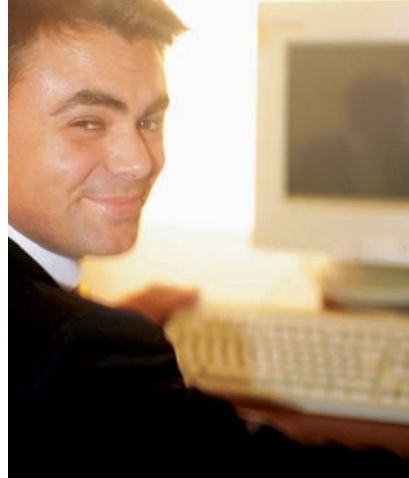


# THE HAZARDS OF RÉSUMÉ SCREENING

It is popular now for employers to use screening tests, often administered on the Internet, to weed out a large portion of applicants for job openings before making the more difficult selections from among those who survive that first cut. Such tests are supposed to measure cognitive ability, personality characteristics, or, in fewer instances, the ability to perform in a simulation of the duties that the job requires. The easily administered and scored screening tests have their appeal, especially if you are charged with filling, say, 10 positions from 100 people who have submitted résumés.



A downside to screening tests is the risk that rejected applicants may persuade a court that the tests essentially were a tool to accomplish prohibited discrimination, even though that may not have been the employer's intent. For example, an employment test that impacts racial minorities or women disproportionately could lead to liability unless the employer can show that the test is sufficiently related to the job and is necessary to the employer's business.

Another potential pitfall stems from

the prohibition in the Americans with Disabilities Act (ADA) against medical testing of job applicants. There sometimes is a fine distinction between acceptable personality or psychological tests and prohibited medical tests. The screening of applicants also could

run afoul of some state statutes that protect against invasions of privacy.

When individuals adversely affected by a personality test challenged the test in federal litigation under the ADA, an appellate court struck down the

test. The test, at least in some of its 502 questions, was a prohibited examination of the applicants' mental health. Its true or false questions went much further than the acceptable lines of inquiry about matters such as working well in groups or in a fast-paced office. Instead, they ventured into the realm of psychiatric disorders. In this case, a prospective manager of a rent to own store could not be required to give true or false answers to statements such as: "I see things or animals or people around me that others do not see"; "At times I have fits of laughing and crying that I cannot control"; or "My soul sometimes leaves my body." ■

*Actual resolution of legal issues depends upon many factors, including variations of fact and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking any action on matters covered by this newsletter. Nothing herein should be construed to create or offer the existence of an attorney-client relationship.*

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# Legal Matters

Winter 2007

## LONG-TIME HUTCHISON & STEFFEN CLIENT, AHERN RENTALS, INC., FOUND NOT LIABLE IN LAWSUIT SEEKING NEARLY ONE MILLION DOLLARS



Mark A. Hutchison,  
Founding Partner



Scott A. Flinders,  
Associate

Founding partner, **Mark A. Hutchison**, and associate, **Scott A. Flinders**, recently obtained a verdict in favor of the Firm's long-time client, Ahern Rentals, Inc., which was sued for wrongful termination by a former employee. Following a week-long trial, the jury returned a defense verdict in favor of Ahern Rentals, Inc., finding the company not liable for the claims presented by the plaintiff. The plaintiff sought nearly a million dollars in compensatory and punitive damages. He alleged that Ahern Rentals, Inc., had fired him for filing a worker's compensation claim. The jury handed down the verdict in early May after deliberating for about an hour. Judge Elizabeth Gonzales presided over the trial in Clark County District Court. ■

## BLOOD DRIVE A SUCCESS!

The summer blood drive held in the parking lot of Hutchison & Steffen was a successful one. United Blood Services set a goal of 14 units of blood. The Hutchison & Steffen team, with some outside assistance, gathered 21 units of blood! The Hutchison & Steffen team hopes to make this an annual event. ■



Jamie and Holly are  
happy to donate.



Joseph Ganley keeps  
working while donating.

United Blood Services  
www.UnitedBloodServices.org



## VALUATION DISCOUNTS FOR ESTATE AND GIFT TAXES

Upon the death of the owner of stock in a closely held corporation, the fair market value (FMV) of the stock must be determined before an estate tax return can be filed. For gifts of such stock, it is also necessary to ascertain the value of the stock for gift tax purposes. Unlike publicly traded stock, the value of which can be determined



easily on the Internet or in a newspaper, stock in a closely held business has a value that is more difficult to nail down. By definition, the shares are held by a much smaller number of people and are not widely traded.

Fair market value means the price at which property would change hands between a willing buyer and a willing seller when neither party is under any compulsion to buy or sell and both parties have a reasonable knowledge of relevant facts. Calculating the FMV of closely held stock generally starts with an estimate of the total value of the closely held company itself. Application of discounts (or premiums) to account for the specific circumstances of the company then reduces (or increases) the FMV of the stock.

