



EXECUTIVE REPORT

THESE ARE EXCITING TIMES FOR OUR FIRM

Happy Spring to our clients and friends! We have a number of exciting changes to share with you in this edition of our firm's newsletter. First, you will notice that our firm name has changed – we are now Petrie + Pettit S.C. This new name reflects a “changing of the guard” as we implement our leadership succession plan. I am honored to have been elected as the first female President in the firm's 122 year history. Many thanks to our outgoing President, Roger Pettit, who served in that capacity since 2008. Roger's son, Tristan Pettit, has been named Executive Vice President, and Roger will remain a firm Vice President and shareholder as he devotes less of his time to practicing law. My father, James Petrie, continues to actively practice in our trusts and estates area and also serves as Chairman of the Board.

Another big change at Petrie + Pettit is our recent move to beautiful new office space located just one block east of our previous location. Our offices are now located on the 10th floor of the newly renovated Two-Fifty building (250 E. Wisconsin Avenue, Suite 1000 – at the northeast corner of Wisconsin and Broadway). We look forward to serving you in our new location - please come see us anytime! For your convenience, client parking is available at no charge in the adjacent Two-Fifty parking lot (entrance on Broadway).

Finally, we are pleased to announce that Attorney David J. Espin has recently re-joined the firm to lead our corporate



Our new office at 250 E. Wisconsin Avenue.

practice team. Dave was a law clerk with us during his Marquette Law School years and then joined the firm as an associate upon graduation. Prior to his return to Petrie + Pettit in mid-March of this year, Dave spent several years at another Milwaukee law firm gaining invaluable experience in the areas of corporate law and corporate bankruptcy. To learn more about Dave, please see Dave's bio and article on page two of this newsletter.

At Petrie + Pettit, we are excited about the future and we are certain that our recent changes will provide enhanced services to you - our clients and friends. *Our experience matters, but your experience matters more.* We truly appreciate your trust and confidence in us.

Laura J. Petrie
PRESIDENT

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WELCOME BACK
DAVID ESPIN

< SEE DAVE'S
STORY ON
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PETRIEPETTIT.COM

250 E. Wisconsin Avenue
Suite 1000
Milwaukee, WI 53202

414.276.2850 Phone
414.276.0731 Fax
info@petriepettit.com

IS YOUR

PROTECTING YOUR PERSONAL ASSETS?



So you've decided to start your own business, and being the prudent entrepreneur that you are, you've followed your attorney's advice and formed a limited liability company to run your business and hold its assets. So all of your personal assets are sure to be protected from the company's creditors, right? Well, not in all cases.

The general rule is that a company's shareholders or members are not personally liable for their company's debts. As the theory goes, this incentivizes investment by capping an owner's risk at the amount they have invested. The concept of limited personal liability has been referred to by many legal scholars as the "most important legal development of the nineteenth century."

However, there are exceptions to the general rule of limited personal liability. This is known as "piercing the corporate veil," and most often occurs when a court finds that a company is the owner's "alter ego," and is merely being used as a sham to bypass regulations or defraud third-parties.

The Wisconsin Supreme Court has explained that personal liability may be imposed when a company is a mere "instrumentality" of the owner, and the owner is hiding behind the company to "evade an obligation, to gain an unjust advantage, or to commit an injustice." In order to satisfy the elements of the "alter ego" doctrine, there must be proof of the following elements:

1. The owner must have absolute control of and dominion over the company to the extent it has no separate mind, will or existence of its own;
2. Such control must be used by the owner to commit a fraud or a wrong, to perpetrate the violation of a statutory or other legal duty, or to commit a dishonest and unjust act in contravention of a third-party's legal rights; and
3. The aforementioned control and breach of duty must proximately cause the injury or unjust loss complained of.

In regard to the first element, the court will look at whether or not the company has followed corporate formalities, i.e. whether it has organizational documents like articles or organization, by-laws or an operating agreement, whether it has conducted meetings and maintained records, and whether the owner is using the company as his or her own personal piggy bank.

As to the second element, the court will look at whether the control was used to commit the wrong or the injustice that occurred. Whether or not a company is "adequately capitalized" at formation is often a factor that is analyzed.

For the third element to be proven, it must be shown that there is a link between the control, the injustice, and the harm that occurred. Practically speaking, this means that the third-party alleging the wrongdoing must have relied on the controlling owner's misrepresentations or fraudulent documents.

Finally, the veil piercing doctrine is not just a one way street: the "reverse alter ego doctrine" can also be used by creditors to reach the corporate assets held by a company owned by an individual judgment debtor. This is usually invoked when a shareholder or member uses the company to hide assets or secretly conduct business to avoid some pre-existing liability.

While it is undoubtedly good practice to form a corporate entity like an LLC to run your business, owners must still be diligent in order to maintain corporate formalities, adequately capitalize their companies, and make third-parties aware that they are dealing with a separate corporate entity.



David J. Espin

Attorney Dave Espin focuses his practice on business law, with an emphasis on business formation, corporate transactions, business bankruptcy and workouts. Dave acts as general counsel for businesses of all sizes and understands the various legal and practical issues that companies face every day.



HAPPENINGS + ANNOUNCEMENTS

TRISTAN PETTIT will be presenting an all-day seminar for the Apartment Association of Southeastern Wisconsin entitled "*Landlord Boot Camp: Everything You Need To Know About Residential Landlord Tenant Law In Wisconsin*" on October 7, 2017. If you are interested in attending, details can be found on our website at petriepettit.com/seminars.

