LAW OFFICES OF JONATHAN M. COOPER

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Inside This Issue

What I Learned From My Children

Too often, I take things for granted, and forget to say "Thank you." And for that I am wrong.

The cause for this bit of introspection is simple: I just had my birthday, and it's my custom on that day to take stock of my life, and to consider how I can improve.

I was humbled, for lack of a better term, by the enthusiasm my children expressed in planning for my birthday; it seems they were excited just for the chance to say "Thank you Daddy, for all that you do."

Applying that lesson, I thank all of you who have placed your confidence in my firm's professional abilities. I feel honored to serve your interests.

One of the Biggest Dangers of Going to Trial in a New York Accident Case

Sometimes, you can read a court's decision and, if for no other reason, it is extremely valuable as a reminder of a most important lesson. Sourifman v. Amie Cab Corp. (which was recently decided) is precisely one such case.

In this case, the plaintiff suffered blunt force trauma to her head, a misaligned and fractured jaw and teeth when a Transit Authority bus collided with the cab in which she was a passenger. At trial, the jury heard the plaintiff's uncontroverted testimony about the excruciating pain she endured as the doctors re-set her jaw, just so it could have some mobility again.

You would also surmise that the jury awarded the plaintiff with a significant amount of damages, right? Guess again.

The jury awarded her $13,000 – total. Even though the trial judge ordered that a new trial be held unless the parties stipulated to a higher number of $85,000 (which, in legalese, is referred to as "additur"), the essential lesson should not be lost: if you go to trial, there is always the risk that a New York jury will not award you what you believe (whether rightfully or wrongfully) is fair and just compensation for your personal injuries.

When Even a New York Court Will Likely Enforce a Non-Compete Agreement

Last month, it was reported that Microsoft sued Matt Miszewski, the former General Manager of one of its sales teams, as well as his new employer, Salesforce.com, who happens to also be one of Microsoft's direct competitors, to enforce Miszewski's non-compete agreement, and bar him from working for a direct competitor – particularly as their VP of the Global Sector, for one year.

From the allegations set forth in the article, this case sounds like the paradigm of a case where a New York court would enforce the non-compete. Here are some of the sordid details:

- Immediately prior to leaving Microsoft, Miszewski downloaded

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

Partnership Agreement Need Not Be Written, Says New York Court

There are several categories of agreements that must be reduced to writing in order to be enforceable under New York law, such as contracts for services that cannot be completed within one year, or contracts pertaining to real estate.

(For more on this topic, you may wish to download the free guide to NY breach of contract cases, "When You Don't Have a Written Agreement," or read one or more of the following articles: "Commission Agreements, Finders Fees and New York's Statute of Frauds," "How Some Important Exceptions to NY's Statute of Frauds Can Sustain a Breach of Contract Action," "How Much Writing is Enough to Be Considered a 'Written Agreement' Under NY Law?").

"Contrary to popular belief, under New York law a partnership agreement may be oral."

But, contrary to popular belief, a partnership isn't one of them; in fact, ***New York's courts have explicitly held that partnership agreements may be oral***.

As a New York County trial court noted in *Vilkelis v. Holmes*:

> "Whether a partnership status is enjoyed turns on various factors, including sharing in profits and losses, exercising joint control over the business and making a capital investment and possessing an ownership interest in the partnership. M.I.F. Securities Co. v. R.C. Stamm & Co., 94 AD2d 211, 214 (1st Dept 1983).
>
> "A partnership agreement may be oral. Missan v. Schoenfeld, 95 AD2d 198, 208 (1st Dept 1983).
>
> "A party claiming the existence of an oral partnership bears the burden of proving the indica of such a relationship. F & K Supply, Inc. v. Willowbrook Development Co., 304 AD2d 918, 920 (3rd Dept 2003). An oral agreement to form a partnership for an indefinite period creates a partnership at will and is not barred by the statute of frauds. Prince v. O'Brien, 234 AD2d 12 (1st Dept 1996). Partnerships of will are subject to dissolution at any time by any partner. Sanley Co. v. Louis, 197 AD2d 412, 413 (1st Dept 1993)."

