

# Legal and Financial GPS

Go forward at the intersection...  
Keep going forward

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Not all newsletters from law firms have to contain dense articles dripping with legal theory. Sometimes we can have fun. I hope you will enjoy the story about how we conceived of taking an iconic Princeton ice cream shop to China and made it happen. Also scroll down to see our analysis of why you shouldn't do your own wills or take out your own appendix, and how some rules governing what your CPA may be forced to tell about you have changed.

We also invite you to view our website ...[DavidNeufeldLaw.com](http://DavidNeufeldLaw.com)...to learn more about the firm and to subscribe to our [blog](#) to keep up with changes to the law as they occur.

Sincerely,  
David Neufeld, Esq.  
Law Office of David Neufeld

## We Take Thomas Sweet to China



4 Ice Cream Shops in New Jersey,  
200 in China

### In This Issue

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Areas of Practice



Cucchi, Neufeld, Zeng, Leagh

Not every good business idea we have gets recognized and appreciated. But every now and then...well, read this story and you'll see what I mean.

For 25 years, since I worked with him at a law firm in DC, I have known John Leagh, a Chinese-American lawyer who spent half of his life in China and half in the US. John and I have worked together over the years on a variety of matters but our most notable work involves US-China business trade of one sort or another. John knows and understands the Chinese side--both culturally and linguistically (being fluent in Mandarin)--the way I intuitively know and understand the US side. The tools and techniques we employ as a team get deals done. Anyone engaging in a transaction between cultures as divergent as the US and China needs to be able to either transcend those differences or take them out of the picture. As a bridge and a filter between the sides--John on the Chinese side and me on the American side of the conversation--we successfully do just that. Messages are conveyed and received without inadvertent insults and slights; deal points are developed and resolved without the distractions that can derail a transaction. As John and I are prone to say to each other, "we need to keep the

## Areas of Practice

### Areas of Practice:

- income tax planning for individuals and businesses
- estate planning for high net worth families
- asset protection planning
- life insurance-based planning
- life insurance trustee risk management
- tax controversies, including tax court litigation and audit and appeals support for CPAs
- expert witness in cases involving 419 Plans, 412(i) plans, life insurance premium financing and life settlements

### Commentary:

It seems a week does not go by that we do not receive an inquiry to take on a new matter as either tax counsel or expert witness for individuals involved in **audits of what is known as a 419 Plan or welfare benefit plan or the resulting civil litigation**. As more and more of these cases develop, the line between welfare benefit plans with

its destination."

One day during the Summer of 2010 the phone rang. It was John telling me of a Chinese entrepreneur he represented from Wuhan City in Hubei Province. This client of his wanted to acquire the Chinese rights to a US ice cream brand. Most of the big name brands, such as Haagen Dasz and Dairy Queen, are there already. We made several inquiries of smaller and lesser known names and had different levels of communications with several brands. None seemed to offer the right fit.

I realized that I had to think beyond the obvious. Having been living in the Princeton area for 15 years it hit me that the locally iconic but small ice cream shop in this area--*Thomas Sweet Ice Cream*--with superb product and a stellar reputation would be perfect for John's client. Being in the shadow of Princeton University Thomas Sweet was known to every student who came through the University from anywhere in the world. The University has a panache in China, a country infatuated with academic achievements. Additionally the Chinese revere Albert Einstein, who is indelibly associated with this town. I knew Thomas Sweet could tell a great story in China even as it is virtually unknown outside of a 25 mile radius of Princeton. I made a call to the owner of Thomas Sweet, Marco Cucchi, but the message was not returned. The same was true for the second and third calls. Yet sometimes persistence pays off; eventually I got Marco on the phone and explained what we wanted to do, starting with, "you might think this is crazy."

Marco was understandably skeptical yet he kept an open mind. My mission was clearly to bring Marco past his skepticism and have him see along with me why this would be a brilliant

can be comfortable and those attracting IRS interest (whether deserving such attention or not) is becoming increasingly clear. While we are handling several cases involving plans that were designed with only death benefits (from providers such as Benistar (including their Grist Mill Plan) and IDP Corporate Benefit Services (their split dollar plan)) **we have seen no cases involving well designed and well executed plans offering retiree medical benefits**, even when funded with life insurance policies. In this day of medical care and retirement uncertainty it is good to know that **there is still a valuable opportunity** to protect your financial future with the government's financial help and approval.

Circular 230 Statement: Nothing in this communication is intended to be legal advice or an

the proposal and otherwise got to know each other. We continued the conversation over some weeks and eventually John joined us for another lunch where even deeper discussions proceeded. As we all got to know each other we each developed an abiding mutual respect and trust--critical to any deal such as this.

Before year end, the principals came over from China and negotiations progressed to where only the smaller details needed to be ironed out. This is not to say that the road was free of bumps; there always are some. But it was up to John and me to make sure that each side remained focused on solutions rather than problems and that communications at this point were not polluted by cultural miscues. And it worked. For instance when one proposed compensation structure didn't work we examined what each side needed, which turned out to involve issues unique to their experiences and desires to avoid some of the intricacies inherent in cross border licenses. We tweaked it--running tables and graphs as many times as necessary--to finally satisfy their needs. There is always an answer.

