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

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BWM&S

'BULLYING' TAKES CENTER STAGE AS FOCUS OF FIRM EVENT

Firm welcomes experts and audience participation on this critical topic

In a 2009 survey by the National Center for Education, 1 in 3 students between the ages of 12 and 18 reported being bullied by their peers. More disturbing, however, are the repercussions of bullying on school communities nationwide. One must merely look at the 1999 Columbine shootings in Littleton, Colorado or the recent suicide of an Irish student attending school in Massachusetts to understand the scope of what bullying can do. What has been thought of as a normal part of growing up is now being viewed as a damaging and dangerous threat to communities' students, teachers, and families.

As the topic of the firm's Religious and Not-for-Profit practice spring lunch scheduled for May 19 at Fulton's on the River in Chicago, "Protecting Students From Cyberbullying a nd Harassment in Schools" will be presented by the firm's Erika N. L. Harold, a nationally recognized expert and speaker on the topic. Also speaking will be Sister Mary Paul McCaughey, the superintendent of Cook and Lake County Catholic schools.

Erika N. L. Harold

Sr. Mary Paul McCaughey

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WEALTH & SUCCESSION PLANNING

TAX LAW CHANGES CREATE ESTATE PLANNING PITFALLS AND OPPORTUNITIES

On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, making significant changes to Federal tax laws. The Act received wide publicity because it extended current income tax rates for all taxpayers through 2012. The Act also made significant changes to estate, gift, and generation-skipping transfer (GST) tax laws.

Karen MacKay

These changes provide new and potentially important estate planning opportunities, which may only be available for a limited period of time. Key provisions of the Act are as follows:

Estate Tax Exemption and Rate The Federal estate tax exemption amount (the amount that may be transferred at death free of Federal estate tax) has been increased to $5 million for each taxpayer (or $10 million for a married couple) with a maximum estate tax rate of 35%.

Gift Tax Exemption and Rate The Federal gift tax exemption amount (the amount that may be transferred during life free of gift tax) has been increased from $1 million to $5 million for

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NEXT ISSUE: the firm grows again and more.

BULLYING

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Sr. Mary Paul will be placing a moral emphasis on anti-bullying campaigns, as well as present her school system's methods of handling the issue.

Ms. Harold began her national bullying prevention advocacy when she won the 2003 Miss America pageant with a bullying prevention platform. Since winning the pageant, she has spoken to more than 100,000 students at hundreds of venues across the country on behalf of anti-bullying efforts. "I have spoken with victims, bullies, and bystanders, at locations ranging from some of the most affluent high schools in the U.S. to juvenile correctional facilities." Additionally, Ms. Harold has discussed bullying on television shows such as *Good Morning America, CNN, The Today Show,* and PBS's award-winning series *In the Mix.* She also received a leadership award from the National Center for Victims of Crime.

Ms. Harold's work in this area draws upon her own experience as a victim of harassment while in high school. "People are often surprised that one can be both Miss America *and* a victim of harassment," says Ms. Harold.

In her work advocating for anti-bullying efforts, Ms. Harold takes a multi-faceted approach, focusing on what schools, parents and communities can do to better protect children. Ms. Harold also challenges young people to be the leaders of change in their own schools.

According to Ms. Harold, given young people's increased use of social networking sites and other technologically-based means of communicating, students now face bullying not just in the classroom but also in cyberspace. Since many children don't report bullying to their parents or teachers, it often goes unchecked, allowing its devastating effects to continue. These consequences can include depression, poor performance in school, stress-related illnesses, violence against others, and even suicide.

In conveying the message to the firm's various not for profit clients, Ms. Harold will describe the scope of the problem and discuss recent court decisions and legislation that comprise a nationwide effort of states and not for profit organizations to combat this destructive phenomenon. Ms. Harold will also provide tips on how parents can protect their children from bullying.

With this in mind, Ms. Harold will elaborate on how these organizations can improve their anti-bullying efforts. "Organizations that serve young people must learn to pick up on warning signs and proactively work to protect young people." says Ms. Harold.

A school perspective

As superintendent for the Archdiocese of Chicago Catholic Schools, Sister Mary Paul McCaughey is responsible for more than 90,000 students at over 250 schools in Cook and Lake Counties. She will discuss the thinking behind the system's recently revised bullying prevention policy

By creating a strong policy against bullying, the Catholic Schools can deliver quick and decisive action when bullying occurs. "Families choose Catholic schools because of our safe and positive learning environments," says Sr. Mary Paul. "Preventing bullying in our schools is essential to our mission, where families expect a community of faith committed to academic excellence and loving service for their children.

