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

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BWM&S

FIRM FIGHTS FOR GM AND CHRYSLER DEALERS SEEKING REINSTATEMENT

Since General Motors and Chrysler collectively terminated over 3000 dealership franchises as part of their 2009 bankruptcies, over half of these dealers, and the families that own them, have been officially fighting back for reinstatement.

A significant number of dealers have chosen Burke, Warren to represent them as they fight for reinstatement. The firm will play a key role in upcoming arbitration hearings throughout the Midwest.

Legislation passed in December of last year allows terminated franchise holders to challenge their closures in arbitration. Based on the dealers' recent profitability and the length of time that the dealers had been in business, arbiters will determine whether franchises are to be reinstated or not — a simple thumbs up

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More than 3000 General Motors and Chrysler dealership franchises were terminated under an aggressive bankruptcy reorganization plan. After hearing countless tales of devastated families and communities, Congress passed legislation that allows terminated franchise holders to challenge their closures in arbitration. The firm is representing a significant number of dealers in the Midwest in upcoming arbitration hearings.

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MEDIATION VS. LITIGATION:

When to Turn Swords into Ploughshares or Vice Versa

BY JIM SERRITELLA

Mediation and other forms of alternative dispute resolution (ADR) play a critical role in bringing many disputes to successful or at least reasonable conclusions. In fact, studies show that nearly 90% of disputes in the United States settle before going to trial. Our firm has championed the ADR cause for many clients in hundreds of disputes. But even with all the advantages of ADR, some disputes are more appropriately addressed in litigation and even should go to trial.

At least four important types of cases lend themselves to litigation: a dispute with no middle ground for compromise, a case with parties who are firmly committed to different positions even if compromise is possible, a dispute with parties who believe one must be right and the other wrong, and a hostile situation with parties who care less about winning or losing than they do about having a public "say so."

The courts, of course, do not always resolve disputes "on the

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INSIDE THIS ISSUE:

MUNICIPAL LAW

Firm Assists Barrington Hills in Favorable Court Ruling

The firm's Doug Wambach, George Lynch and Susan Horner successfully represented the Village of Barrington Hills in a recent administrative review proceeding.

A resident of the Village was operating a commercial boarding facility on his property. The Village believed that the facility violated applicable zoning regulations and issued a cease and desist order. The resident appealed the matter to the Village Zoning Board of Appeals, which upheld the cease and desist order. The resident then sought review of the matter in the Circuit Court of Cook County.

Wambach presented the Village's case before the Village Zoning Board of Appeals; Lynch and Horner presented the case in the Circuit Court. The court agreed with the Village that the facility violated the Village's zoning code.

The firm is honored to serve as council to the Village of Barrington Hills.

For more information, contact Doug Wambach at 312/840-7019 / dwambach@burkelaw.com, George Lynch at 312/840-7008 / glynch@burkelaw.com, or Susan Horner at 312/840-7082 / shorner@burkelaw.com.

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Executive Leadership: Finding the Right Fit

Greg Carrott is a founder of Cavoure, LP, an executive search firm headquartered in Chicago. Greg has more than 20 years in search, and his articles have appeared in *Forbes* and the *Harvard Business Review*. The *Chicago Tribune* recently turned to Greg for an article exploring Lovie Smith's job security as head coach of the Chicago Bears. In this interview, Greg shares some of his insights and advice for businesses seeking new leadership.

In your recent* Forbes *article, you give the five essential steps for picking the right CEO. Are you oversimplifying this task?

Yes and no. Finding the right leader for your company is a complex process. Small differences between candidates can make the difference between success and failure. Companies may also have different strategies to increase shareholder value, so these rules should not be the final word. Still, following these guidelines is important.

Five Key Steps for Selecting a CEO

1. ***Know how the company can best create shareholder value.***
2. ***Examine strategies for development and choose one.***
3. ***Focus on "what to do," not "how to do it." Create a strategic vision.***
4. ***Try to pick a CEO from inside the company.***
5. ***Personality and compatibility with corporate culture should come last.***

You have been assigned the task of finding new leaders for many organizations including both public and private companies. What are some of the challenges in finding the right fit for a company?