By April 2011, the deal closed; the first store is slated to open by August. Two hundred more stores are to follow in short order. Rather than US jobs and capital flowing to China, money is coming inbound and jobs should be generated here. Not a bad deal all around.

And then the fun began. *US 1* Newspaper ran a great story about the deal that spread over 5 pages. The *Trenton Times* ran its own story (with an unfortunate error) as did *The Princeton Packet*, *WCBS-AM Radio 880* in New York and *News 12 New Jersey*. More coverage is developing. Sometimes good ideas do get attention.

not intended or written to be used, and cannot be used, by a taxpayer for the purpose of avoiding penalties that may be imposed on a taxpayer.

## Breaking News

### Chinese LED Factory Deal Set

We can now announce that we have successfully found a component manufacturing facility in China for a Russian-US LED lighting fixture manufacturer. While there is no shortage of Chinese manufacturers and middle men, finding the right factory with the appropriate capabilities and pricing eluded this client as it does for many unfamiliar with this territory. Once we made the right match we helped negotiate the right pricing and terms, and the client will now be fulfilling major contracts in both the US and Russia.

We have several other deals in the works. Watch our log and newsletters for future announcements. What can we do for you?



## Wills: Don't Try This at Home

### Do-it-yourself Wills and Trusts Just Make Money for the Litigators

The theme of this year's Estate Planning Awareness Week is the danger behind trying to do your own wills and trusts. True, it may be more dangerous to try to de-fuse a bomb without

and planning can be devastating nevertheless. Of course it may smack of self-interest for me to tell you that you need my services, but as you read on you might see why this is good advice and not self-promoting.

Ironically, during Estate Planning Awareness Week I took a call where the wife (who called me) told me that her husband (not on the phone) was convinced he could do their own wills. While I explained briefly--and she understood--why this was not a good idea, what I should have said is one or both of the following:

1. You can pay me (or someone like me) a little now or you can pay me (or someone like me) a whole lot later, your choice.

What's this mean? You can pay a lawyer to do a professional planning job as we are trained to do or, if you choose to do it yourself, with the high degree of likelihood that there will be mistakes, your family, in the midst of their grieving, can pay significantly more to the litigators who will need to fix the mistakes.

2. When he buys the do-it-yourself will book he should also buy the scalpel he will use to perform surgery on himself and the drill he will use to fix his own cavities. Sure, I fix leaky faucets, take on minor electrical jobs and buy and sell some stocks on my own, but the major plumbing and electrical jobs are best left to those who know what they are doing, my financial future best left to the money managers with appropriate experience and training and my health to the doctors and dentists I visit. The best way I can put it is that you don't know what you don't know.

Still not convinced? How about some examples. I would guess my caller's husband would be

expect that she'd leave it all to their kids. Let's say he dies, she gets everything and there is no estate tax return filed...why should there be if there is no estate tax on his estate? I don't know how much they own but they risk needlessly exposing upwards of \$5 million to federal estate tax. They don't have nearly that amount? OK, they risk needlessly exposing \$650,000 to New Jersey estate tax. And what if after his death the wife remarries and the new spouse gets access to those funds and squanders them? Or what if their son/daughter get his/her money, gets married and gets divorced? Does the kid's ex walk away with much of what my caller's husband worked for all his life? Is that what he really wants? I am guessing not, but that may be what results from an amateur job.

Too obvious? Maybe her husband knows a bit about some tricks of the trade and makes a will that says something like: "I leave to a trust for my children the amount that can be left free of federal estate tax using the unified credit amount, with the rest to a trust for my wife." Pretty smart. Under the law as it is today if the bulk of the family assets are in his name and is--pick a number--\$3 million (house, pension, life insurance, savings), does he realize that he effectively disinherited his wife? The entire \$3 million goes to the kids' trust and none--none--goes to the wife's trust. It will cost a fair amount to try to fix this mess.

I can go on but I think you get the idea. I am in the advice business so take this small piece of free advice: don't de-fuse bombs and don't do substantial estate planning without the proper background.

## Seen in the Wall Street Journal: CPAs May Be Forced to Testify Against Clients

### Common Tools Used by Attorneys May be Inadequate

It has long been understood by attorneys and accountants that there is no such thing as accountant-client privilege. We all know that a lawyer, in most cases, cannot be forced to divulge what a client discloses. However, stated simply, the CPA can be forced to testify in civil, regulatory and criminal matters about what the client tells him or her. Problems arise when the client, embroiled in a legal proceeding, works through the issues with his accountant. This very act waives the privilege thereby creating an opportunity for the other side to obtain the very information that the attorney and client worked so hard to protect. To deal with those instances when it is important to protect information, the accepted procedure is for the attorney to engage the services of the accountant as a consultant to the attorney, known as the Kovel Rule. Following that, whatever the client tells the accountant relating to the matter at hand should fall within the attorney-client privilege.

An article in the June 18 issue of the *Wall Street Journal* explains that some recent cases have restricted the scope of this rule, particularly in the context of return preparation. Contact me for a copy of the article.