The long term consequences, Ms. Harold emphasizes, are of the utmost importance. "Young people often can't fully appreciate the long lasting impact bullying will have on their classmates. But many adults can attest to the fact that you can be a successful 45-year-old adult, who still remembers the names you were called in junior high."

Ample time for audience participation will be provided following the presentation.

The attorneys at Burke, Warren, MacKay & Serritella, P.C. invite members of Chicagoland's religious and not-for-profit community to attend:

"Protecting Students from Cyberbullying and Harassment in Schools."

PRESENTERS:
Erika N. L. Harold,
Burke, Warren, MacKay & Serritella, P.C
Sister Mary Paul McCaughey,
Cook and Lake County Catholic Schools.

MODERATOR:
James A. Serritella,
Burke, Warren, MacKay & Serritella, P.C

Thursday, May 19, 11:45 -1:45 p.m.
Fulton's on the River
315 N. LaSalle Street – Chicago
Lunch will be served.

Please R.S.V.P. to Cy Griffith at 312/840-7035 or cgriffith@burkelaw.com on or before May 16.

BWM&S

Firm welcomes new associate

Associate Erika N. L. Harold recently joined Burke, Warren, MacKay & Serritella, P.C. She will serve clients in the firm's Litigation, Religious and Not-for-Profit, and Automotive Franchise practices.

Ms. Harold previously practiced at Sidley Austin LLP, representing clients in complex commercial litigation matters, including civil RICO cases, class action, fraud, breach of contract disputes and appellate proceedings.

"A Sidley partner spoke very highly of Burke Warren, and the firm has proved to be a wonderful fit," says Ms. Harold.

She received her law degree from Harvard Law School in 2007, where she won a Boykin C. Wright Memorial Award for her appellate advocacy and won Best Brief in the Harvard Ames Moot Court semi-final and final rounds of competition. She attended the University of Illinois in her hometown of Champaign-Urbana, where she earned her B.A. in Political Science, and was both a Chancellor's Scholar and Phi Beta Kappa.

Ms. Harold has also been active in pro bono efforts including death row post-conviction proceedings and teaching Chicago Public School students about the U.S. legal system as part of the Lawyers in the Classroom program. Additionally, Ms. Harold promotes bullying prevention efforts throughout the country (see "Bullying" pg. 1) and was named one of Fight Crime: Invest in Kids' "Champions for Children."

Ms. Harold can be reached at 312/840-7052 and eharold@burkelaw.com.

WEALTH & SUCCESSION PLANNING

Firm attorney moonlights as adjunct professor

This spring the firm's Jonathan W. Michael is teaching an Estate Planning course at The John Marshall Law School in Chicago. The course is designed for students seeking their Juris Doctor and Masters of Law degrees.

"It is great to work with students who are interested in our area of law," says Michael. "It is also an honor to be appointed to the adjunct faculty at The John Marshall Law School."

The course is designed to introduce the students to Illinois common law, Illinois statutes and Federal tax laws associated with estate planning techniques. The course will provide students with a technical and practical understanding of the application of these concepts and laws. A student who completes the class should have sufficient knowledge to understand the basic groundwork of the area of estate planning.

Jonathan W. Michael

Students in the class are a mix of full and part time students. The class also consists of practicing attorneys seeking their Masters of Law (in Taxation) who are working at a law firm and practicing in this area. Michael is a member of the adjunct faculty at The John Marshall Law School and the Wealth and Succession Planning practice at the firm.

In the spring Michael will also teach an IICLE (Illinois Institute for Continuing Legal Education) course on advanced estate planning techniques.

For more information, please contact Jonathan Michael at 312/840-7049 or jmichael@burkelaw.com

Burke Warren became the first law firm nationally to reach 100% firm participation in the inaugural University of Illinois College of Law "Law Firm Challenge." The Challenge is designed to achieve 100% alumni gifting to the College's Annual Fund, which supports the school's students, faculty, and academics. Partially as a result of Burke Warren's pace-setting efforts, the College's Annual Fund, year to date, is already up 30% in total dollars and 20% in alumni donors. Pictured from left are firm Illinois alums (unless indicated): Alexander Marks, Jessica Cox, Dean Bruce Smith (U of I College of Law, Dean), Susan Miller Overbey, Steve Meinertzhagen, Nora Flaherty Couri, Aaron Stanton and Patrick Bruks.

