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

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A COMPANY TO WATCH

Woods Equipment Company: Moving Earth and Plowing Ahead Under New Leadership

Leading a business that for years had been struggling on the brink to unprecedented success in the course of just one year is no small accomplishment. What makes such a dramatic turnaround possible? “Putting the right people in place at every level of the organization is the starting-point,” says Fred Korndorf, who, together with private equity firm, GenStar Capital LLC, and a group of operating executives, recently purchased Woods Equipment Company.

Woods, headquartered in Oregon, Illinois, began as a family business in 1947 manufacturing rotary cutters for the agricultural industry. Over the next 50 years, under several different owners, including Code, Hennessy &

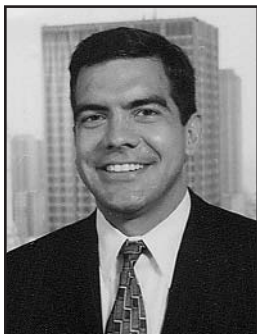
Continued on page 4



New ownership brings world class management to locally-based Woods Equipment Company.

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FIRM'S DARROW NAMED TO 40 UNDER 40 LIST OF TOP ILLINOIS ATTORNEYS



John Darrow

Burke, Warren, MacKay & Serritella, P.C. is pleased to announce that the coveted 40 under 40 list of top attorneys in Illinois includes in its 2005 listing one of its own: John Darrow.

40 under 40 is compiled each year by the Law Bulletin Publishing Company and recognizes leading attorneys under the age of 40.

According to the selection committee, 2005 was the most competitive year ever, with more than 1,200 lawyers nominated.

Darrow was nominated for “40 under 40” by Sara Finley, Senior Vice President and Assistant General Counsel and Corporate Secretary for Caremark Rx, Inc.

Finley’s nomination highlighted Darrow’s leadership of a

Continued on page 3

INSIDE THIS ISSUE:

Federal Odometer Act rolled back2

Federal Law Clerk joins firm3

NEXT ISSUE:

The firm grows again, a client profile and more...

7TH CIRCUIT AGREES WITH BWM&S ATTORNEYS: Recent Ruling Rolls Back Efforts To Expand Federal Odometer Act

The Federal Odometer Act is a very straightforward statute. It requires that the seller of a motor vehicle provide the buyer with a document that accurately states the vehicle's mileage at the time of sale. Technically, the disclosure should be made on the back of the title, assuming the title is available. Failure to comply, with the intent to misrepresent a vehicle's mileage, exposes the seller to judgment for three times actual damages, plus attorney fees.

Sounds simple enough, but attorneys representing car buyers have filed claims under the Act even where there is no allegation of mileage fraud. Why are these attorneys so determined to make a federal case out of garden variety state law consumer claims? Their attempt to expand the Federal Odometer Act is, of course, driven by attorney fees and treble damages.

This issue recently reached the federal appellate level for the first time in *Ioffe v. Skokie Motor Sales, Inc.*, a case in which BWM&S attorney Ira Levin, whose practice specializes in legal issues facing automobile dealers, and associate Kimberly Smith represented the dealer.

The Ioffe case involved a car buyer who purchased a \$2,500 used vehicle but was not shown the title, which was in the dealer's vault, because the sale occurred late in the evening. However, the buyer was given an accurate

“By affirming that the Federal Odometer Act is limited to claims that a vehicle's mileage was misrepresented, the Court's ruling should stop plaintiffs' attorneys from using the Act in non-mileage cases just to hold dealers hostage to its treble damages and attorney fees provisions.”

—Ira Levin

odometer disclosure statement. When the buyer discovered that the car had been rebuilt, he filed suit in U.S. District Court, alleging two claims under Illinois state law, and one under the Federal Odometer Act. The dealer attempted to

resolve the lawsuit with the plaintiff by refunding his entire purchase price (even though he had driven the vehicle for six months before trading it in) and paying reasonable attorney fees. The plaintiff's attorney refused the offer and demanded \$100,000.

The District Court ultimately granted Mr. Levin's summary judgment motion and dismissed the Federal Odometer Act claim, ruling that the Act did not apply because the complaint did not even allege that the seller's failure to provide title involved any intention to misrepresent the vehicle's mileage. The court then declined to maintain jurisdiction over the plaintiff's remaining state law claims.

The plaintiff appealed the decision, and the U.S. 7th Circuit Court of Appeals agreed with the District Court. After oral argument by Mr. Levin and a nationally recognized consumer law expert recruited by the plaintiff's counsel, the Court held that the Federal Odometer Act is, on its face, strictly limited to cases where there is a fraudulent intent to misrepresent a vehicle's mileage. In its ruling, the Court explained that Congress's wording of the statute clearly prohibits the kind of expansion of the Act that plaintiffs' attorneys have sought, and often achieved, in federal district courts.

Reflecting on the importance of this decision, Mr. Levin says, “By affirming that the Federal Odometer Act is limited to claims that a vehicle's mileage was misrepresented, the Court's ruling should stop plaintiffs' attorneys from using the Act in non-mileage cases just to hold dealers hostage to its treble damages and attorney fees provisions.”

For more information regarding this case or other legal issues affecting the automobile industry, please contact Ira Levin at 312/840-7065 or ilevin@burkelaw.com or Kimberly Smith at 312/840-7052 or ksmith@burkelaw.com. **B**



Ira Levin



Kim Smith

A FEDERAL LAW CLERK JOINS FIRM

After five years as a judicial law clerk for Judge Blanche Manning of the U.S. District Court for the Northern District of Illinois, Aaron Stanton joined BWM&S's litigation practice on August 1, 2005. In 2000, after working for three years as a litigation associate at Jenner & Block, Judge Manning selected Stanton from among hundreds of applicants for one of two law clerk positions. Although federal judges generally hire law clerks for only two years, based on his performance, Judge Manning asked Stanton to remain as her clerk after his initial term had expired.

