



ARE THERE LIMITS TO LIABILITY PROTECTION OF AN LLC?

By: Patrick Blaney
pmb@lcojlaw.com

In Wisconsin, the general rule enunciated in Sec. 183.0304 of the Wisconsin Statutes provides liability protection for members or managers of limited liability companies, whether in contract, tort or otherwise, for the debts, obligations and liabilities of the LLC. There are exceptions, however, as set forth both in the statute and in a recent Supreme Court decision.

The first exception to the general rule provides that a member or manager may become personally liable by that person's acts or conduct other than as a member or manager. Discussing the types of allegations that may give rise to such liability, the Wisconsin Supreme Court in Brew City Redevelopment Group, LLC v. The Ferchill Group, et al, 297 Wis.2d 606, 724 N.W.2d 879 (2006) decided that allegations in a complaint against two individuals did not give rise to the liability protection under Sec.183.0304 since the allegations did not allege that the individuals were members or managers of an LLC when their actions occurred.

The second exception restates the common law of Wisconsin which allows a court to ignore the limited liability company entity in instances which would apply to business corporations and shareholders for actions which would give rise to personal liability under the theory of "piercing the corporate veil."

In sum, it is our recommendation that members of LLCs pay close attention to the proper corporate form. This includes always using the proper legal entity name on contracts and business documents; always signing documents as a "Member" or "Manager"; recording proper resolutions approving business decisions; and always acting in the role of a member or manager to the public. Personal conduct outside the realm of the entity can lead to substantial legal problems down the road.