An Employer's Guide to New Civil Union Law in Illinois

Signed by Governor Quinn on January 31, 2011, the new law will permit parties to a civil union to enjoy the same legal rights and obligations provided to opposite-sex spouses in Illinois. Illinois will also recognize such unions entered into in other states with similar laws, currently ten states and Washington, D.C. Parties to a "civil union" can be members of the same sex or the opposite sex, and must go through an "application, licensing, certification" process with state officials to obtain recognition of the civil union.

Employers should review their benefit plans now to prepare for the law which goes into effect in Illinois on June 1, 2011. Employers should expect to see increased requests for health coverage and surviving spouse benefits under retirement plans.

Health Coverage

Coverage for an employee's civil union partner will be required under health insurance contracts issued in Illinois if the plan provides spousal coverage. Such coverage will not be required if the plan is self-insured, is covered by an insurance contract from a state without a civil union law, or does not provide spousal coverage.

Amendments to health plans, enrollment forms, and other communication materials will need to be made by employers required to, or who voluntarily, extend coverage to their employees' civil union partners. Note that health coverage should never be voluntarily extended to any employee, retiree, civil union partner, or other individual not covered by the express eligibility provisions of the underlying insurance contracts without first amending the contracts. If an amendment is not done, the insurer may deny that individual's claims as not being pursuant to the plan terms and the employer is then directly liable for the medical expenses, which could be substantial.

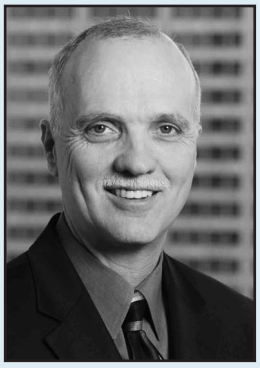
COBRA

Because the federal Defense of Marriage Act (DOMA) does not recognize civil unions, parties to a civil union are not entitled to continuation coverage under COBRA (Consolidated Omnibus Reconciliation Act of 1985). However, an employer that wants to provide coverage consistent with COBRA to a civil union partner can do so but, again, this should be done only after approval from the insurer. Continuation coverage for civil union partners may be required by states which have laws similar in nature to COBRA. Illinois has such a law, which will recognize civil unions, effective June 1.

Taxation of Health Benefits

Proper tax reporting will require employers to revise their payroll systems. Because civil unions are not recognized under federal law, employees providing coverage for their civil union partners have imputed income equal to the excess of the fair market value of the coverage provided to the civil union partner over the amount paid by the employee for such coverage. There is an exception to this taxation if the civil union partner qualifies as a dependent of the employee under Section 152 of the Internal Revenue Code (IRC). The imputed amount is subject to income tax withholding, FICA and FUTA.

Michael S. Virgil



Marty LaPointe

An employee may not make pre-tax contributions to a cafeteria plan under Section 125 of the IRC on behalf of a non-dependent partner. The employee also may not receive reimbursements from flexible spending accounts, health reimbursement accounts, or health savings accounts for the expenses of the non-dependent partner.

In contrast, because Illinois provides the same rights and benefits to civil union partners as to spouses, employer-provided health coverage is not taxable for state income tax purposes. Premiums for these benefits can also be paid on a pre-tax basis for Illinois income tax purposes.

Retirement Plans

The new civil union law will not require non-government employers with 401(k) and other retirement plans qualified under the Internal Revenue Code to provide spousal benefits to civil union partners because those plans are regulated by ERISA (Employee Retirement Income Security Act of 1974) and DOMA, which

Parties to a "civil union" can be members of the same sex or the opposite sex, and must go through an "application, licensing, certification" process with state officials to obtain recognition of the civil union.

preempt state law. Employers who wish to provide such benefits to civil union partners may amend their plans to do so. However, such changes to a benefit plan can increase costs and should be reviewed with the plan's actuary.

Other Employee Benefits

Examples of other benefits which could be affected include long-term care insurance, life insurance, employee discounts, family care and medical leave, and moving/relocation expenses. Once a benefit is offered to spouses, it could be prohibited discrimination to not offer it to civil union partners.

The Next Step for Employers?

Implementing these changes in employee benefit plans can be complex. Therefore, it is advisable that employers review their benefit plans now to evaluate their obligations and options in providing benefits to civil union partners when the new law becomes effective on June 1, 2011. Conflicting federal and state tax laws will create reporting problems which will need to be resolved.