As a clerk, Stanton served as the judge's "right-hand man" writing draft judicial opinions and orders on a wide range of complex matters including employment discrimination, RICO, white-collar criminal, class actions, federal and state securities, and patent cases.

"Clerking for a federal trial court allows you not only to meet and get to know the judges, but also to sit on the other side of the bench," says Stanton. "I was able to see the kinds of arguments that work and the ones that do not. I learned a great deal from seeing exceptional trial lawyers at work as well as some not-so-exceptional litigators. Overall, it was an invaluable experience."

While clerking, Stanton was also an adjunct professor at Loyola University of Chicago School of Law where he instructed first year students on the fundamentals of legal writing. Prior to clerking, Stanton gained invaluable experience as a litigator at Jenner & Block in arguing numerous motions before state and federal courts, taking depositions, and preparing complex cases for trial. He worked on a diverse range of matters in his three years at Jenner. "I worked on everything from complex insurance coverage and patent cases to small breach of contract matters." Stanton received his undergraduate degree (economics) and JD (*magna cum laude*) from the University of Illinois. He lives with his wife and two children in Evanston.

In making the jump back into private practice, Stanton chose BWM&S over a number of other firms in Chicago because "its full service offerings and strong litigation group will provide me with the right environment to build my practice." Stanton is very excited about being back in private practice and using his experience as a law clerk to best serve the clients at BWM&S. Aaron Stanton can be reached at 312/840-7078 or astanton@burkelaw.com. **B**



Aaron Stanton

40 UNDER 40

Continued from page 1

multi-firm team of outside attorneys in handling the health care and business due diligence for Caremark's 2004 acquisition of AdvancePCS. Because of anti-trust considerations, in-house lawyers and business personnel were not allowed access to material business contracts and other competitively sensitive information before the acquisition was completed. Caremark chose Darrow to lead the review team and advise the company of the legal risks it would face in the multi-billion dollar deal.

"His work during the due diligence process and immediately following the acquisition has been critical to the successful integration of the two companies from a legal perspective," says Finley.

Finley also credits Darrow with helping steer her company through the earliest stages of the pharmacy benefit management business, guiding the company through the uncharted waters of an emerging industry. She placed particular emphasis on the high professional standards continually displayed by Darrow in his legal practice, and noted his ability to

"pragmatically solve business problems without compromising ethical or legal standards."

Darrow specializes in health care and corporate law, providing counsel on fraud and abuse compliance, pharmaceutical distribution, acquisitions and divestitures, venture capital and other financing and contracting strategies and negotiation. John Darrow can be reached at 312/840-7003 or jdarrow@burkelaw.com. **B**

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A COMPANY TO WATCH

Continued from page 1

Simmons and Madison Dearborn Partners, Woods evolved into a company with three primary areas of business: agricultural and turf care products, construction equipment, and attachment and aftermarket parts. Yet by the late 90's, Woods found itself struggling to survive in extremely fragmented industries.

Woods presented exactly the opportunity that Korndorf had been looking for since his retirement as President of Deere & Company's Worldwide Agricultural Equipment Division in 2002: an established company in a market he understood that required only experienced and proven management to succeed. Korndorf was confident that he could provide that critical ingredient.

Over his 28-year tenure at Deere, where he had headed each of Deere's equipment divisions on a global basis, Korndorf established a record of building scale and taking businesses to record levels of performance through every phase of the business cycle. Korndorf secured these achievements by building teams of talented and committed individuals and promoting cooperation at all levels in order to energize business organizations. When he turned his sights on Woods, Korndorf drew on long-term

relationships to assemble a "dream team" of industry executives to lead Woods in such areas as product design, production efficiency, management, and sales and service development.

Hitting the ground running

As a result, Woods notched a 15% increase in annual revenue and substantially more in profitability during the first year despite a staggering increase in the cost of steel and an unusually cold spring, which depressed demand for Woods' seasonal products. The company had also assumed a significant increase in overhead as a result of adding several senior executives and other salaried professionals.

Korndorf remarks, "I felt certain that the ability to recruit and retain world-class executives, and to increase competence at every level, would give a middle-market company like Woods the opportunity to prosper and grow." Just one immediate result of this strategy was a decrease in the delivery time of some of Woods' key construction products from an unsure industry average of 6 weeks to a definite 10 days. Simultaneously, Woods' new product development pace has more than tripled as a consequence of a renewed commitment to design engineering. Korndorf also credits the company's early over-achievement, as well as its

projected further growth, to updated manufacturing processes, and expanded sales and marketing capabilities. Strategic outsourcing and acquisitions are also being pursued to complement Woods' current nationwide manufacturing and distribution capabilities.

Korndorf, Woods' Chairman and CEO, is pleased but not surprised by the company's now promising prospects. "The key to success in business is not really a mystery," reflects Korndorf, a native of Arlington Heights who earned his B.A. and M.B.A. in five years at the University of Chicago. "If you recruit professionals with proven track records in their industry who possess a long-term commitment to growing the business, success will usually flow from the collective efforts of those individuals."

Long one of the largest employers in Oregon, Illinois, Woods, under its new leadership, is now well poised to achieve preeminence in all of its markets. That is a prospect that the attorneys of Burke, Warren, MacKay & Serritella, P.C. are proud to support. For more information about Woods, please contact Jay Dobrutsky at 312/840-7089 or jdobrutsky@burkelaw.com or Chris Manning at 312/840-7010 or cmanning@burkelaw.com. **B**