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BURKE, WARREN, MACKEY & SERRITELLA, P.C.

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LITIGATION

BWM&S LITIGATION TEAM DEFEATS GM ON BEHALF OF LOCAL MOTOR VEHICLE DEALERS

In a case that has received considerable attention in the national press, four Chicago area GMC motor vehicle dealers (three represented by BWM&S attorneys William Kelly, Ira Levin and Mark Horwitch) joined forces to successfully block General Motors Corporation's attempt to add two new GMC truck franchises to the Chicago market.

The four existing GMC dealers brought protests against GM under the Illinois Motor Vehicle Franchise Act, a statute authored by Mr. Kelly, which allows a dealer to challenge an automobile manufacturer's attempt to add franchises of the same "line make" to the dealer's market area. Under the Motor Vehicle Franchise Act, the manufacturer has the burden of proof to show that "good cause" exists to add the additional franchise.

During the 19-day hearing before an officer of the Illinois Motor Vehicle Board, lead trial attorney Levin, assisted by Horwitch, was able to demonstrate that the existing Chicago area GMC dealers were already more than adequately serving the market. In addition, the dealers successfully argued that adding more GMC franchises to an already overcrowded dealer network would be of no benefit to the public. Moreover, allowing the additional franchises would come at the expense of the existing dealers who had made significant long-term investments in their dealerships.

"Although we respect the manufacturer's desire to sell more vehicles, when it comes at the expense of the existing dealers, all of whom are family-owned and operated businesses that have supported GM's products for

decades, the dealers had no choice but to exercise their rights under the Franchise Act," said Levin.

At the close of the hearing, the hearing officer issued a 96-page recommended order in favor of the four dealers preventing GM from adding the two new GMC franchises. In August, the Illinois Motor Vehicle Review Board adopted the hearing officer's decision in full. As a result of the Board's finding that the dealers substantially prevailed, the four



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WAMBACH JOINS CHICAGO BOYS HOPE GIRLS HOPE BOARD



BWM&S's Doug Wambach recently joined the board of Boys Hope Girls Hope Chicago. The organization was founded in 1979 to help children who are at-risk, yet academically capable, realize their full potential.

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Class Action Defense Results, Your End-Of-Year Tax To Do List, New BWM&S associate, Catholic Charities award, And More...

THE ILLINOIS TAX DELINQUENCY AMNESTY ACT

The Illinois Tax Delinquency Amnesty Act (the "Tax Amnesty Act") was enacted into law effective October 1, 2003.

The law provides that the State of Illinois will forgive interest and penalties owed with respect to an eligible taxpayer's unpaid taxes for periods ending after June 30, 1983 and prior to July 1, 2002, provided that such unpaid taxes are paid in full between October 1, 2003 and November 17, 2003. A taxpayer may avoid interest and penalties with respect to eligible taxes for a past tax period, even if the taxpayer has not previously filed any tax return with respect to that tax period. Taxpayers who are a party to a pending civil litigation involving tax imposed by Illinois law, or a party to any criminal investigation for nonpayment, delinquency or fraud in relation to any tax imposed by

Illinois law, are subject to special rules, which may restrict such taxpayers' eligibility for amnesty under the Tax Amnesty Act.

Interest and penalties on taxes that are eligible for amnesty will double if those taxes are not paid within the amnesty period. In some cases, taxpayers might wish to enter into a settlement agreement with the Illinois Department of Revenue regarding unpaid back taxes, on or before November 17, 2003, in order to avoid the doubling of interest and penalties with respect to any of those back taxes that will remain unpaid after November 17, 2003.

The Tax Amnesty Act applies to Illinois income tax and sales tax, and to generally all other taxes that are imposed by (or pursuant to authorization under) Illinois law and collected by the Illinois Department of Revenue. The Tax Amnesty



Terry Stein

Act does not apply to the Coin-Operated Amusement Device Tax, International Fuel Tax Agreement taxes, or the Motor Fuel Use Tax.