Civil union law is in its infancy stage. State laws differ from one anther. The application of ERISA and DOMA is uncertain. ERISA preempts state law and defines marriage as opposite sex due to DOMA. However, the constitutionality of DOMA is being litigated. The Obama administration has chosen not to defend the constitutionality of DOMA, but Congress apparently will. Employers must comply with the civil union law as it applies to them, but its application will be in a stage of flux for some time.

For more information, please contact Michael S. Virgil at 312/840-7015 or mvirgil@burkelaw.com or Marty LaPointe at 312/840-7012 or mlapointe@burkelaw.com.

WEALTH & SUCCESSION PLANNING

TAX LAW

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each taxpayer. This means that a married couple may transfer up to $10 million in assets, gift tax free, for the benefit of children, grandchildren, or other beneficiaries. Gifts over this amount are taxable at a top rate of 35%.

Generation Skipping-Transfer Tax Exemption and Rate The GST tax exemption amount (the amount that may be transferred over multiple generations free of transfer tax) has also been increased to $5 million for each taxpayer (or $10 million for a married couple). The GST tax rate has been reduced to 35%.

Window of Opportunity

If Congress does not enact new legislation by December 31, 2012, the pre-2001 rules (e.g., only a $1 million estate and gift tax exemption with a top 55% rate) will return effective January 1, 2013. This means that you may only have a two year window of opportunity. Following are steps to take advantage of the increased gift and GST tax exemption amounts during this timeframe:

- **Outright Gifts:** Make outright gifts to children and more remote descendants.
- **Gifts in Trust:** Make gifts to GST tax exempt trusts for the benefit of children and more remote descendants. Utilizing assets you expect to appreciate significantly in the future increases the tax savings of such a gift.
- **Forgive Loans:** If you have made loans to children or others, consider forgiving such loans, thereby using a portion of the increased gift tax exemption.
- **GRATs:** Use a grantor retained annuity trust (GRAT) when making a gift. A GRAT is a trust to which you gift assets, retaining the right to receive an annuity from the trust for a certain period of time. Upon the termination of such period, the GRAT assets pass in trust for children free of estate and gift tax. Although there were fears that the Act might include provisions that would curtail the use of GRATs, such provisions were not included. GRATs remain an excellent wealth transfer tool, particularly in light of continuing historically low interest rates.
- **Irrevocable Grantor Trusts:** Use an irrevocable "grantor" trust to make a large gift to a trust. Under the grantor trust, the assets of the trust are not subject to estate, gift, or GST taxes, but you pay the income tax on trust income, thus maximizing the amount being transferred from your taxable estate to the beneficiaries. You can also consider selling additional assets to the trust, without triggering capital gains tax.

Illinois Estate Tax

Following the changes to federal tax laws in January, 2011, Illinois enacted its own legislation setting the Illinois estate tax exemption at only $2 million per taxpayer. Consequently, it is very important to review your estate plan to be certain that it is structured to avoid not only Federal estate tax at the death of the first spouse to die, but also Illinois estate tax. It is also important that the asset holdings of spouses are structured to take advantage of each spouse's $2 million Illinois exemption amount. While spouses with assets of $5 million may escape Federal estate tax, if their plans are not properly structured, an Illinois estate tax of approximately $352,000 will be payable upon the survivor's death.

This article was prepared by Karen MacKay. For more information, we encourage you to contact any member of the Wealth & Succession Planning practice at 312/840-7000 or burkelaw.com.

Facebook's Billion Dollar Bust:
Lessons for Private Companies Seeking Investors

Facebook makes a fortune by coaxing users to post private information on a public website. But when it comes to its own affairs, Facebook stridently conceals financial and business information. Facebook's recent private offering has become a roadmap for any company that is selling stock and wishes to avoid public scrutiny, governmental fines, and investor liability.

What follows is a summary of the legal techniques that private companies can use for successful, inexpensive, rapid, private offerings of capital while avoiding administrative headaches.

The Frenzy to Finance Facebook

In early 2011, a story of another spectacular round of private financing for Facebook exploded on the pages of national newspapers. The Wall Street Journal and wire services reported that Facebook tried to raise about $2 billion, but sidestepped the months-long process of filing an initial public offering. The deal would involve a $500 million investment from Goldman Sachs and some of its partners and affiliates, amounting to a reported $1.5 billion. The investment would complement an earlier $500 million sale of stock to a Russian-based investment fund.