Greg Carrott

Company leadership needs to know its strategy. Is it improving existing products and services? Or is it expanding through acquisition? There needs to be a consensus among all stakeholders. Also, the company needs to have clear expectations for a CEO. What type of role is he or she going to play? In what direction should the CEO take the company?

I believe that a potential CEO should have a "been there, done that" background. If a company is down in the dumps and needs help, they should hire a leader who has a history of revitalizing struggling businesses. In other words, the CEO should fit the strategy and the company's current direction.

Leadership is a quality that should not be mistaken for competence. Oftentimes companies may look within to find a CEO. While it is often a good idea to promote from within, you should also bear in mind a good executive may not necessarily become a good CEO. A stellar CFO, for example, may not make a good CEO because he or she lacks the strategic vision necessary for future development.

EXECUTIVE LEADERSHIP *Continued from page 2*

What are some of the biggest risks facing company boards in connection with their CEOs?

In my experience, many companies have had emergency situations in which the CEO is unable to perform his or her duties due to illness or death. This happens more often than you'd think. In privately held companies in which the brand equity is often tied up in the owner, losing that person can destroy a company. It is important to have a contingency plan in place for these types of companies.

Private companies, especially family owned, are often reluctant to bring in someone from the outside due to a fear of losing control. We hear horror stories of the havoc that outside leadership creates. It is important that private companies have a good understanding of the role that outside leadership is going to play and make their expectations and limits clear.

Tell us about the basic process of filling a position. How much time should this process take?

I'm a bit like George Clooney in "Up in the Air," though I have only five million frequent flyer miles. I travel for the opposite reason. Instead of firing people, I have the pleasure of helping clients hire people.

At any rate, the process takes about five months. We subscribe to the school of behavior-based interviewing, which means that we want people who have done it before. My company has an extensive database of potential leaders and we also utilize a vast variety of industry news and publications to find out more information about prospective CEOs. We then set up interviews with interested parties and present our selections to the company and its board to make a final selection.

We are experiencing one of the biggest business downturns in decades and everyone is looking for "green shoots" of economic growth. Is an uptick in activity in your business any kind of leading economic indicator? What are you seeing out there?

After many months without much activity, we have seen an uptick in search demand. We have seen this in the past and typically this has been an indicator of a better business environment ahead. Given the severity of this recession, however, what we are seeing could also be the equivalent of restocking shelves after inventory was allowed to get very low. Time will tell of course, and we are happy to see a spike in demand.

Do you have any advice for companies who may be seeking new leadership in the months ahead?

Since it is unlikely that the current market is going to get away from you, company stakeholders should press hard and get the best CEO possible. Perfection may be elusive, but finding an excellent fit between a company and its CEO is well worth the extra effort.

Finally, do you still believe, as reported in the* Chicago Tribune *last month, that the Bears will not be seeking a new head coach in the foreseeable future?

Yes. As I told the *Tribune's* business columnist, professional sports teams do not necessarily have to win to maximize earnings — they just have to be good enough to keep the seats filled. That, apparently, is not a problem for the Bears, regardless of their performance on the field or place in the standings. Unless and until that changes — by, say, the team's other "stakeholders," the fans, voting with their feet — the Bears' decision to stick with Smith is completely rational, at least from a business standpoint.

For more information, please contact Jay Dobrutsky at jdobrutsky@burkelaw.com or 312/840-7089.

The UIC Family Business Council Focuses on Succession Planning at April Event

Statistics show that over 65% of all first generation businesses don't survive the transition to the second generation and only 7% survive into the third. Just 3% of businesses are lucky enough to make it to the fourth generation.

Faced with these overwhelming odds, the University of Illinois at Chicago's Family Business Council (FBC) will be giving businesses the tools they need to build an enduring legacy. At the 2010 FBC "Family Business Day" on Wednesday, April 21, several presenters and experts — including attorneys from BWM&S — will discuss best practices and strategies on transferring business to future generations. The keynote speaker will be Jim Oberweiss of Oberweiss Dairy.

The FBC is the largest alliance of family and closely-held business in the Chicagoland area. Over 70 local businesses are active members. In 2009, Burke, Warren became FBC's strategic law partner.