The amount of interest and penalties imposed with respect to unpaid back taxes frequently exceeds the actual amount of unpaid tax. Thus, eligible taxpayers may in some cases realize tremendous savings by acting quickly to take advantage of the Tax Amnesty Act.

If you have any questions about the Tax Amnesty Act, please contact Terry Stein at 312/840-7055 or tstein@burkelaw.com. **B**

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BWM&S CLASS OF 2003

The attorneys at Burke, Warren, MacKay & Serritella are pleased to announce the arrival of two new associates: Rebecca H. Huston and Nora E. Flaherty. Both are 2003 law school graduates and previous participants in the firm's summer associate program.



Rebecca H. Huston

Ms. Huston joins the firm's real estate and corporate practices. She received her B.A., with distinction, from the University of Wisconsin at Madison in 1998. During her undergraduate education, Ms. Huston also spent a semester abroad in Rome, Italy, through Loyola University of Chicago's Rome Center Program.

Ms. Huston earned her J.D., *cum laude*, from the University of Illinois College of Law in 2003. While in law school, Ms. Huston was the Articles Editor for the *Elder Law Journal* and received a Rickert Award for Excellence in Legal Publications. She also spent a semester externing for the Honorable Holly Clemons in the Circuit Court of Champaign County.

Ms. Huston chose a career in law following in the footsteps of many of her family members. On joining the firm, she said, "After spending the summer of 2002 at the firm as a summer associate, I knew I wanted to begin my legal career within the collegial, professional and diverse environment at Burke Warren. I am honored and excited to be a part of such a well-respected and talented group of attorneys."



Nora E. Flaherty

Ms. Flaherty joins BWM&S's litigation practice group. A Chicago native, Ms. Flaherty graduated from the Honors Program at Marquette University in Milwaukee, Wisconsin in 1999 with a Bachelor of Arts. As an undergraduate, Ms. Flaherty worked for the Marquette Law School and a small private law firm in Milwaukee. After working for one year for a Chicago law firm, Ms. Flaherty headed to Champaign, Illinois, where she recently earned her J.D., *cum laude*, from the University of Illinois. On choosing her profession, Ms. Flaherty commented, "The law was always attractive to me because I saw an opportunity to challenge myself and help people at the same time."

While in Champaign, Ms. Flaherty served as a member and associate editor of the *Elder Law Journal*. Last spring, she had a

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BUT THE CHECK WAS IN THE MAIL?

Tips for Making Your Gifts Count in 2003

If you are planning to make gifts to individuals or charitable organizations to take advantage of your exclusions in 2003 or to deduct on your 2003 income taxes, timing is a critical fact. Simply putting the “check in the mail” is not enough. The IRS has imposed rules that apply to various gifts, each with specific criteria regarding when the delivery of the gift is considered “completed.”

Completing the giving of some gifts takes longer than others. What follows are a few tips that can help you achieve your desired tax benefits for your 2003 gifts.



Stephanie Denby

For Gifts to Individuals (or to a trust for the benefit of individuals)

- Gifts of checks are not completed until deposited and the bank has made payment on the checks.
- Gifts of stock certificates are completed on the date of physical delivery of the endorsed certificate.
- Gifts of stock in a brokerage account are not completed until the transfer is recorded on the books of the issuing company.
- Gifts made via “Pay by Phone” are not completed until the bank effectuates the transfer.
- Gifts of real estate are not completed until the deed is signed, delivered and recorded.

For Gifts to Charities

- Gifts by check are completed on the date delivered in person or mailed so long as the check is honored.
- Gifts by credit card are completed when the charge is made to the card.
- Gifts of stock certificates are completed when a properly endorsed certificate is delivered in person or on the date mailed.
- Gifts of stock in a brokerage account are not completed until the transfer is recorded on the books of the issuing company.
- Gifts made via “Pay by Phone” are not completed until the bank effectuates the transfer.
- Gifts of real estate are effective upon delivery of the signed deed.

