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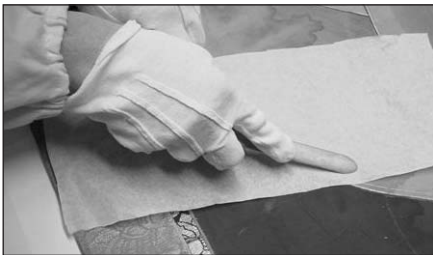
BURKE, WARREN, MACKEY & SERRITELLA, P.C.

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BWM&S BULLETIN

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ILLINOIS GROUP FUNDS VATICAN ART RESTORATION



The kakemono (processional banners) pictured at left are part of the collections of the Vatican Ethnological Museums in Vatican City. These very precious and rare objects are the creation of a great master of the 1600's from the area now part of present day Japan. The Vatican collections contain works of art from around the world, most of which are non-religious.

Patrons of the Arts in the Vatican Museums are regional groups from North America and Europe that fund the restoration of Vatican Museum collections. The restoration of the collection of 13 kakemono, sponsored by the Illinois chapter of Patrons, will take place at the Vatican Museums and will be performed by a Japanese expert, Orju-san, alongside two Vatican restorers. This marks the first time that this type of restoration has taken place outside of Japan. **BWM&S's Anne-Marie Wieland** serves on the board of the Illinois Patrons of the Arts in the Vatican Museums. She can be reached at 312/840-7086 or awieland@burkelaw.com.

LITIGATION

A PRIMER ON MORTGAGE BANKING CLASS ACTION LITIGATION

The mortgage banking industry has been subjected to a disproportionate number of class action complaints for more than a decade. Unlimited accessibility to potential plaintiffs and the myriad of federal and state laws that apply to the origination and servicing of residential mortgage loans make the industry a prime target for class actions.

According to LeAnn Pedersen Pope, chair of the Burke, Warren, MacKay & Serritella, P.C., Consumer Financial Services Class Action Defense Group, many of these class actions target technical violations of the Truth and Lending Act, the Real Estate Settlement Procedures Act, as well as their implementing regulations (on the origination side) and the charging of various fees (on the servicing side).

"We have defended scores of nationwide class actions against the mortgage banking industry since 1990, and in the overwhelming majority of those cases, the putative class members really suffered no damages," says Pope. "Instead, these claims are filed by plaintiffs' lawyers who actively solicit a particular company's customers to act as their named plaintiff. If the case settles, it's the plaintiffs' lawyers who reap substantial benefits

from filing the action; the class members walk away with pennies, which was all their claims were worth in the first place."

In Pope's view, there are two primary types of plaintiffs' lawyers in this field. There is a large group of plaintiffs' lawyers who know virtually nothing about the industry they are suing, or prosecuting class actions at all for that matter, but who simply file copycat lawsuits across the country hoping to strike it big. There is also a relatively small contingent of knowledgeable plaintiffs' class action lawyers who tend to stay away from filing class actions asserting

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Mezzanine Financing, Illinois Pet Trusts, And More...

THREE BWM&S LAWYERS JOIN RANKS OF FIRM DIRECTORS

Burke, Warren, MacKay & Serritella, P.C. is proud to announce the promotion of three attorneys to the rank of director in 2004. All of this year's new directors were lateral hires and represent different firm practices: litigation, tax & estate planning, and corporate law. Their backgrounds are also diverse, including a Ph.D. in English Literature; experience in Arthur Andersen's corporate tax practice; and experience working at a large downstate law firm. For all three lawyers, the directorship represents an important milestone in their legal careers.

Prior to starting law school, **Jay Dobrutzky** had earned a Ph.D. in



Jay Dobrutzky

English Literature and taught college English courses. When Dobrutzky finished law school and started searching for a legal position, many law firms seemed puzzled by a

background that did not fit the typical path to a legal career. After practicing at a smaller firm, Dobrutzky was invited to join the firm as a litigator. "Burke, Warren viewed me in a different light than other firms had, but in the same way it views all of the attorneys it recruits," reflects Dobrutzky. "Beyond seeking individuals with the legal competence required of all practitioners, the firm actively seeks mature, well-rounded individuals representing a diverse array of experiences."

