

# BASIC RISK MANAGEMENT

## FOR NON-PROFITS

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- General educational material
- Not legal advice to any attendee
- All situations are unique – consult a lawyer



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## OVERVIEW

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- Putting Your Corporate House in Order
- Customer and Supplier Relationships
- Employee Relationships
- Managing Potential Tort Liability

## PUTTING YOUR CORPORATE HOUSE IN ORDER

## PRESERVING THE “CORPORATE VEIL”

- Properly formed and run corporations and limited liability companies create a "corporate veil" that protect the business owners' personal assets
- The corporate veil is lost if the corporation is not formed or run properly

## TIPS FOR PRESERVING THE “CORPORATE VEIL”

You Should:

- Confirm that Articles of Incorporation have been filed with the Secretary of State
- Confirm that annual meetings have been conducted and documented
- Separate business books and bank accounts from personal books and accounts
- Review insurance

## TIPS FOR PRESERVING THE “CORPORATE VEIL”

You Should: (cont.)

- Be careful about taking money or assets out of the business
- Make clear that you act on behalf of their business:

Signatures: XYZ, Inc.

By: \_\_\_\_\_  
Joe Client, President



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## PROTECTING CORPORATE ASSETS

You Should:

- Identify All Assets:
  - Real Property
  - Personal Property
  - Intangible Property
    - Intellectual Property:
      - Copyrights, Patents, Trade Secrets
      - Customer Lists, Supplier Lists, Pricing Information
    - Promissory Notes, Trade Credit, Accounts Receivable



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## PROTECTING CORPORATE ASSETS

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You Should: (cont.)

- Protect your Assets
  - Real Property & Personal Property
    - Insurance
  - Intellectual Property:
    - Patent,
    - Copyright, and
    - Trade Secret Protection



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## PROTECTING CORPORATE ASSETS

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You Should: (cont.)

- Protect your Assets (cont.)
  - Promissory Notes and Accounts Receivable
    - Get secured
    - Provide for costs of collection and fees



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## **CUSTOMER AND SUPPLIER RELATIONSHIPS**



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## **CUSTOMER AND SUPPLIER RELATIONSHIPS**

- Defining expectations through contracts
- Contracts can reduce the likelihood or cost of a dispute



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## CONTRACTS

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- Get them in writing
- Key terms:
  - description of goods and services
  - time for delivery/due date
  - price
  - payment terms
  - warranty/disclaimer
  - limitation on liability
  - dispute resolution

## MANAGING EMPLOYEE RELATIONSHIPS

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## MANAGING EMPLOYEE RELATIONSHIPS

*Well structured employment practices can avoid suits or make suits less likely to be successful.*

### **Typical Case:**

- Employer terminates Bob
- Bob gets angry, then goes to see his lawyer



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## MANAGING EMPLOYEE RELATIONSHIPS

### **Lawyer has options for a case:**

- Title VII
  - Prevents discrimination and harassment based on race or gender
- Age Discrimination in Employment Act – ADEA
  - Prevents discrimination against employees over 40
- Americans with Disabilities Act – ADA
  - Prevents discrimination based on actual or perceived disability of an employee or one associated with an employee
- Fair Labor Standards Act – FLSA
  - Requires payment of minimum wage and overtime
- And Others . . .



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## MANAGING EMPLOYEE RELATIONSHIPS

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*Case will be “Bob was terminated not because of a legitimate business reason, but because Employer was discriminating” or “Bob hasn’t been paid overtime for the last two years.”*

- Defending Bob's Claim Will Be Easier With:
  - A Clear job description
  - A Solid personnel policy
  - Good documentation of business reason for the termination
- Maintain Work Records
- You Should Review Insurance Policies
  - Check for Employment Practices Liability Insurance



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## MANAGING POTENTIAL TORT LIABILITY

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## MANAGING TORT LIABILITY

- Defining negligence
- Avoiding negligence claims



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## DEFINING NEGLIGENCE

What is negligence?

- Negligence refers to a person's failure to follow a duty of care imposed by law
- A person must use the same degree of care that a reasonable and prudent person would use under the same or similar circumstances
- A violation of this duty of care is negligence
- The negligence must be a proximate cause of the damage



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## DEFINING NEGLIGENCE

Negligence -- Example

Sullivan v. Smith

- Sullivan hired Smith to build a house
- Smith, a general contractor (“GC”), hired Hooker as a masonry subcontractor
- Masonry sub left gaps in the fireplace
- GC failed to discover these gaps
- Sparks from a fire passed through the gaps and ignited the house



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## DEFINING NEGLIGENCE

Negligence -- Example

Sullivan v. Smith

- Sullivan sued GC for negligent supervision of the masonry-sub
- Sullivan sued masonry-sub for negligent construction of the chimney
- GC sued masonry-sub seeking indemnity
- The court found that negligence claims were valid
- The court found that GC could not seek indemnification from masonry-sub for his active negligence (failure to supervise)



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## DEFINING NEGLIGENCE

### Negligence -- Example

#### Ashe v. Acme Builders, Inc.

- Ashe hired Acme to remodel rooms in her house
- Acme leaned sheetrock against a wall in the room where work was to be done
- Acme didn't warn Ashe of risks
- Vibration from work caused the sheetrock to fall, injuring Ashe
- Ashe sued Acme
- Judgment for Acme – risk was as apparent to Ashe as it was to Acme (40 years later in 2006, this case could have been decided differently).



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## DEFINING NEGLIGENCE

### Negligent Hiring/Retention – Example

#### Moricle v. Pilkington

- Johnny's plumbing, owned by Johnny Brooks, hired Charles Brooks, Johnny's nephew, and Raymond Pilkington.
- Johnny lived in the same general area as his nephew and had known him since birth. Johnny did not check his nephew's references or criminal record.
- Johnny called a former employer of Pilkington to ask about his work record.
- The nephew had been convicted of assault at or about the time he was hired.
- Pilkington had prior convictions for an unsealed container of alcohol, harassing telephone calls and traffic offenses.
- Pilkington may have been using crack, had "gone downhill" and was behind on payments to Johnny and others.
- While on a plumbing job, the nephew and Pilkington stole a diamond bracelet.



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## DEFINING NEGLIGENCE

### Negligent Hiring/Retention – Example (cont.)

- The Homeowner sued.
- The Court held:
  - Johnny followed hiring practices that are customary among other plumbing companies.
  - Johnny had known his nephew all his life and had no reason to think that he was unfit.
  - Johnny interviewed Pilkington, asked about his criminal record and checked a reference.
  - Nothing in the background of either man suggested that they were known to steal.
- Judgment for Johnny



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## AVOIDING NEGLIGENCE CLAIMS

### Negligence – Limiting Exposure

- Inspect your work carefully
- Avoid limitation of liability provisions in your supply and subcontractor agreements
- Include contract provisions that shift responsibility for goods and services supplied by others to the provider
- Maintain a safe jobsite
- Screen Employees (and possibly volunteers)
- Insurance



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