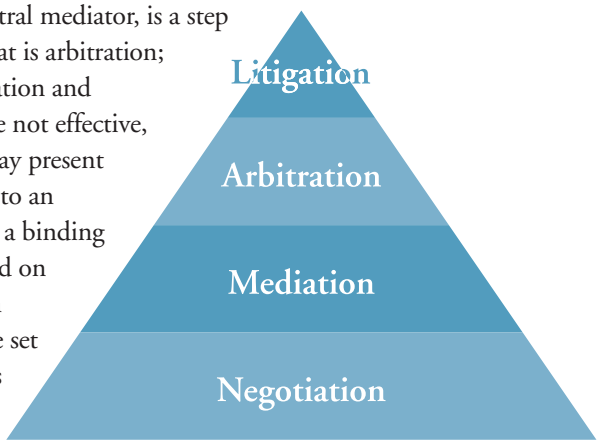
For more information on this event and the FBC, please contact Jeff Warren at 312/840-7020 / jwarren@burkelaw.com or Jonathan Michael at 312/840-7049 / jmichael@burkelaw.com.

MEDITATION VS. LITIGATION *Continued from page 1*

Jim Serritella

merits" and determine who was right and who was wrong. The court may resolve the case on a technicality or other issue that has nothing to do with the merits. Moreover, an important witness may be unavailable, or freeze up while trying to testify, or even die before trial. The lawyers may not be evenly matched, the judge may have a bad day, or the jury may not fully understand the case before it. A party may simply run out of money or tire of an arduous legal process. In many situations, litigation may end without the real dispute being resolved or even addressed. Still, litigation may be the right choice because there are no practical alternatives.

The methods for dispute resolution can be analogized to the food pyramid. At the bottom is negotiation, the measure that should be used for most disputes. Mediation, negotiation enhanced by the help of a neutral mediator, is a step up. Above that is arbitration; when negotiation and mediation are not effective, the parties may present their dispute to an arbitrator for a binding decision based on rules that can sometimes be set by the parties themselves. Litigation in the public courts, subject to all the legal requirements, is perched at the very top. Like sweets in the food pyramid, litigation must be chosen carefully and sparingly. It is costly, time-consuming and aggravating — if you win. It is all that and more if you lose.



In short, a variety of methods from negotiation to litigation are appropriate for the circumstances of different disputes. In fact, more than one method may be appropriate for a particular claim at different stages of the claim. Litigation is the method of necessity in situations when no practical alternatives exist to help the parties achieve their objectives. The skillful lawyer recommends the method or methods that show promise of advancing the client's objectives.

The tipping point

Nearly all disputes begin with some form of ADR. When these efforts are ineffective, or at least not effective enough, disputes head to court.

So when exactly do disputes reach the "tipping point" where going to trial takes precedence over ADR, specifically mediation?

Jim Serritella is a 1971 graduate of the University of Chicago Law School. During the first part of his career he worked as a litigator for the trial and appellate levels as well as before public agencies. Later he moved into other areas of practice and received mediation training from the National Health Lawyers Association and advanced mediation training from the CPR Institute for Conflict Prevention and Resolution and the Program on Negotiation at Harvard University. Jim has worked as a consultant on alternative dispute resolution, a party representative in mediations and a mediator for most of his legal career. Jim can be reached at 312/840-7040 or jserritella@burkelaw.com.

We asked several members of the firm's litigation practice to share their views. The collective experience of members of the practice ranges from serving the litigation needs of Fortune 100 clients to private company entrepreneurs and not-for-profit organizations. Please note that the individuals' views of ADR are their own.

Steve Voris

Steve Voris

The question: "When do you abandon mediation and proceed to trial?" must be preceded by "do you mediate at all?" You mediate to obtain an independent assessment of your client's case; to learn your opponent's theories or spin; and to explore whether the litigation can be settled without further time and expense on economically acceptable terms. You abandon mediation and proceed to trial if the mediator's assessment is distinctly favorable for your client; your opponent's theories or spin pose a measurably reduced risk in a trial; and the opposing side's offer to settle is unacceptable. The analysis is never this simple, but these points represent the basic boundaries.

Steve Voris is a partner in the firm's Litigation practice and has litigated cases in state and federal trial courts, as well as in the appellate and supreme courts. His recent experience includes a jury trial in the State Court of Oklahoma as well as several arbitrations.

