

# BWM&S

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

DECEMBER 2004

BWM&S BULLETIN

VOLUME 3 • ISSUE 5

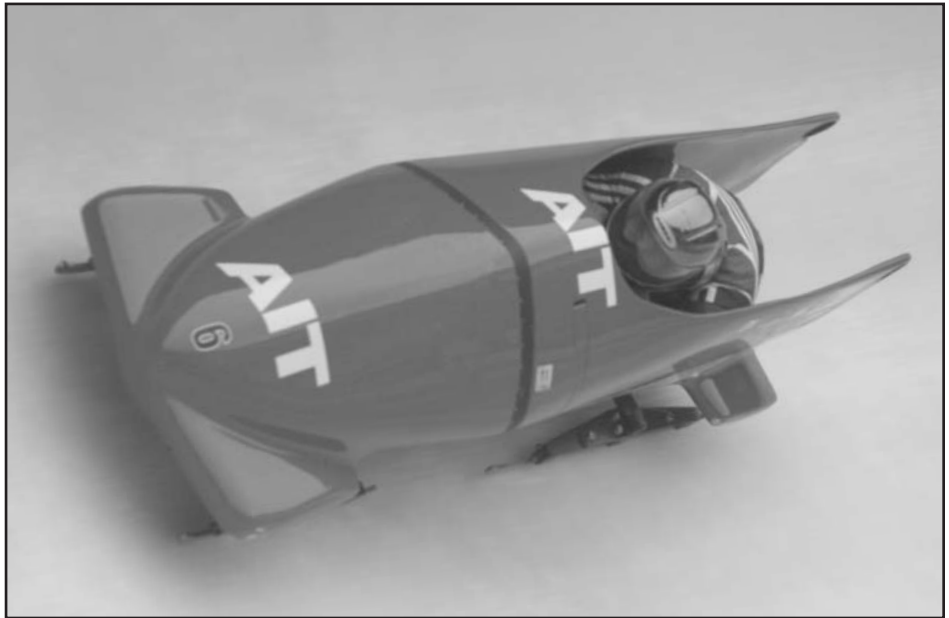
## BWM&S

### AIT WORLDWIDE LOGISTICS – AN EMERGING WORLDWIDE SHIPPING LEADER

You might wonder why a shipping company based in a state like Illinois, which is cold but flat, would seek to become the primary sponsor of the U.S. Bobsled and Skeleton teams.

“Partnering with the U.S. Bobsled and Skeleton teams is a perfect fit for our company,” says AIT Worldwide Logistics co-founder Steven Leturno. “The sports allow for virtually no margin of error. Our clients expect the same.”

As Sponsor and Official Cargo Carrier of the U.S. Bobsled and Skeleton Federation, AIT’s involvement doesn’t stop at



AIT-sponsored U.S. 2-Man Bobsled competes in Winterberg, Germany in December 2003. Driver Todd Hays, 2002 Olympic Silver Medalist, is joined by push athlete, Steve Mesler.

*Continued on page 4*

## BWM&S

### TOP ILLINOIS MORTGAGE GROUPS TAP BWM&S TO CHALLENGE CLARK DECISION

Lenders nationwide take notice with billions of dollars at stake



Jeffrey Warren

On November 24, 2004, the Illinois Supreme Court agreed to review the decision of the Illinois Appellate Court in *U.S. Bank National Association, et al. vs. Clark, et al.* The Illinois Appellate Court, in a decision published March 31, 2004, shocked the lending industry by holding that the charging of mortgage points and fees in excess of 3% of loan principal

in a first-lien mortgage transaction is usurious if the annual *Continued on page 3*

#### INSIDE THIS ISSUE:

- U.S. Supreme Court Curbs Damages .....2
- Franke Joins BWM&S .....2
- New Associate Joins Firm .....3

#### NEXT ISSUE:

The firm’s Private Client Services Practice, New BWM&S Partner, Client profile, And More...

## U.S. SUPREME COURT CURBS DAMAGES ON CAR LOAN CASES

On November 30, 2004, the United States Supreme Court ruled, in an 8-1 decision, that, under the Federal Truth in Lending Act, car buyers are entitled to a maximum of \$1,000 in statutory damages against car dealers and lenders when a customer claims to have been misled about the financing terms of an automobile loan.

Automobile dealers and consumer lenders estimate that a ruling the other way could have opened the door to more than \$1 billion dollars annually in damages.

"The ruling by the Supreme Court tells me that the courts are aware of the increasing regulatory burdens facing dealers and lenders and the skyrocketing costs of litigation even in relatively small dollar cases," said Ira Levin who heads the



*Ira Levin*

firm's litigation practice for automobile dealers. "This ruling will hopefully chill those lawyers who file cases solely to generate fees for themselves where the consumer's actual damages are only minor or even non-existent. In cases where actual damages in excess of \$1,000 truly exist, a car buyer will not be limited to the \$1,000 cap for statutory damages under the Truth in Lending Act."