The process is highly focused on the particulars of each business. For example, in a recent decision by the United States Tax Court, the starting point in valuation of a decedent's minority interest in a closely held

family corporation was easier to figure, because the corporation was a holding company with a portfolio of widely traded securities that had readily ascertainable values. But that market value was discounted by 10% to take into account a buyer's lack of control over the company and by another 15% for lack of marketability of the shares.

The Internal Revenue Service likes to keep an eye on valuation discounts, since they lead directly to a reduction in estate tax liability. Federal statutes, regulations, and Revenue Rulings have shed light on the use of valuation discounts. IRS Revenue Rulings have identified the following list of some primary criteria for determining the valuation discounts for closely held stock:

- nature and history of the business;
- outlook for the economy and the specific industry;
- book value of the stock and financial condition of the business;
- earning and dividend paying capacities of the company;
- goodwill or other intangible value of the enterprise;
- sales of the stock and size of the block of stock to be valued; and
- market price of publicly traded stocks of corporations in the same or similar line of business. ■

## WHICH CORPORATE STRUCTURE FITS YOUR BUSINESS NEEDS?

Following fast on the heels of a decision to go into a particular kind of business is the decision about what kind of legal form it should take. The most common options are a sole proprietorship, a partnership, or a corporation. You may lean toward the corporate route because you like the sound of having "Inc." after the company's name, but there are some more practical, businesslike considerations to take into account.

More so than with some of the other structures for a business, starting a corporation means complying with formalities required by state laws. Once the shareholders (owners) of the business agree on some basic matters, such items are embodied in articles of incorporation that must be filed with the appropriate state agency. These essentials usually include:

- a corporate name;
- the number of shares that can be issued;
- the number of shares each owner will buy and for what contribution of cash or property;
- the nature of the corporation's business; and
- the identity of the directors and officers of the corporation who will handle day-to-day operations.

The fledgling corporation will also need bylaws, which constitute a procedural rule book for the company.

### DECISION-MAKING

The bottom line here is that whoever holds a majority of the shares of a corporation has ultimate control over it. Usually it takes a majority of the shares to elect the board of directors, which is charged with making the "big picture" decisions. If a decision is momentous enough for the company's future, such as a change in the articles of incorporation or whether or not to merge with another company, the shareholders usually have a more direct role in that they themselves must approve the decision by a certain margin of votes.

The board elects the officers of the corporation, typically including a president, vice president, secretary, and treasurer. The officers may or may not be salaried employees or shareholders, and in some cases one person may hold more than one office.

### ACCOUNTABILITY

At or near the top of the list of characteristics favoring the corporate structure is the fact that, since the corporation is treated as a legal "person" separate from the people who own and run it, the shareholders as a rule are not personally liable for the corporation's debts. Instead, their risk is confined to their investment in the company. To every rule there is an exception, however, and here the exception has the colorful legal

name of "piercing the corporate veil." If the owners do not comply with the statutory requirements for running a corporation, or if they blur the lines too much between corporate and personal finances, the legal fiction of the corporation as a separate entity is ignored and the owners are on the hook for the corporation's losses.

### TRANSITIONS

As a separate entity in the eyes of the law, a corporation does not go out of existence if one or more of its owners dies. Instead, a corporation stays alive until its owners decide otherwise. Transfer of the ownership of the corporation is accomplished by selling its stock. New owners are added either when existing owners sell some of their stock or the corporation itself sells more shares of stock. The smaller the enterprise, the more likely it is that the owners, for whom the corporation may be both their property and their employer, may agree to restrict the sale of the stock in order to maintain control.



The particular circumstances of each new business and the differences in the governing laws of the states make generalities difficult. That said, the factors on the debit side of the ledger for corporations include the costs of setting up the corporate entity, the need for a separate tax return, and the burden of "double taxation." Double taxation means that the corporation is taxed on its profits, and the shareholders are then taxed on their dividends. On the credit side are limited liability for the owners and easy transfer of ownership.

Making the appropriate choice for a business form is one of the first, and one of the most important, decisions a new business will make. Whether choosing a corporate structure or some other form, make sure to consult with a qualified attorney. ■

**John T. Steffen** received the AV rating from Martindale-Hubbell. His A rating in "Legal Abilities" ranks him in the very high to preeminent category, and his V rating in "General Recommendation" ranks him in the very high category. Being AV-rated requires extensive legal ability ratings that take into consideration the standard of professional ability in the area where the lawyer practices, the lawyer's expertise, and other professional qualifications. If a lawyer's practice is limited or specialized, ratings are based on performance in those specific fields of law. ■



John T. Steffen