LAW OFFICES OF JONATHAN M. COOPER

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Don't Let it Get to Your Head

Last night, my wife and I drew straws and I lost – so I had to attend parent-teacher conferences for one of our children. (Okay, so I volunteered to give my wife a break).

I had to wait to see seven different teachers, and fortunately, for this particular one of my children, my wife and I weren't concerned about getting any troubling reports.

That said, one comment I received stuck out in my mind, but not for the reason you might think: "Mr. Cooper, I know you missed the last round of conferences and I was disappointed, because I really wanted to meet the parents of this wonderful child."

Here's what I thought: while that's certainly a very nice and flattering sentiment, the truth is that the credit doesn't belong to me; she's far better than her "old man."

If True, This is the Paradigm for How You Prove a Negligent Hiring Claim Against a NY School

In a news story that broke on February 8, a former California high school administrator is now at the center of three (3) separate lawsuits charging that the school district was negligent in hiring Andrea Cardosa, who is accused of engaging in inappropriate sexual behavior with these girls, more specifically, "grooming" them for her advances.

"So, how is the school district responsible for that?" you ask.

If you give credence to the lawsuits' claims, it appears that Ms. Cardosa had a history of sexual misconduct involving students, but this history was swept under the rug by her former school district in exchange for her voluntarily resigning her position and then moving to a different school district. In other words, the (new) school district failed to do its due diligence before hiring Ms. Cardosa, and thereby put these children unnecessarily at risk.

Assuming the truth of these allegations (and there is a companion criminal case charging Ms. Cardosa with numerous felony counts), **this is the paradigm of how you prove a negligent hiring case against a school district**.

The Biggest Hurdle to Winning a Fraudulent Concealment Claim in New York

Permit me to be blunt.

It is really hard to win a claim that the other side to a contract fraudulently concealed material information from you (breaching their fiduciary duty), and on that basis to seek rescission of the contract.

There are a number of reasons for this, not the least of which is that ***commercial contracts almost always have a provision wherein the parties acknowledge that they had the opportunity to perform their full due diligence, and are going in to the deal with their eyes wide open***.

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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.JMCooperLaw.com or via e-mail at jmcooper@jmcooperlaw.com

"The chosen law must bear a reasonable relationship to the parties …and must not be 'truly obnoxious to New York's public policy."

LAW OFFICES OF JONATHAN M. COOPER

Long Island

483 Chestnut Street
Cedarhurst, NY 11516
516.791.5700

New York City

135 West 29th Street
Suite 801
New York, NY 10001
(By Appt. Only)

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How to Get Around a Choice of Law Provision in a New York Contract

True, New York's courts will almost always honor the parties' choice of which state's law should govern any dispute arising out of their agreement. As a practical matter, that means it behooves you to make sure that you can live with the state's law that is set forth in the agreement, because as noted elsewhere, when it comes to non-compete agreements, for example, the states' laws vary rather widely.

So, what can you do it you've previously signed an agreement that contains a choice of law provision that you're very unhappy with, and the other side to the agreement is pushing to apply that unfavorable jurisdiction's laws?

You're not necessarily out of luck - although neither of the two primary options is easy to prove.

One option to circumventing the choice of law provision is that the choice of that other jurisdiction's laws can't be out of the proverbial hat; it must have some tangible relationship to the parties and/or the agreement at issue; the other option is demonstrating that the other jurisdiction's law offends New York State's public policy.

Recently, an upstate New York appellate court summarized this rule as follows:

"New York courts generally will enforce a choice-of-law provision in order to "effectuate the parties' intent" (*Welsbach Elec. Corp. v MasTec N. Am., Inc.*, 7 NY3d 624, 629). The chosen law, however, must "bear a reasonable relationship to the parties or the transaction" and must not be "'truly obnoxious'" to New York's public policy (id., quoting *Cooney v Osgood Mach.*, 81 NY2d 66, 79; see *Matter of Frankel v. Citicorp Ins. Servs., Inc.*, 80 AD3d 280, 286)."

A word of caution is warranted:

In order to avail yourself of this exception to the general rule favoring choice of law provisions, you need to actually show that the proposed law not only conflicts with New York law, but that it violently collides with New York principles.

