining business financing in today's economy, was published in the business section of the New Jersey Herald. Robbin's article addressed law firm preparation for the H1N1 flu pandemic, and was published in the New Jersey Association of Legal Administrator's quarterly publication, the Jer-Z-Journal.

Cases of Note

Laddey, Clark & Ryan reached a policy limit settlement for a 61 year old Chester man who was involved in an accident on his motorcycle. The driver of the car made a turn in front of the man, causing the man and his 61 year old wife to be thrown off the motorcycle. The man suffered severe leg damage.

A construction worker was directing traffic at a site in Jersey City when he was struck by a man who was talking on his cell phone. The 41 year old Andover man suffered extensive back, leg, knee, shoulder and neck injuries, resulting in multiple surgeries. Laddey, Clark & Ryan's personal injury team obtained a settlement for the severely injured man.

Bulldozers, track-hoes and similar units, unlike automobiles, do not have state-issued titles. When purchasers finance such equipment, the lenders record their UCC liens in Trenton, and the liens can follow the vehicles from owner to owner. In our case, a used equipment dealer bought several units and relied on the seller's written statement that there were no liens. When that seller didn't pay off his loan, the dealer was facing a lawsuit from the lender and hired Laddey, Clark & Ryan, LLP. We were able to settle the claim and discharge the lender's lien claims. The lesson here is to have a lawyer check for UCC liens before you buy. It's your "hard-hat" protection when purchasing used equipment, machinery or inventory.

Thomas Ryan, chair of the Employment and Labor Practice Group, recently represented Sparta Township and Byram Township in successfully concluding labor negotiations with their respective police unions. Ryan also serves as Special Labor Counsel for Rockaway Township in their labor negotiations.

Laddey, Clark & Ryan's Personal Injury Practice Group has obtained, through settlements and verdicts, more than \$4,000,000 for their clients in the past year. Our Personal Injury Team continues to secure the highest possible values for seriously and permanently injured clients of Laddey, Clark & Ryan, LLP.