Craig McCrohon

Normally, internet or software companies would raise such vast sums through an initial public offering. Such an IPO for a newly "public" company would require that the company disclose sensitive details about its business and finances. After raising the money, the company would make public quarterly and annual financial statements; significant transactions become public record. Securities laws enacted about a decade ago impose newly public companies with additional accounting and bookkeeping procedures that add millions of dollars in expense. Therefore, the new crop of dot com stars are avoiding the public markets and the accompanying administrative headaches.

In less than two weeks following the spate of publicity surrounding the Facebook deal, the company retreated. It shifted the entire offering outside of the United States to avoid scrutiny and risk of liability for violating securities offering rules.

The following are among the rules that Facebook and any private company confront, as well as the legal techniques to overcome the obstacles to complete a successful, inexpensive, rapid, and private offering of capital.

Be Exclusive

It appears that Facebook limited its aborted offering to accredited investors only. These are investors that, among other things, have $1,000,000 in net worth (excluding their home), personal income greater than $200,000 annually, or combined annual income with the investor's spouse of $300,000. By limiting an offering to only such accredited shareholders, companies dodge a variety of disclosure and procedural rules that can easily derail an offering and provide a technical defect to the process that investors can exploit to demand their money back.

Go International

Facebook ultimately raised the money off-shore, using an exemption to securities rules that permit raising money outside the United States, but using the funds domestically. Known as "Regulation S", the rule outlines the procedures to raise funds in potentially huge amounts. As with most of the rules regarding stock and bond offerings, if companies attempt to be "cute", and create foreign entities to slyly evade the letter of the law, investors can punch through the trick and demand that the company return the money.

Get Small

Facebook tried to limit the number of shareholders to fewer than 500 to avoid triggering mandatory disclosures. Under the Federal securities statutes, companies with 500 or more shareholders, and with assets exceeding the statutory threshold, must disclose information periodically as if they were the largest company on the largest exchange. As Facebook tried to raise more than $1 billion, however, limiting the number of shareholders to less than 500 became a challenge. For smaller companies, especially those held by several generations of holders, the 500 shareholder number can present a genuine trap that must be avoided.

Whisper to Friends, Do Not Shout to Strangers

Another obstacle confronting Facebook was the publicity of its offering. For offerings to be exempt from the disclosure

Firm Promotes New Partners

The attorneys at Burke, Warren, MacKay & Serritella, P.C. are pleased to announce the promotion of Nora Couri and Michael Salemi to partner.

Nora Flaherty Couri is a litigator representing clients in disputes involving commercial lending, franchising, and shareholder issues. She also counsels not-for-profit and religious organizations on a wide range of issues spanning multiple disciplines including litigation, risk management, insurance, public relations, and mental health.

Nora Flaherty Couri

"Being made a partner at the firm is especially an honor to me because I started out here as a summer associate and have been working toward this goal for almost nine years," says Flaherty Couri. "The firm has given me the chance to grow as a lawyer, gaining important experience in and out of the courtroom."

Flaherty Couri received her B.A., with honors, from Marquette University in 1999 and was awarded her J.D., *cum laude*, from the University of Illinois College of Law in 2003. She was a summer associate at the firm in 2002.

Mike Salemi is a member of the firm's litigation and class action defense practices. He focuses on defending banks, mortgage lenders, title insurance companies, and related entities in consumer class actions brought in state and federal courts. Mr. Salemi has experience working with a diverse clientele, including insurers and reinsurers. His talents in these matters have been shown in courts throughout the United States.

Mike Salemi

"The class action group at Burke, Warren is a national practice serving some of the country's largest financial services companies," says Salemi. "It means a lot to me to be named a partner in this group."

Prior to joining the firm in 2008, Mr. Salemi practiced for over four years in the litigation department of Locke Lord Bissell & Liddell LLP (formerly Lord Bissell & Brook LLP). Mr. Salemi received his B.A. from the University of Wisconsin-Madison in 1995 and was awarded his J.D. from Loyola University Chicago School of Law, *magna cum laude*, in 2003. While at Loyola, Mr. Salemi served as the Executive Student Articles Editor for the Loyola University Chicago Law Journal.

