

W E L C O M E

A MESSAGE FROM ANDREW N. KRINSKY



Andrew N. Krinsky

With this, the summer edition of *The TKD Advisor*, I am delighted to advise our friends that TKD will soon be relocating to new offices at 1350 Broadway where we will occupy the entire 11th floor. Our new facility and systems will reflect the state-of-the-art in law practice technology. We will have the ability to handle the vast number of documents and data associated with complex business transactions and disputes and will be well-positioned to take advantage of the opportunities for the time savings and efficiencies afforded by the accelerating trend toward the "electronic courtroom."

Our additional space will allow us to implement our plan for continued growth in both the depth and scope of our practice, further enhancing our full range of services for middle market and larger companies. Naturally, we are excited about our expanded capacity and look forward to having you visit our new headquarters.

I also wish to warmly welcome three new additions to our firm. Rachel Fleischman and David Kleinmann have joined our litigation and labor and employment practices and Jeanette Baiardi will strengthen our real estate and corporate practices.

We hope you enjoy this issue, and welcome your feedback and suggestions. Please do not hesitate to contact me at 212.481.8585 or by email at akrinsky@tarterkrinsky.com.

EMPLOYERS BEWARE: NEW LAW RESTRICTS USE OF SOCIAL SECURITY NUMBERS

By Tara Toews

A new law that takes effect on January 1, 2008 is designed to combat the growing problem of identity theft by restricting the use of social security numbers ("SSNs"). Whether the "New York Social Security Protection Law" ("SSPL") law accomplishes its goal remains to be seen, but our immediate concern is to ensure that our clients are mindful of their new obligations.



Tara Toews

The SSPL will make it unlawful to disseminate SSNs in communications to the public; to require a SSN as a password to receive services, benefits or products (such as on an employer ID card) or to transmit a SSN over the internet absent certain encryption protections. The use of SSNs in mail correspondence will now be expressly forbidden unless an exception to the law applies (such as a federal law requiring that a mailing contain a SSN – like on your tax return). Most significantly, the SSPL requires companies to implement measures to safeguard SSNs by storing them securely and limiting access to only those employees with a legitimate business reason for viewing or utilizing them.



More importantly, given the “high profile” nature of identity theft, as the effective date of the new law nears it may be widely reported in the media. Disgruntled employees (or former employees) who learn of the law, and who are aware of violations by current or former employers (such as failing to safeguard SSNs), may view this as an opportunity to file an

anonymous complaint, triggering an investigation by the New York State Attorney General’s office. Compliance is important because strict penalties apply – ranging from \$1,000 to \$250,000.

This article is intended only as a summary of the law, and clients seeking more information should contact our labor

and employment practice group.

About Tara Toevs, Associate

Tara practices in the area of labor and employment law and related litigation. She has experience in the defense of management clients in labor and employment-related litigation and proceedings before various state and federal administrative agencies in defense of wage/hour and individual employment discrimination matters. Tara can be reached at ttoevs@tarterkrinsky.com.

SEC GRANTS BLUE SKY EXEMPTION FOR NASDAQ CAPITAL MARKET COMPANIES

By James G. Smith

Since 1996, the National Securities Markets Improvement Act (“NSMIA”) has provided large companies an exemption from review of securities offerings from state securities, also known as blue sky, regulators. Prior to NSMIA, any company engaging in a public offering would have to comply with the blue sky laws in those states where the company is seeking to sell its securities. After NSMIA, a company

listed on the New York Stock Exchange, the American Stock Exchange, or NASDAQ National Market (now called the NASDAQ Global Market) need no longer qualify or register their public offerings with state blue sky regulators.

On April 18, 2007 the Securities and Exchange Commission expanded the exchanges to include companies listed on the NASDAQ Capital Market (formerly known as the NASDAQ SmallCap Market). NASDAQ essentially consists of two tiers – NASDAQ Global Market (including the NASDAQ Global Select Market) and NASDAQ Capital Market.

The NASDAQ Global Market, the tier most people are familiar with, is for large capitalization companies, such as Microsoft. The NASDAQ Capital Market, which has initial and continued

listing standards less burdensome than the NASDAQ Global Market, has traditionally been available for smaller companies.



James G. Smith

This action by the SEC provides a welcome relief from registering public offerings for smaller public companies currently listed on the NASDAQ Capital Market and those seeking access to public markets through listing on NASDAQ.

About James G. Smith, Partner

Jim practices in the areas of securities and corporate transactions, investment management and corporate law. Jim can be reached at jsmith@tarterkrinsky.com

IT'S ABOUT PEOPLE: COMMON SENSE ADVICE FOR RESOLVING DISPUTES

By Edward R. Finkelstein

The broad sword and shield are often the primary tools used by litigation attorneys in protecting a client's rights. However, there are times when a client will be best served by tact, diplomacy and understanding, which can go a long way toward resolving disputes before they turn into lawsuits.

