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# Who are you?

*The importance of having named the right entity in your complaint when it comes time to collect the judgment*

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What is the legal name of the defendant? How does the defendant hold title to the property? If plaintiff wins, can plaintiff reach those assets? Has plaintiff properly named the party? Who has title to the business where the plaintiff was injured?

Where to find basic information? Suffering a major personal injury at the hands of a stranger, the plaintiff can rarely identify the defendant. This goes beyond title to the vehicle or ownership of the building. Rather this question goes behind the name appearing on the title. If the plaintiff suffered third-degree burns from a faulty stove, Here's the problem: the retailer is "Joe's Appliances," so who is Joe, or better, what is Joe? Is Joe a person or entity? Let's take a tour of sites, cites and sources to answer the question "Who are you?" Answer that question first, and plaintiff asks the second question, "Can you pay?"

## **Fictitious Business Names (FBN) and other local permits**

If the owner is doing business under a fictitious name, and in order to sue on a debt, the owner will file and publish a fictitious name statement. The FBN identifies the name of the owner, a residence address, the date of commencement, and any other owners. FBNs are under oath, signed by the owner, and a public record. Most counties make FBN summaries available online. FBNs are highly reliable.

Many cities or counties also require a city business license, health permit, operating permit (depending on the business), environment permit (gas stations etc.), or other use or specialized permits. Nearly all permits are accessible through the city or agency clerk, or even online.

## **Secretary of State (SoS)**

Most businesses are incorporated for the purposes of limiting trade liability, continuity of existence, and shared ownership. The SoS offers an online search service that enables a searcher to locate the entity. The SoS download provides the date of formation, the jurisdiction, status and agent for service of process. The common surprise is that an FBN might reveal a corporate owner that bears a name radically different from the corporation that should bear the name of the business. The bigger surprise is that the entity does not exist. The SoS likewise offers searches for limited-liability companies and limited partnerships. Other state SoS's, such as Florida, offer cross referencing for officers, agents and names. A suspended or forfeited corporation (or LLC) cannot defend or prosecute an action. A suspension signals financial decay.

## **State Board of Equalization (SBE)**

Every retailer of goods must have a sales tax permit issued by the State Board of Equalization (SBE permit). Permit applications are under oath, very detailed and reveal the owner's name. Access to the SBE "verify license" page requires an SBE number which is available through Westlaw or Lexis Nexis. Based on the application, the SBE issues the permit in the name of the applicant who is owner and operator of the business. The disparity of the SBE permit from the FBN or SoS shows new or different owners, and trouble.

## **Department of Alcoholic Beverage Control (ABC)**

Any person selling alcoholic beverages must have an ABC license. The ABC

offers an online directory that identifies the license, the trade name, dates of the issuance of the license, and generally the type of entity (corporation etc.). The licensee must fill out a sworn application. To transfer a license, the parties must publish and record a notice of intention to transfer a liquor license which likewise identifies the parties. Some restaurants attempt to split out the bar from the food service, which is illegal but prompts the search to insure that the ABC license matches the SBE permit, or even the FBN. Attorneys who specialize in "bar fights" take note.

## **The Recorder's Office and Secretary of State**

To sell most businesses, the parties must publish and record a notice of bulk transfer. If someone fails to pay taxes, such as federal and state withholding, sales tax, franchise (income) taxes, the taxing authorities will record a tax lien that identifies the taxpayer. If a party takes out a bank loan on a large scale of commercial credit, the bank will record a deed of trust or UCC that identifies the borrower who is the owner of the business. Even post-digital, most bank loans originate in face-to-face transactions between the borrower and banker. These recorded documents reveal the owner of the business who initiated transactions, such as transfer of the business, accrual of a tax debt, or default on the loan. UCC filings and lien notices are filed with the SoS and reflect the name of the debtor who inevitably is the owner of the business. Whatever name appears in a document, such as a tax lien, is highly probative of the true owner.

