



**CUETO LAW GROUP**<sup>®</sup>  
INTERNATIONAL BUSINESS ATTORNEYS

## **The 5 Key Ways Your Business Can Avoid Lawsuits**

Last week I received a call from a corporate client that had been threatened with a lawsuit from a minority shareholder who was not happy with the way the company was being run.

Fortunately for my client, a shareholder buy-out agreement had been carefully prepared when the shares were originally issued (a fact the investor had overlooked).

The buy-out agreement avoided the lawsuit because it gave the company the right to buy-out the shareholders' stock at a fair price. Had the Agreement not been prepared, the minority shareholder would have filed a lawsuit, potentially costing the company millions of dollars.

The above is just one of many examples of how a business can protect itself from a costly lawsuit. Whether a business dispute concerns contractual obligations, employment matters, intellectual property issues or shareholder controversies, there are a number of ways to minimize the chance of a lawsuit being filed against your business.

Below are 5 key ways to protect your business against lawsuits.

### **1. Document Everything**

While it may seem simple, the age-old maxim “put everything in writing” continues to prove invaluable. Nothing is better at preventing lawsuits than a well-drafted contract, memorandum of understanding, memo to file or any other writing that records an agreement or important event.

In the example above, a potentially devastating lawsuit was avoided because the parties chose to document and account for all possible contingencies arising

out of the issuance of shares. The same kind of forward-thinking can and should be applied in every transaction that is entered into.

Documents are far-and-away the best tools for managing parties' expectations and memorializing material events.

## **2. Develop a Comprehensive Employee Handbook**

Employee-related litigation is by far the most common type of litigation faced by small businesses. One of the best ways to avoid an employee-related lawsuit is to develop a comprehensive employee handbook.

Your employee handbook should contain all essential employee issues, such as the employer's right to terminate employees, maternity-leave rights, confidentiality, sick leave, vacation, sexual harassment, etc.

The owner and each manager should be intimately familiar with the rights of employees in these areas. If you comply with the handbook and the rules regarding employees' rights, employees should be discouraged from suing you, or you should have the upper hand if they do.

## **3. Protect Your Intellectual Property**

Every business has intellectual property (IP). Whether it's the name of your business, a product you manufacture, a service you offer. It's important that you protect anything that can be construed as proprietary against theft both in the United States and in other countries.

Most IP rights are territorial, meaning, for example, a U.S. patent or trademark only provides protection in the United States. To receive IP protection in other countries, you need to apply for protection in those countries.

Different types of intellectual property are protected by different means.

- In the U.S., patents may be available to any person who **"invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof."**

Patent protection must be sought by application with the U.S. Patent and Trademark Office (USPTO). The U.S. Patent and Trademark Office (USPTO) reviews patent applications and determines whether an application meets the requirements for federal registration. For more information on filing for a patent in the United States contact: (800) 786-9199 or (703) 308-4357 or [www.uspto.gov/web/patents/howtopat.htm](http://www.uspto.gov/web/patents/howtopat.htm).

- Trademarks protect words, **names, symbols, sounds, or colors that distinguish goods and services from those manufactured or sold by others and to indicate the source of the goods.** Registration with the USPTO is not required, but does provide certain advantages. The U.S. Patent and Trademark Office (USPTO) reviews trademark applications and determines whether an application meets the requirements for federal registration. For more information on filing for a trademark in the United States contact: (800) 786-9199 or (703) 308-4357 or [www.uspto.gov/main/trademarks.htm](http://www.uspto.gov/main/trademarks.htm). To file with the USPTO electronically visit: [www.uspto.gov/teas/index.html](http://www.uspto.gov/teas/index.html).
- Copyrights protect **original works of authorship, including literary, dramatic, musical, artistic and certain other works, both published and unpublished.** In the United States, the U.S. Copyright Office handles copyright registration that, although not required for protection, does confer advantages. To register a work, submit a completed application form, a nonrefundable filing fee of \$30, and a non-returnable copy or copies of the work to be registered.

Take an IP inventory of your business and determine what might be eligible for a patent, trademark, copyright or trade secret status. Taking steps to protect your IP early-on will go a long way towards minimizing the chances that you'll be involved in a lawsuit.

#### **4. Mediation**

Despite your best efforts to resolve a dispute, sometimes you'll need to call in an expert mediator.

A mediator is a neutral third party trained in conflict resolution. His or her job is to get the parties to negotiate and enter into a settlement agreement. Settling a dispute out of court through a mediator is a lot less expensive and disruptive than litigation. Another feature that makes mediation so attractive is that it can be completed in one day, whereas litigation can take years.

With a success rate of about 80%, it's easy to see why companies prefer mediation.

The next time you're threatened with litigation, suggest mediation. You'll be surprised how often the other party will agree. You can call your local bar association for recommended mediators.

The result of a successful mediation is a binding agreement that resolves the conflict and, in some cases, even restores damaged relationships.

Below is a sample Mediation Clause that you may consider including in your contracts, agreements *etc.*:

In the event a dispute shall arise between the parties to this [contract, lease, etc.], the parties agree to participate in at least four hours of mediation in accordance with the mediation procedures of [*Your local Mediation Agency*]. The parties agree to share equally in the costs of the mediation and cooperate fully in the effort to schedule a mediation session within 30 days of a mediation request by either party to this [contract, lease, *etc.*].

For more information on the mediation process, you may contact the American Arbitration Association (the AAA also mediates matters) at (212) 716-5800.

## **5. Arbitration**

As opposed to mediation, arbitration results in a binding or non-binding decision of the dispute. If you choose to have your dispute arbitrated, you and the other party must agree that the arbitrator or arbitration panel has the power

to hear the dispute and make a final binding decision that both parties will abide by.

If the losing party doesn't comply with the arbitration award, the winner can convert the award to a court judgment and have the judgment enforced like any other.

The advantages to arbitration are that it's cheaper, quicker and more private than a court proceeding. In arbitration, relaxed rules of evidence are used so that the process doesn't get bogged down in legal maneuvering.

Below is a sample Arbitration Clause that you may consider including in your contracts, agreements *etc.*:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be resolved and determined by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) shall be entered in any court having jurisdiction thereof.

For more information on the arbitration process, you may contact the American Arbitration Association at (212) 716-5800.

## **Conclusion**

While the above strategies will go a long way in protecting your business from a lawsuit, there are many other ways to protect your business. To learn more, be sure to contact [Cueto Law Group](#) today!