For example, a retail client retained us to recover a substantial sum that had mistakenly been overpaid to a vendor. After discovering the error, the client sent several letters to the vendor advising that it would commence a lawsuit unless the money was returned. The client received no response to its letters. After reviewing the file, I called the vendor who acknowledged that he owed our client the money and agreed to repay the entire amount. When I asked the vendor why he simply had not done this, he told me that he was offended and upset because the client had sent threatening demand letters instead of simply calling and politely asking him to return the money. He said he was now willing to resolve the matter because he had been politely asked to repay the money and had been allowed to express his anger.

Similarly, a lender client sued a longtime customer who defaulted on a major personal loan. We were instructed to take a hard line with the debtor and insist on payment of 100% of the debt. The debtor's attorney was baffled by the hard line taken by the lender since it was a large institution to which the amount of the loan was a "drop in the bucket." I explained that institutions are made up of individuals who have feelings and concerns. In this case, several bank officers had a long-term business relationship with the debtor and they felt personally betrayed by the debtor and were furious with him for his conduct. Based on the personal dynamics, I thought it would be helpful if the officers and debtor could address each other directly and I suggested a settlement meeting. After some resistance, the debtor finally agreed to attend the meeting. At the meeting, the bank officers expressed their anger and disappointment and the debtor apologized and expressed a desire to resolve the matter. Since the personal feelings had been addressed in a meaningful manner, the matter was satisfactorily settled shortly after the meeting.

Of course, not all disputes can be resolved this easily. However, as the above cases illustrate, ignoring the concerns and emotions of the people on both sides of a dispute will lead to increased tensions and hostility that will make it much harder to settle. However, acknowledging and addressing the concerns of the people involved in a dispute can often avoid or substantially reduce tensions and lead to a settlement. Sometimes you just have to pick up the phone before you sue.



Edward R. Finkelstein

About Edward R. Finkelstein, Counsel

Ed represents individual and corporate clients in a broad range of commercial litigation matters, with an emphasis on real estate, creditor's rights, employment, commercial torts, banking and financial transactions and contract and partnership oriented disputes. Ed can be reached at efinkelstein@tarterkrinsky.com.



GETTING TO KNOW... LINDA SINGER ROTH



Linda Singer Roth is Counsel at Tarter Krinsky & Drogin LLP. She focuses her practice on commercial litigation and, since 1984, has handled numerous matters involving breach of contract, unfair competition, misappropriation of trade secrets, fraud, real estate, construction disputes, partnership disputes, computer law, product performance and products liability. Although Ms. Roth often litigates in the state and federal courts in New York and New Jersey where she is admitted to practice, she is equally comfortable representing clients in alternative dispute resolution forums such as arbitrations and mediations.

What do you find most satisfying about practicing law? There are always new problems and issues to be solved. No two cases are exactly the same. Also, as an attorney what you do and the decisions you make in a case can really affect the outcome.

How did you know that you wanted to become a lawyer? My friends always told me that I should be a lawyer and it seemed

to fit with my personality. I'm not afraid to take on a challenge, I like to write and I like to get my way.

What was your most memorable legal assignment? Two cases come to mind: in the first, I was assigned by the court to represent the plaintiff in a police brutality action. My client was allegedly a "hit man" for one of the drug cartels and I had to meet with him at Attica and Sing Sing correctional facilities. It was very different from the business litigation that I am usually involved with. In the second case, Kirk Douglas was the plaintiff. Mr. Douglas was the corporate spokesperson for our client and he sued after our client terminated his employment agreement. Every time something happened in the case, *Variety* magazine showed up to cover the story.

What was your most proud professional moment? Probably the first time a jury came back with a favorable verdict. After the verdict we took the jury out for drinks and I found out that as part of their deliberations the jurors were all making bets about how old I was.

What is your favorite movie?

Cinema Paradiso and *Life is Beautiful* are two of my favorites.

Tell me about your hobbies. I am an avid tennis player and I have played competitive tennis for many years. I played on my college team and today I play on a club team. I also like to bake. It's therapeutic.

The information contained in The TKD Advisor is of a general nature and does not constitute legal advice. Consultation with our personnel is recommended before taking action based upon any of this information. Under the rules of certain jurisdictions, this material may be considered attorney advertising. Prior results do not guarantee a similar outcome.

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F I R M N E W S

New Herald Square Headquarters Supports TKD's Plans for Growth

When TKD moves to 1350 Broadway later this summer, we'll occupy the entire 11th floor and significantly increase our office space to over 16,500 square feet—almost double our current office space and with options for further expansion.

"The extraordinary growth we have experienced has been an exciting challenge for our firm," says Alan M. Tarter, managing partner. "Our continued growth will enhance the full range of services we provide to middle-market and larger companies in the New York metropolitan area."

The firm's staff now includes 19 attorneys and 15 support professionals. Our aggressive business plan calls for increasing the New York office to 45 plus attorneys over the next three to five years.

The new headquarters is located within the high-growth Herald Square area, near Penn Station, PATH trains and subway lines, and within walking distance of Grand Central. We look forward to a Thanksgiving Day celebration in our new conference rooms with a prime view of the Macy's Day Parade.