Recorded documents, such as deeds, deed of trust, easements, and other transfer, identify parties with great certainty



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given the imperative of identity demanded by banks, escrow holders, title companies, and buyers and seller. Fourth grade teachers and title officers regale that “spelling counts.”

Any recorded transfer by the defendant, post-incident, is bad news.

### **United States Patent and Trademark Office (USPTO)**

A person seeking to protect a trademark or patent would file for protection with the USPTO. Trademarks and patents require a signed, sworn application that identifies the claimant, who in most instances is the owner of the business. If the business is sold, the searcher would find an assignment of the trademark or patent. The USPTO offers a Web site that permits a detailed search and copies of key documents. Sometimes the name on the patent or trademark might differ from the name that appears on the FBN, SBE or disclosed through UCC filings. This is a big problem.

### **Other judicial proceedings**

As they say in the movies, you are not alone. Others have sued the defendant. These lawsuits would reveal the identity and capacity of the party and the names of the owner or principals. Suits by the defendant against a third party are very revealing. Counsel for parties in other litigation might be willing to share or exchange discovery, non privileged documents, and, best of all, deposition transcripts and answer to form interrogatories. Other proceedings include any case pending in tax court, the trademark trial and appeal board (TTAB), or other administrative courts. Most courts in the US have open dockets and some offer actual downloads of filed papers. Always cycle the names through PACER which would instantly reveal every federal or bankruptcy proceeding in the name of the party. If the defendant is buried under other judgments, ponder whether a bankruptcy is round the corner.

### **Professional licensing**

An action against a contractor, attorney, doctor, broker or anybody else with a license requires a careful survey of the licensing sites. Virtually all agencies that issue permits or licenses have an extensive online search function. Gas stations and other environmentally sensitive businesses might have filings with a water control board or other state agencies.

Cycling the defendant through license enables you to determine who is the real “owner and operator” of the business, the correct legal name, and the names of partners, or related entities. Many businesses operate under marquee trade names, but they might be “XYZ INC.”

### **Commercial search services**

Westlaw, Lexis Nexis and competitors offer this information in a summary basis and given the low cost, are always a good place to start. Legal research services offer most court filings in state and federal actions at a modest cost. Filings in federal court and some state courts are available through PACER for federal courts, or free or for a small fee through state court.

D&B, Experian and TransUnion offer commercial reports for a small fee and never should be missed. These services offer more arcane searches for gun permits, airplane and boat licenses and other items that are obscure but sometimes very helpful. Needless to say, post-digital, Google the name. Google would reveal the normal Internet slipstream of information but also court cases through uploaded judgments, rulings, complaints, or even appellate decisions, and hence cites.

Reported or unreported cases, derived from a search, generate more information than a seven-hour deposition or make that deposition far more productive.

### **The defaulting defendant**

Facing a large claim, and lacking insurance, the defendant declines to defend

and transfers everything out of his name to render himself judgment proof.

These transfers leave a paper trail through the public records. A search pattern would reveal the newly formed entities, names and suspect transfers. For any business, cycle the name through an FBN search. The defendant might have filed a new FBN that shows a newly minted corporation operating the business under the trade name of the defendant. The new FBN was filed days after the incident. Run another search through the SoS that might disclose that the defendant formed a new corporation or limited liability company which mimics the name of the debtor. Joe’s Appliances Inc. to Joe’s Appliances, LLC are common name changes.

Double back to the county recorder to see if Joe’s Appliances Inc., the judgment debtor, recorded a notice of bulk transfer that conveys the business to Joe’s Appliances LLC. If Joe’s Appliances Inc. held a trademark for its distinctive logo, name, or trade name, dial up the USPTO Web site to see if debtor transferred the trademark to the LLC namesake. Even more surprising is whether the judgment debtor, post transfer, still files small claims court actions, in which the plaintiff is still the defendant and not the successor entity. Double back to the SBE to see if the new entity took out a new sales permit, and whether the defendant closed its current SBE permit. Don’t hesitate to subpoena the defendant’s landlord for the new lease, the defendant’s bank (if known) for all records, and all lenders, leasing companies and key vendors for loan or credit files.