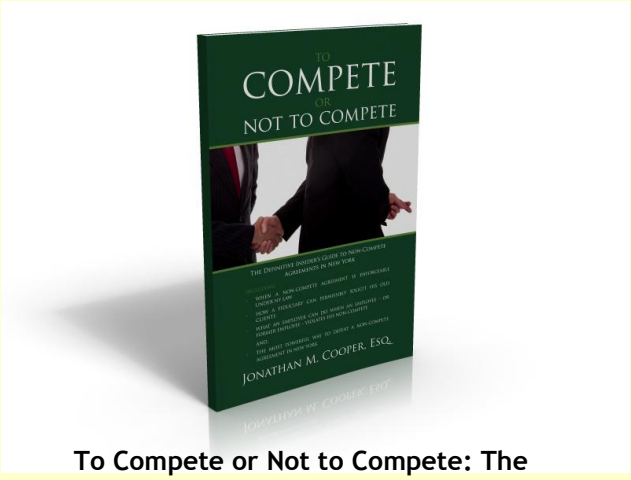
Don't Accept a New Job Until You've Read this Free Book

With the end of the calendar year, I've heard a number of stories about people either losing their jobs, or really want to move on to alternative employment after being denied appropriate bonuses or raises,

Before you take on another job, however, I urge you to read this FREE eBook, because one of the last things you want to happen is to have your move challenged in court or blocked by your former employer on account of a non-compete.

Just fill out your contact information, and the book is yours.

Here's the link: http://bit.ly/16c6240



To Compete or Not to Compete: The Definitive Insider's Guide to Non-Compete Agreements in New York

The Biggest Hurdle to Winning a Fraudulent Concealment Claim in NY

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Moreover, and further complicating matters from the perspective of the party seeking out of the contract, even if they relied to their detriment on the seller's representations, the buyer is far from assured of winning his claim because **he still has to prove that his reliance was justified and reasonable.**

To that end, New York's courts have stated as follows:

> "A plaintiff is expected to exercise ordinary diligence and may not claim to have reasonably relied on a defendant's representations where he has "means available to him of knowing, by the exercise of ordinary intelligence, the truth or the real quality of the subject of the representation" (*Curran, Cooney, Penney v Young & Koomans*, 183 AD2d 742, 743 [1992] [internal quotation marks and citations omitted]; *see Orlando v Kukielka*, 40 AD3d 829, 831 [2007])."

"Even if the buyer relied to his detriment on the seller's representations, he still has to prove that his reliance was reasonable."

While this can seem a bit harsh, it really is a logical rule; otherwise, consider the parade of horribles that would ensue, as no contract would have any true finality, because the purchaser would remain free to contest it after just a bit of buyer's remorse.

***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.*

Did a School's Failure to Have a Defibrillator Cause this 14 Year-Old Boy's Death?

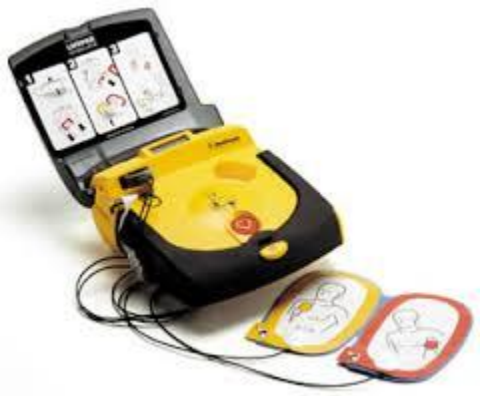
Recently, the father of a 14 year-old boy who died sued a New York school district, claiming that the district was liable for his son's death that occurred when he fell during warmups for cross-country track championships against a rival school.

More specifically, it appears that the teen went into cardiac arrest when he fell hard on his chest after slipping on the track.

Ordinarily, it would be hard to prove a negligence case based on a slip and fall on a track.

But here's the wrinkle to this particular story:

The father contends that if the district had the mandated defibrillator (AED) on hand, his son wouldn't have died.



I think that this lawsuit will be particularly challenging to win, even assuming this boy's father has the requisite experts to back up his claims; I think that such experts - if they're honest - will probably have to concede the strong possibility that this boy would have died even if a defibrillator had been available.

LAW OFFICES OF JONATHAN M. COOPER
483 Chestnut Street Cedarhurst, New York 11516-2019

Phone:
516.791.5700

Fax:
516.791.8188

E-mail:
jmcooper@JMCooperLaw.com