"Burke, Warren offers an environment of genuine mutual respect among all attorneys at the firm," Dobrutzky continues. "Each attorney at Burke, Warren is expected, encouraged, and taught to exercise independent thinking

and creative problem-solving in every area of the firm's practice. This means that there are no mere followers at Burke, Warren, but, in its place, truly open and productive collegiality. This makes Burke, Warren unique among law firms."

According to Dobrutzky, the ultimate winners are the firm's clients who receive a level of attention, commitment and engagement in the legal services that is truly unmatched.

In 2000, **Greg Winters** joined



Greg Winters

BWM&S, leaving behind the world of Big Five accounting at Arthur Andersen and work at another Chicago law firm. Winters works as a part of both the firm's tax and estate planning groups.

"Bigger organizations are not equipped to really understand a client's business. That is what I was looking for when I joined Burke, Warren," says Winters. "We work with many clients including the owners of privately held companies representing many different industries. Our clients expect us to understand their business as well as where they plan to take their businesses."

According to Winters, expectations for client attention are matched with the demands for legal know-how. "I use every bit of my Arthur Andersen experience here. Our clients expect a very high level of legal knowledge."

Winters is honored to have been elected a director: "I have the utmost respect for my peers here. It means a lot to me to be recognized by them," he states. When not reviewing the

intricacies of the tax law, Greg enjoys spending time with his wife and two young boys.

Mark O. Stern joined BWM&S in 2000 as a member of the Corporate



Mark O. Stern

Practice Group. He previously practiced law with a firm in Springfield, Illinois. Mark works with clients in various sectors, including pharmaceuticals,

software, and automotive sales and service, among others.

Regular personal communication with clients is one aspect of practice at BWM&S that Mark particularly enjoys. "I like to keep my finger on the pulse of the clients' businesses, including visiting them in person," he said.

Within the firm, Mark is the coordinator for regular educational sessions with the Corporate Practice Group to address recent legal and client developments. "At BWM&S, the interaction among our attorneys enables me to draw on a broad perspective of the law, which helps me when assisting our clients with their legal needs," said Stern. "Much of my work involves the negotiation and documentation of business deals, and it is helpful to have experience in a variety of areas."

Mark is a graduate of the University of Illinois and the University of Chicago Law School. A resident of Wheaton, he participates in community affairs there. He is currently enjoying the Fighting Illini basketball season; he is also an avid Illini football fan, and predicts, "We'll win more games next year." **B**

SPLIT-DOLLAR LIFE INSURANCE: NEW TAX REGS IMPOSE SURPRISING TAX BURDEN ON SOME

On September 11, 2003, the IRS released comprehensive regulations (the “New Regulations”) governing equity split-dollar life insurance arrangements and other types of split-dollar life insurance arrangements. The New Regulations apply to split-dollar life insurance arrangements entered into after September 17, 2003, and **to arrangements entered into prior to that date which are materially modified after September 17, 2003.**

Under a common type of “equity” split-dollar life insurance arrangement, an employer pays the premiums for a life insurance policy covering the life of an employee, the cash value of the life insurance policy up to the amount of premiums paid is allocated back to the employer, and the remaining cash value of the life insurance policy (the portion exceeding the amount of premiums paid) is allocated to the employee. The life insurance policy may be owned by the employer or by the employee.

The New Regulations provide that if the employee is the owner of the life insurance policy in an equity split-dollar life insurance arrangement, the employer will be treated as having loaned the amount of the premiums to the employee. If the employee is not required to pay interest to the employer, the employee will be taxed as if he or she had received compensation income from the employer equal to the amount of foregone interest.

The New Regulations also provide that if the employer is the owner of the life insurance policy in an equity split-dollar life insurance arrangement, the employee will be taxable not only on the value of the term life insurance protection benefit provided by the employer but also on accruals of cash value to which the employee has current access — **regardless**

of whether the employee actually withdraws such accrued amounts. By taxing accrued amounts, the New Regulations impose a very substantial new burden on employees covered under an employer-owned policy in an equity split-dollar life insurance arrangement.