For more information, please contact Ira Levin at 312/840-7065 or ilevin@burkelaw.com. **B**

## BWM&S

## FORMER CITY AVIATION COMMISSIONER FRANKE JOINS BWM&S

Jay R. Franke has recently become of counsel to Burke, Warren, MacKay & Serritella and works in the religious organizations area headed by Jim Serritella. Franke and Serritella are renewing a working relationship that dates back to 1975 where the two were a part of the religious organizations practice at Kirkland & Ellis. Along with a portfolio of general litigation, Franke did extensive work with Catholic health institutions; in this capacity he served as lead counsel for the first two nursing home receiverships in Illinois history. The two migrated together to Reuben & Proctor and Mayer Brown & Platt. In 1983, Franke was detailed to Catholic Charities to manage the development and construction of housing projects for the elderly then being undertaken by the Archdiocese. Over \$70 million was invested in the program, including over \$50 million in new construction.

In 1989, Franke's parallel interest in transportation took center stage as he was appointed Commissioner of Aviation for the City of Chicago. In

that position he managed a department of 2,500 employees charged with operation of O'Hare and Midway airports. In that capacity he oversaw development of the new International Terminal at O'Hare, the bankruptcy of Midway Airlines, as well as the beginning of the City's regional debate about development of a third airport.

In 1993, Franke joined the Northwestern University Transportation Center where he continues to teach. At the Center, he has organized executive education and industry outreach programs, as well as participation in a variety of transportation research programs. His experiences with the Center ranged from a lecture visit to Agra, India and the Taj Mahal, to a series of programs offered for the Panama Canal Authority in Panama, to a long period of computer exercises in support of the



*Jay R. Franke*

creation of a regional dynamic traffic simulation model. It is the conclusion of this last effort that has left Franke partially at large and available to join BWM&S.

Franke, together with wife Pamela Baker, a partner at Sonnenschein, Nath & Rosenthal, are long-time residents of Chicago's River North neighborhood. For more information, please contact Jay Franke at 312/840-7092 or jfranke@burkelaw.com. **B**

## NEW ASSOCIATE LEAVES SILICON VALLEY FOR CHICAGO

### BUSINESS CLIMATE

**B**WM&S welcomes Christopher J. Schafer as an associate in its corporate practice. Born in Ohio, he spent his formative years in Tempe, Arizona before entering the University of Oklahoma. After spending a year studying abroad in Mexico and Spain, he graduated *magna cum laude* with a degree in chemistry in 1999. Schafer then headed to California and UC Berkeley's Boalt Hall School of Law, where he was Senior Executive Editor of the Berkeley Technology Law Journal and earned the Certificate in Law & Technology. After graduation, he

practiced as a corporate associate at a mid-sized law firm in California's Silicon Valley.

Schafer's California firm provided representation to companies and



*Chris Schafer*

investors in venture capital transactions, mergers & acquisitions, venture capital fund formation and maintenance, SEC filings and

other aspects of business law. "Many of our clients operated under 3 to 5 year

exit strategies, often positioning themselves to be acquired," says Schafer. "I was attracted to Burke Warren because of the nature of the practice and its client base. The opportunity to work with a stable of solid, mid-market companies to which a lawyer can add real value, and help grow and thrive going forward is exciting."

Schafer is admitted to practice in Illinois, California, the U.S. District Court for the Northern District of California and the U.S. Circuit Court of Appeals for the Ninth Circuit. He can be reached at 312/840-7086 or [cschafer@burkelaw.com](mailto:cschafer@burkelaw.com). **B**

### CLARK

*Continued from page 1*

rate of interest exceeds 8%. The Appellate Court based its decision on an obscure 1992 amendment to the Illinois Interest Act that did not place limits on mortgage loan fees but rather allowed mortgage lenders to charge new fees for late payment and dishonored checks.

Until the Appellate Court ruling, lenders nationwide assumed that the Federal Depository Institutions Deregulation and Monetary Control Act of 1980 had preempted the 3% limitation on points and fees set forth in the Illinois Interest Act. The effect of the Appellate Court's ruling was to nullify the federal preemption of the fee limitation retroactive to January 1, 1992, the effective date of the Illinois Interest Act amendment. Potentially, every first mortgage loan made in Illinois since January 1, 1992, bearing interest in excess of 8% for which more than three points were charged, could be considered usurious.