WHA's Revised Rental Documents – On June 21, 2017, Tristan will be presenting a seminar for the Wisconsin Housing Alliance on WHA's Revised Rental Documents in Oshkosh from 1:00 - 2:45p.m. Details can be found on our website at petriepettit.com/seminars. If interested in attending please contact Julie Patton of the WHA at julie@housingalliance.us.

Tristan's Landlord-Tenant Law Blog is a forum to discuss landlord-tenant laws in the state of Wisconsin as well as keep landlords and property managers up to date on the recent events and changes in the industry. It can be found at www.LandlordTenantLawBlog.com.



WI COURT: TERMINATION FOR MISCONDUCT “CAUSED BY” MENTAL IMPAIRMENT = DISABILITY DISCRIMINATION

To avoid liability for disability discrimination, Wisconsin employers may have to obtain an expert evaluation before imposing discipline for misconduct arguably “consistent with” the symptoms of an employee’s “mental impairment.”

Wisconsin employers can be held liable for “adverse actions” taken against an employee “because of” the employee’s disability. The Wisconsin Court of Appeals recently held that a judge should “infer” that disability is the “cause” of a termination “if an employee is discharged because of *unsatisfactory behavior* which was a direct result of a disability.”

The employer was aware in this case that the employee, a call center worker, was diagnosed with bipolar disorder. He was working under a last chance agreement issued after a prior suspension for “avoiding customer calls,” and was terminated because he took an extended “health code” break after learning that he had failed a test required to allow transfer to another department. During this break, and before leaving work claiming illness, he communicated about his disappointment over this failure with some co-workers on the Company’s intranet system.

The Company received medical reports explaining that, as a result of his bipolar disorder, relatively minor frustrations could cause the employee to experience rapid and extreme mood swings, but they did not specifically indicate that the employee’s conduct on the day in question had been caused by his mental disorder. During the ensuing investigation the employee indicated that news of the failed test had

“greatly upset him,” and that he had communicated with co-workers before leaving for the day as a “coping technique.”

Based upon the “tone and content” of these electronic communications, the employer concluded that the employee’s conduct on the day in question was not connected with his bipolar disorder, and terminated him for again intentionally “avoiding customer calls.”

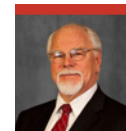
However, based on its finding that the employee’s conduct was “consistent with the symptoms” described in reports from the employee’s psychiatrist, the court held that: 1) there was a “causal link” between the employee’s disability and the conduct triggering his termination; and 2) the employer had not acted in “good faith” by terminating the employee “without procuring an expert of its own” to discount the employee’s report that the failed test had triggered a bipolar episode that required him to stop working.

The decision is troubling because it suggests that employers must obtain a professional evaluation before disciplining an employee for misconduct that the employee claims was caused by a diagnosed mental impairment known to the employer.

When read together with prior Wisconsin cases, this decision means that employers facing similar situations may have a duty

to accommodate the employee’s actions by “forbearing” from applying their normal rules relating to misconduct if the employee’s healthcare provider indicates that new or modified medications are likely to prevent similar misconduct in the future. Suggesting that there are some boundaries on its holding, the court did cite with approval a federal case holding that an employee who threatens co-workers is disqualified from protection under disability discrimination statutes.

Although this case involved a mental impairment, the “inference method of causation” adopted by the court can also be applied in cases involving physical impairments. The court approved the general proposition that discrimination can occur when an employer “acts on the basis of dissatisfaction with a problem with an employee’s behavior or performance which is caused by the employee’s disability.”



David A.
McClurg

Dave McClurg is a labor + employment attorney who defends businesses accused of discrimination, harassment, retaliation and wage & hour and OSHA violations. He also litigates trade secret and contract claims, and drafts non-compete agreements, employee handbooks and executive employment contracts.

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PETRIE+PETTIT.COM



TRUSTS+ESTATES TEAM NEWS



Clockwise, from top left: Sumeeta Krishnaney, Kelly Wachniak, Laura Petrie, James Petrie

Attorney **SUMEETA KRISHNANEY** recently joined the Board of Best Buddies Wisconsin, which is dedicated to creating opportunities for one-to-one friendships, integrated employment and leadership development for people with intellectual and developmental disabilities. Sumeeta played in the Best Buddies Golf Event on May 15, 2017 and also led the Petrie + Pettit team in the annual Best Buddies Friendship Walk in downtown Milwaukee on May 20, 2017.

The Trusts and Estates team is pleased to announce the arrival of **KELLY WACHNIAK**, our new Senior Paralegal, who comes to P+P with extensive experience in all facets of trust and estate administrations as well as estate planning matters. Kelly currently serves as a Steering Committee member of the Milwaukee Bar Association's Estates & Trusts Specialty Section, a group comprised of paralegals, CPAs, accountants and other professionals who are interested in the complexities of estates and trusts.

PETRIE+PETTIT'S 2017 FIVE STAR AWARD WINNERS

Congratulations to Petrie + Pettit shareholders **Laura Petrie** and **James Petrie** on being named "2017 Milwaukee Five Star Investment Professionals." Five Star award winners are selected annually through an independent survey of both clients and financial service professionals in the Milwaukee area. Jim and Laura will be featured in a special section of the July 2017 edition of Milwaukee Magazine, along with firm associate **Sumeeta Krishnaney** and senior paralegal **Kelly Wachniak**.