Susan Horner

Susan Horner

There is a saying among prosecutors, "the People always answer ready"— meaning ready for trial. In other words, while prepared to discuss a plea bargain, the People are also ready to try the case. The same should be true for a party in mediation. A client opting for mediation should know their threshold: what am I willing to offer/accept to resolve this dispute short of trial? That calculus is informed by a variety of economic and non-economic factors, and may change during the course litigation.

But at the end of the day, if the parties cannot agree, the client and their counsel must be prepared to answer ready.

Susan Horner is a partner in the firm's Religious & Not-for-Profit Organizations and Litigation groups. Before joining the firm, Ms. Horner served as a prosecutor in the felony trial division of the Cook County State's Attorneys Office. She has tried more than 25 jury trials and litigated hundreds of bench trials. In addition, Ms. Horner has handled appellate matters and has argued before the Illinois Court of Appeals.

Marty LaPointe

Marty LaPointe

We focus on mitigating risk for employers. Whether a litigation matter can be resolved is dependent upon the facts, the law, and the expectations of the plaintiff, the plaintiff's lawyers, and our clients.

From a defense perspective, immediately following the plaintiff's deposition is often the high water mark in determining whether an employment case can be settled. Any case with unreasonable plaintiff demands and baseless claims is likely going to trial. Even so, a trial involves substantial risk for employers. While jurors may assume that the employer has done something wrong, convincing them otherwise depends upon the facts and an honest straightforward approach by its lawyers and witnesses.

Marty LaPointe is chair of the firm's Labor & Employment practice. He concentrates his practice on the defense of employers. With more than 20 years experience, Marty has represented clients in 12 trials and has prevailed in every one.

Victoria Collado

Victoria Collado

With class action, it's a different calculus. Plaintiff lawyers purport to be working on behalf of a class rather than one individual. Because a settlement would not be binding on any purported class member without a court approving the settlement, settling wouldn't happen until after plaintiff has filed the class action. Once the complaint is filed, you're always looking for settlement options while always preparing for trial.

Victoria Collado is a partner in the firm's Litigation and Class Action Defense practices. She joined the firm in 2009 and previously practiced at Mayer Brown LLP in Chicago. She was recently involved in an arbitration before the London Court of International Arbitrations (LCIA) involving a dispute between a manufacturer and a distributor of pharmaceutical products that resulted in a multi-million euro award for the claimant.

Jay Dobrutsky

Jay Dobrutsky

There's a standard provision in settlement agreements stating that the parties are settling "solely to buy their peace." It's boilerplate, but it provides an important insight into what causes parties to mediate or continue litigating. A party is willing to mediate a claim if he or she can never be at peace with the risk of an unknown verdict, as well as the many costs of ongoing litigation: not just legal fees, but also the diversion of human resources, invasive discovery (that may reveal skeletons in the closet), time-consuming depositions, expert witness and consultant fees, bad press, and being forced to continue to live with a painful experience. On the other hand, if a party will never rest easy wondering whether it paid too much or accepted too little to settle, then it must continue to litigate. It is ultimately a question of which path will buy the most peace. And, sometimes, knowing that you got — or at least tried to get – every last ounce of vindication possible is the only thing that will allow a litigant to be at peace with himself.

Jay Dobrutsky is a partner in the firm's Litigation practice and Religious & Not-for-Profit Services group. He also represents clients in employment matters, real estate and construction claims, and other business and commercial disputes. Mr. Dobrutsky has tried cases in both state and federal courts, and has represented clients in arbitrations, mediations, and before appellate courts.

Gerry Ring

Gerry Ring

Courtrooms are graveyards for egos. Abraham Lincoln cautioned: "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses and waste of time." Lincoln was a trial lawyer before he became President, and a very good one. He was not afraid to try a case, but having done so, as have the litigators at Burke, Warren, MacKay & Serritella, he understood how unpredictable and costly trial can be. Yet, sometimes you have no choice but to do what you have trained to do because your opponent is unreasonable. As President John F. Kennedy said, you "should not negotiate out of fear, but never fear to negotiate."