### **The policy limits offer**

If the claim is very substantial, and the liability or damages are not in doubt, and the defendant has some insurance, expect a policy limits offer. Expect that the defendant to lie in the financial disclosures.

In evaluating a policy limits offer, plaintiff’s counsel demands sworn



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financials that typically disclose limited assets or assets that are exempt from enforcement. Policy limits offers are a smart resolution if the policy has a burning limits provision and the case is extremely costly to prosecute. Other factors include the conclusion that the defendant lacks any viable assets to satisfy a large dollar judgment, the debt is dischargeable in bankruptcy, or the client's financial condition.

Taking \$300,000 to settle a \$5 million, solid case requires diligence. Before signing off on the deal, or dud, of the century, cycle through the search pattern to confirm whether the defendant, on the eve of the deal, formed a new identity to cloak assets with, or without, a change of ownership. Protocol in policy limits offers is to demand three years of *filed* tax returns (the entire return), an audited financial statement, a stipulated subpoena to reach all loan packages that includes the Uniform Residential Loan Application (URLA) in hands of a lender, leasing company or major vendor, and a current credit report. Severe policy limit offers compel counsel to demand a deposition of the defendant to confirm the bonafides of the offer. Cycling through this search pattern might produce startling revelations that might compel the plaintiff to reject the offer, or compel the defendant to put real money on the table.

### Gatekeeper to enforcement

The defendant defaulted, leading to a large-dollar default judgment, and plaintiff must enforce the judgment. The plaintiff seeks to levy on the defendant's bank account, real property or install a keeper in the defendant's place of

business. The battle of liability is over, and the battle of assets begins. The first rule is that the name on the SBE permit, ABC license, corporate articles, or city business license must match the name on the summons and complaint, the name on the judgment, the name on the writ, the name on the notice of levy and the name for the bank account. Spelling means the difference between an "A+" or an "F" that stands for failed levy.

The sheriff demands compliance with Code of Civil Procedure section 699.510(c)(1), which requires the following:

The writ of execution shall be issued in the name of the judgment debtor as listed on the judgment and shall include the additional name or names, and *the type of legal entity*, by which the judgment debtor is known, as set forth in the affidavit of identity, as defined in Section 680.135, filed by the judgment creditor with the application for issuance of the writ of execution.

Just to add insult to injury, Code of Civil Procedure section 699.520(c) requires the following:

The writ of execution shall require the levying officer to whom it is directed to enforce the money judgment and shall include the following information: (c) The name and address of the judgment creditor and the name and last known address of the judgment debtor. If the judgment debtor is other than a natural person, *the type of legal entity shall be stated.*

No matter how egregious the injury befalling the plaintiff, the judgment against "Joe Appliances" might be unenforceable given the lack of legal identity. Nailing down the identity and status of

the defendant opens the door to effective enforcement, and maybe settlement.

If the defendant is an offshore entity, the local derivation for a corporation, must be translated into English. For example, SDN BHD is Malaysian for a corporate designation. The complaint, and writ of execution, must identify the defendant as "a corporation organized and existing under the laws of Malaysia."

### Getting to know you

Multimillion-dollar cases are the coin of the realm, particularly if that realm is the Stanley Mosk Courthouse. Getting the name right is imperative in collecting the big judgment. Locking down the name of the defendant and bird-dogging the name throughout the case insures that the plaintiff can enforce the judgment, discover a fraudulent conveyance and, sans complete coverage, navigate a difficult policy limits offer.

Counsel faces two questions. Cycling through the search patterns answers the first question of "Who are You?" With that answer in hand, counsel can ask the next question of "Can you Pay?"



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