Ms. Flaherty Couri may be contacted at 312/840-7069 or ncouri@burkelaw.com. Mr. Salemi may be contacted at 312/840-7112 or msalemi@burkelaw.com.

and filing rules applicable to jumbo public companies, firms cannot engage in a "public solicitation" for investors. No general advertisements, no appearances on Oprah, no web sites, no large-scale email blasts. Instead, companies raising funds must patiently contact persons they, or their investment banker, already know. The relationship could be just about anything — from coaching a soccer team to an occasional lunch companion. In the case of Facebook, the so-called private offering was reported by the New York Times, then the Wall Street Journal, and then John Stewart's monologue on Comedy Central. As a result of this gusher of publicity, Facebook risked a serious challenge to its private offering, being vulnerable, fairly or not, to the accusation that it publicly promoted the stock.

Beware the Shell Game

Facebook initially tried to sell stock to a single-purpose company that would pool money from dozens or hundreds of investors. Presumably, this would have permitted the company to dodge the limits on 500 investors. As scrutiny and criticism of this sleight of hand grew, Facebook retreated to an off-shore offering. Any private company should similarly be wary of such a short-cut around the limit on the number of investors. In fact, securities statutes, regulations and rulings consistently dismiss semi-clever methods to conceal non-qualified shareholders under the ruse of an investment pool. Some of these devices work, but usually only if there is a compelling independent reason for the structure. Otherwise, companies should look for other less risky techniques to avoid the burdens of public company stock offering requirements.

For more information on the Facebook deal or securities law in general, please contact Craig McCrohon at 312/840-7006 or cmccrohon@burkelaw.com.

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PREPARE TO RESOLVE CONTRACT DISPUTES BEFORE YOU SIGN

Too few business people know the full scope of the contracts they enter into, especially the "boiler plate", which often has provisions controlling where and how contract disputes are resolved. These are referred to as "pre-dispute resolution provisions" which are agreed to by contracting parties when a contract is first formed and before disputes arise. Common provisions include mandatory arbitration where parties agree to select one or more "neutrals" (typically retired judges or practicing attorneys) to serve as arbitrators to preside over a hearing where the parties present their case, and variants that can call for "mediation" first (e.g., voluntary conciliation), party-to-party discussions, and similar alternate dispute resolution commitments.

Pre-dispute resolution provisions are extremely important once a dispute arises. Too many business people give these provisions little consideration beforehand, only to realize, after the fact, that their ability to resolve issues is limited by the provisions. In a recent case, a distributor wanted to pursue statutory anti-trust claims against a supplier, only to discover it was prohibited from asserting that claim in federal court (where judges are particularly knowledgeable as to the law and such cases) because the underlying contract contained a broad arbitration provision. The lesson learned is that pre-dispute resolution provisions should be fully considered before entering into a contract.

While many business people believe that arbitration provisions are beneficial, arbitration is not always the speedy and inexpensive forum that many believe. Even though courts often sanction arbitration provisions and dismiss suits if the underlying contract (or even a related contract) contains a binding arbitration provision, many courts refuse to enforce such provisions, depending on the facts and circumstances. To the extent that arbitration is the preferred method of dispute resolution, the provisions should be given careful consideration, before contract execution, so the business understands exactly what it is bargaining for, and that what it bargained for is enforceable. There are other aspects of pre-dispute resolution provisions, such as jury waivers, forum-selection clauses, personal service waivers, choice of law provisions and/or consent to jurisdiction clauses, all of which can be important, both tactically and strategically.

Fred Mendelsohn

Jury waivers are of particular interest. A well-drafted jury waiver (where the contracting parties give up any right they have to a jury trial) can make a judicial forum a more favored venue for the resolution of a contract dispute, particularly because jury waivers eliminate much of the procedural and substantive challenges to arbitration provisions, and give parties more protection against runaway jury verdicts. By agreeing to have a court resolve a dispute without a jury, not only do the parties eliminate significant extra expense associated with a jury trial, but preserve the rules of procedure and the right to discovery. They also protect appellate rights, and ensure more predictability in the outcome of a dispute, as the trial is presided over and determined only by a judge who should determine the dispute based on the law and the facts, as opposed to the complicated decision-making process of a jury.

While not nearly as common in practice or in the literature, planning for disputes to be resolved by way of a bench trial (i.e., one presided over by a judge without a jury) is a viable alternative to pre-dispute mandatory arbitration, and should not be overlooked by contracting parties in pre-dispute resolution contract formation planning. A bench trial can be a meaningful alternative to arbitration if and when the relationship between contracting parties turns south and disputes develop.

For more information, please contact Fred Mendelsohn at fmendelsohn@burkelaw.com or 312/840-7004.