The tax treatment of equity split-dollar life insurance arrangements not governed by the New Regulations is not entirely clear. The IRS has announced that if a compensatory equity split-dollar life insurance arrangement was entered into prior to January 28, 2002, the IRS will **not** seek to impose tax on any cash value accrued by the employee if, “for all periods beginning on or after January 1, 2004, all payments by the sponsor from inception of the arrangement (reduced by any repayments to the sponsor) are treated as loans for Federal tax purposes...” The IRS has not yet clarified whether this safe harbor applies only to taxpayers who adopted “loan” treatment before January 1, 2004, or whether the safe harbor is also available to taxpayers who adopt “loan” treatment in 2004 and apply such loan treatment retroactively to January 1, 2004. Thus, in cases where a compensatory equity split-dollar life insurance arrangement was entered into prior to January 28, 2002, and where the life insurance policy developed prior to 2004 cash value substantially in excess of the premiums paid, it may still be possible for employees and employers to adopt “loan” treatment in 2004 in order to claim the benefits of the safe harbor.

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Terry Stein

IRS GIVES INVESTORS THE BENEFIT OF PENDING TECHNICAL CORRECTIONS ON QUALIFIED DIVIDENDS

One of the cornerstones of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (“2003 Tax Act”) was the reduction in the tax rate imposed against individuals on qualified dividend income.

Pursuant to the 2003 Tax Act, individual taxpayers pay a maximum rate of 15% on qualified dividend income

received on or after January 1, 2003. However, not all qualified dividends are eligible for the reduced rate. Specifically, the 2003 Tax Act does not permit dividends received on or after January 1, 2003 by certain pass-through entities (such as partnerships, S corporations, estates and trusts) that use a fiscal year

beginning in 2002 to be taxed at the reduced rate.

For example, if a partnership with a fiscal year of July 1, 2002 through June 30, 2003 received qualified dividend income in January 2003, the dividend income would pass through to the

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mere technical violations of some federal or state law, but rather concentrate on



LeAnn Pope

filing those claims that have media appeal. Those are the cases that generate interest among consumer advocacy groups, as well as the media in general, such as allegations of

predatory lending. "Certain more experienced plaintiffs' attorneys have become very astute in using the media and advocacy groups to their benefit," says Pope.

According to Pope, successful defense of class action litigation against mortgage servicing companies requires extensive knowledge of this complex industry.

It is vital to not only understand the mortgage origination process, but the differences between the various business channels, such as wholesale, retail, and sub-prime lending.

"If your client is sued in connection with lender placed insurance, and you don't have an intimate knowledge of how lender placed insurance works within the industry, you simply cannot effectively defend your client in class action," says Pope. Industries that are prime targets for class action complaints need to look beyond general civil litigators, who handle all of a client's litigation, to attorneys with industry-

specific knowledge. This is what distinguishes BMW&S from the general civil litigator, who will represent his or her client in a class action because they handle the rest of the client's litigation.

WHAT'S AHEAD IN MORTGAGE BANKING CLASS ACTIONS?

According to Pope, the trend of filing class actions against the mortgage servicing industry will certainly continue. "There are far too many plaintiffs' lawyers who believe they can retire on that one perfect case. We have handled many cases that were worth a relatively insignificant amount of money, but plaintiffs' counsel, from the day they file their lawsuit, truly believed that the case was worth millions. Defeating those lawyers does not make them go away. They will just simply search for their next target, find the appropriate class representative, and start the process all over again," says Pope.

Mortgage bankers should not, however, underestimate the importance of good customer service. While about half of the named plaintiffs in the cases BWM&S has defended over the years were solicited by plaintiffs' counsel, and have virtually no interest in prosecuting the case or in the defendant's practices, the other half involve plaintiffs who had an axe to grind with the mortgage servicer because of the manner in which a customer service problem was handled. According to Pope, "I have handled many cases in which a customer seeks

the advice of an attorney involving a problem with their mortgage servicer, and ends up being the class representative in a class action involving an entirely different issue than the one that prompted the customer to seek legal advice in the first place."

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IRS

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the entity's partners and be reportable on the partners' 2003 tax returns, but the partners would not enjoy the benefit of the reduced 15% rate. Instead, the dividends would be taxed at ordinary income tax rates of up to 35%.

Both the House Ways and Means Committee and the Senate Finance Committee have advised the Internal Revenue Service that they intend to enact a technical correction bill that would allow dividends received by such fiscal year taxpayers on or after January 1, 2003 to qualify for the reduced tax rate. On February 19, 2003, the Internal Revenue Service issued a Notice stating that taxpayers may rely upon this technical correction when preparing their 2003 tax returns even though the legislation has not yet been enacted.

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