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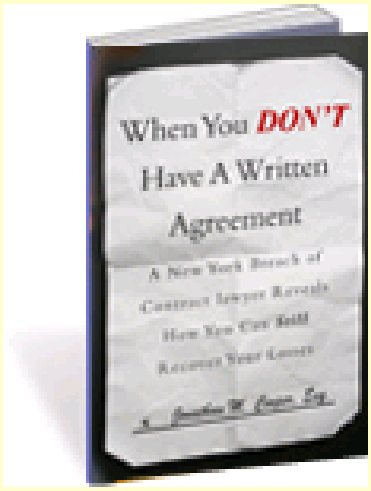
When You Don't Have a Written Agreement –

(How You Can Still Recover Your Losses)

by Jonathan M. Cooper



This **FREE Book,** which explains how you can recover your losses if you've been wronged by someone else's breach of contract in New York, but you didn't memorialize all of the terms you meant to in your agreement, is available for download directly from:

www.BreachOfContractBook.com

When a New York Court Will Likely Enforce a Non-Compete Agreement

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roughly 25,000 pages of business files and 600 MB of data to his personal laptop, much of which included sensitive, confidential and proprietary information;

- In the month of his departure, Miszewski helped author a memorandum setting forth Microsoft's business strategy for the Public Sector for the coming year of 2011. This material was compiled well after his agreement to assume a new position as Salesforce's VP of Global Sales was, for all intents and purposes, a "done deal"; and,
- While working for Microsoft, his job duties specifically entailed working with and modifying their "Worldwide Public Sector Government Cloud Playbook," which containing Microsoft's confidential and proprietary sales strategy for marketing Microsoft's cloud computing offerings. Importantly, the Playbook contained vital information regarding Microsoft's evaluation of its competitors in this market – including Salesforce.com.

This is precisely the type of trade secret material that New York's courts will look to protect, and the type of non-compete agreement that the New York courts will likely uphold, because to do otherwise would all but encourage trade secret theft and unfair competition.

Thus, it is not surprising that, at least for the time being, the Washington State judge assigned to this case signed Microsoft's proposed order temporarily restraining Miszweski from working for the new company in this capacity pending a hearing on the issue.

"This is precisely the type of trade secret material that New York's courts will look to protect, and the type of non-compete agreement that the New York courts will likely uphold."

***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.*

Why Capping Damages in Defective Products Cases is a Bad Idea (Hint: It's Not to Put More $ in Plaintiffs' Pockets)

As part of the larger debate regarding the placement of a cap on non-economic (i.e., pain and suffering) damages in medical malpractice cases, a similar suggestion has often followed: allowing the same thing in defective products cases.

To be sure, there is a compelling argument in favor of such a cap: without it, small to mid-size businesses that are importers, distributors or other middlemen in the chain of distribution of any consumer product would face the prospect of liability for significant damages if any downstream consumer was badly injured by a product – one that they didn't even manufacture. (This is to say nothing of the additional quality control costs that would necessarily be assumed by these middlemen in order to avoid the prospect of such a liability).

In my view, the other side of the coin is more compelling, and here's why: a cursory review of the product recalls issued over the past year confirms that well over 90% of these products are made overseas, in territories well beyond the jurisdictional reach of any injured end user of the products. As a result, the only ones who can exert any pressure at all on these manufacturers to make their products safer are those domestic companies who deal directly with the upstream distributors, and ultimately, the manufacturers themselves.

Perhaps I'm overly cynical, but here's my take in a nutshell: Medicine is a necessity; unsafe toys and consumer products are not. And the absence of a cap in these cases is the best disincentive, or insurance policy, we have against the importation of dangerous and insufficiently tested products.

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