Because of the various rules of when a gift is deemed “completed” for tax purposes, it is best not to wait until the last minute to make these gifts.

Guidelines for Charitable Deductions

A complex set of rules applies to determine how much you are entitled to deduct from your income taxes when you make a gift to charity. The following chart will provide you with some guidelines:

	Gift to a Public Charity		Gift to a Private Foundation	
	Amount Deductible	Percentage Limitation of Adjusted Gross Income	Amount Deductible	Percentage Limitation of Adjusted Gross Income
Cash	Cash amount	50%	Cash amount	30%
Long-term capital gain property	Fair market value	30%	Cost ³	20%
Qualified appreciated stock ¹			Fair market value	20%
Personal property ²	Cost	50%	Cost	20%
Short-term capital gain property	Cost	50%	Cost	30%

¹ Applies to publicly traded stock (i) traded on an established securities market and (ii) subject to long-term capital gain. Not applicable to public charities.

² Assumes the property is not related to the charity's functions.

³ All references to cost are based on the lesser of cost or fair market value.

For more information, please contact your BWM&S attorney or Stephanie Denby at 312/840-7068 or sdenby@burkelaw.com. **B**

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The Bulletin is written by the firm of Burke, Warren, MacKay & Serritella, P.C. to keep clients and friends current on developments in the law and the firm that might affect their business or personal lives. This publication is intended as a general discussion and should not be construed as legal advice or legal opinion on any specific facts or circumstances. It is meant as general information only. Consult an attorney with any specific questions. This is a promotional publication. ©2003 Editor: Cy H. Griffith, Director of Marketing; Legal Editor, Jay S. Dobrutzky, Esq.

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BWM&S LITIGATION TEAM DEFEATS GM

dealers were awarded their attorneys' fees and other costs incurred in bringing their challenge. GM has recently appealed that decision.

BWM&S is recognized as one of the few law firms in the Midwest having the experience and expertise to successfully represent franchised motor vehicle dealers in this type of dispute. For that reason, BWM&S has represented and continues to represent a number of Illinois motor vehicle dealers in similar cases across the State of Illinois.

For more information, please contact Ira Levin at 312/840-7065. **B**



William Kelly



Ira Levin



Mark Horwitch

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WAMBACH

Boys Hope Girls Hope provides youth with long-term care within non-institutional homes. Live-in residential counselors challenge children under their care to live up to their potential while developing a strong spiritual and moral foundation. Boys Hope Girls Hope views a long-term nurturing home environment and an excellent education as the primary tools required to break the cycle of poverty, abuse and neglect.

As part of Boys Hope Girls Hope's emphasis on education, children participating in the program attend first-rate schools and

are taught organizational and study skills. Mandatory study periods are held in the homes during the school week, and tutoring and special academic programs are provided to those who require additional support. All of the children are expected to attend periodic cultural and enrichment activities. College is the goal, and the program provides college financial assistance to high school graduates.

There are various Boys Hope Girls Hope locations across the country and internationally as well. The Boys Hope Girls Hope of Illinois homes are located in Evanston.

For more information about Chicago Boys Hope Girls Hope, please call Doug Wambach at 312/840-7019. **B**

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student Note published entitled, "Medicaid Preferred Drug Lists: Florida as a Model for Analysis," 11 Elder L.J. 77 (2003). She was also active in the Illinois State Bar Association and the Irish Law Students Association as well as participating in the Civil Litigation Clinic. During the summer of 2001, she worked as a legal intern at the Chicago Transit Authority.

Happy to be back in Chicago, Ms. Flaherty is very excited about beginning her career at BWM&S. "Because of its sophisticated client base, Burke Warren offers all its lawyers complex and challenging work. The environment is extremely friendly and supportive. I am constantly learning from the talented and experienced attorneys around me, which helps to make me a better attorney and to produce the best work product I can for our clients." **B**