"The Appellate Court's ruling poses disastrous consequences for the lending community, which, in setting rates and charges in literally millions of home mortgage transactions over the years, quite reasonably relied on a clear line of legislative and judicial authority that had been in place since 1980," says the firm's Jeff Warren, who serves as Legislative Chair of the Illinois Mortgage Bankers Association (IMBA). "This decision contradicts federal law,

Illinois law and even a published Opinion of the Illinois Attorney General issued in 1996 for the specific purpose of removing any doubt about the authority of mortgage lenders to charge fees that the Appellate Court now says have been unlawful since 1992." Warren and colleagues from the firm's mortgage banking litigation group have been engaged by IMBA and the Illinois Association of Mortgage Brokers to intervene on their behalf in the Supreme Court proceedings by filing a "friend of the court" brief detailing the lending industry's arguments in support of overturning the Appellate Court ruling. This marks the third occasion prominent trade associations have turned to the firm to represent them in litigation of crucial importance to mortgage lenders.

The outcome of this appeal will have a significant impact on virtually all mortgage lenders and investors who currently have Illinois loans in their portfolios. It will also have a major effect on the future availability of mortgage credit within the state of Illinois.

If you would like to receive updated information on issues relating to *Clark*, please contact Jeff Warren at 312/840-7020 or [jwarren@burkelaw.com](mailto:jwarren@burkelaw.com). **B**

# BULLETIN

Burke, Warren, MacKay & Serritella, P.C.

IBM Plaza - 22nd Floor

330 N. Wabash Avenue

Chicago IL 60611-3607

*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. ©2004 Editor: Cy H. Griffith, Director of Marketing; Legal Editor: Jay S. Dobrutzky, Esq.*

312/840-7000 • [www.burkelaw.com](http://www.burkelaw.com)

## AIT

*Continued from page 1*

putting its logo on the U.S. sleds and uniforms. AIT is part of the U.S. teams. It takes full responsibility for moving the Bo-Dyn sleds and equipment to all competitions in the U.S. and abroad.

In 2003, Itasca-based AIT ranked fifth among U.S. shippers delivering nearly 900 million tons of cargo of all kinds through 33 U.S. offices to destinations around the world. 2004 included many notable shipments: AIT's Printed Matter Division recently helped fight homesickness among U.S. troops in Baghdad and Kuwait City. This sector delivered commemorative issue newspapers featuring the Boston Red Sox World Series championship victory. AIT took a decidedly neutral stand on politics by delivering shipments of regional newspapers to both the Democratic and Republican National Conventions this year. AIT's Government Division clients include NASA. Space Shuttle wing parts were counted among recent shipments, one piece per plane. F-16 parts are also frequent AIT cargo as are Perishable Division imports of French cream puffs and éclairs to the USA.

Not a bad gig for a couple of guys who did not like working for someone else. Twenty-five years ago, Steven Leturno and Daniel Lisowski, formed AIT based on the principle that they

could deliver better service for better value. At the time, a half day meant 12 hours. They bought a van to serve their first customer, a printer, whom they continued to serve for many years until the client was acquired in a merger.



*John Stephens*

could deliver better service for better value. At the time, a half day meant 12 hours. They bought a van to serve their first customer, a printer, whom they continued to serve for many years until the client was acquired in a merger. In the shipping business, AIT is referred to as non-asset based. The company generally does not own or staff the trucks, trains and planes necessary to move cargo for clients. Instead, they partner with local transportation and logistics providers who specialize in different markets and locations. This allows the company to tailor its services to the diverse needs of its clients. AIT manages all of the details while providing clients with seamless service. The company's 700 employees include 28 internal programmers who produce customized software applications for customers as a value added to its transportation services.

## What's Next for AIT

Never working from a formal business plan, AIT will continue to build off of previous successes and maintain its flexible customer base. The company made a strategic decision to direct its capital towards the development of an

extraordinary group of people and the technology necessary to maximize the service they provide to clients. AIT is well suited for continued growth in international markets in which it seeks to expand its global footprint from 22% to 40% of major markets serviced in the next 3 years.

## Calling All Bobsled Fans!

If you share AIT's passion for bobsled and skeleton competition, please visit AIT's website for competition schedules and related activities, at [aitworldwide.com](http://aitworldwide.com)

## The BWM&S Connection

The firm's John Stephens has served AIT since the early 90s. While Stephens has headed up our relationship with AIT and assisted the company with its expansion, including both the leasing and acquisition of shipping centers at multiple U.S. locations, Ed Lesniak and other BWM&S attorneys have represented AIT on transportation issues and other needs. According to Stephens, "AIT is an entrepreneurial success story. It is an honor for our firm to have played a role in their success."

For more information, please contact John Stephens at 312/840-7017 or [jstephens@burkelaw.com](mailto:jstephens@burkelaw.com). **B**