Gerry Ring chairs the firm's Litigation practice. With over 20 years of experience, Gerry focuses on commercial and business litigation, will and trusts litigation, real estate litigation and bankruptcy matters on behalf of creditors. Gerry has represented clients in mediation and arbitration and before judges and juries.

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MEDITATION VS. LITIGATION *Continued from page 5*

George Lynch

George Lynch

As a litigator, would I or do I recommend to clients that they include an ADR provision in contracts, agreements, etc. with third parties? My answer is no. While I understand the purported time and money savings alleged to be provided by ADR, I have found that the time restrictions and the restrictions on discovery imposed under the ADR rules are counter productive. I believe when a matter is ripe for either ADR or litigation, the options provided by litigation are much more beneficial and usually result in a settlement of the matter.

George Lynch has been a partner in the firm's litigation practice since 1981. Prior to that, he was a prosecutor with the Cook County State's Attorney's Office. He has represented numerous clients in civil, bench and jury trials and also handled numerous criminal trials, both bench and jury on behalf of the People of the State of Illinois.

Jim Geoly

Jim Geoly

I am a firm believer in the mediation process for a number of reasons. First, it is far less costly than trial. Second, it allows clients to liquidate a risk under controlled circumstances rather than to gamble. Third, it is (or can be) a confidential process that allows for the vetting of sensitive information for settlement purposes without exposing that information to the public. For parties that expect to continue to do business with each other, it offers the added benefit of avoiding some of the hostility inherent in any litigation. For these reasons, I don't have any arbitrary rule about cutting off a mediation -- so long as it serves the client's interests, it is worth pursuing. Even on the eve of trial, the parties may find that an agreement on a certain outcome is preferable to the risks of trial. The real question is whether there is anything to be gained by allowing a mediator to explore settlement. So long as you do your work and really know your case, there is no downside to this.

Jim Geoly is a partner in the firm's Litigation practice and Religions & Not-for-Profit Services group. He has broad experience representing religious, social services, health care and commercial organizations. He has successfully litigated in state and federal courts at every level. He has extensive appellate experience and has filed numerous briefs in the Supreme Court. Mr. Geoly has litigated a variety of issues, concentrating on constitutional law, religious liberty, not-for-profit corporate control, professional and clergy misconduct, insurance coverage and privilege and confidentiality.

Ed Lesiak

Ed Lesniak

One of the things I like about the Firm's creditors' rights practice is that we send litigators to bankruptcy court, not just bankruptcy attorneys. Since ADR is not readily available in the bankruptcy courts, it's an advantage to have litigators involved rather than just bankruptcy lawyers if we have to go to trial. That having been said, the expense and disruption to a client's business that occurs in the litigation process can easily make a win seem like a loss. So in the absence of ADR in bankruptcy courts, we have to stay particularly attuned to and explore any opportunities to reach common ground and resolve matters short of trial.

Ed Lesniak is a partner in and former chair of the firm's Litigation practice. He concentrates his practice on creditors' rights, bankruptcy and banking issues. He has represented numerous creditor and other no-debtor clients in bankruptcy court.

Fred Mendelsohn

Fred Mendelsohn

In my view, mediation, or any other ADR procedure, are simply tools in the "tool kit" of an experienced litigator that should be used when needed, just as any other tool in one's tool kit. In a recent case, I rejected the advances of the defendant to resolve a case short of court action, as my objectives (consistent with those of the client) were to shut-down a certain line of business of the defendant (improperly selling the goods of the client) and to obtain a million dollar judgment — both of which were accomplished but would not have been in mediation or through some ADR procedure. So, ADR was the wrong tool for that case. The views of all of the litigators show, in my view, that mediation, like any ADR remedy, is part of a litigator's strategy, to be worked into the game plan depending on all of the facts and circumstances.

Fred Mendelsohn is a partner in the firm's Litigation and Labor & Employment practice groups. He has been trying cases for two decades. His first 20 plus trials were as an Assistant State's Attorney in the Cook County State's Attorney's Financial Crimes Unit. Recent experience includes successfully arbitrating labor disputes for a nationally recognized insurance company, as well as obtaining a wholly favorable jury verdict for the same client in Illinois state court. He has taught trial advocacy at the National Institute for Trial Advocacy for the past seven years.

Loose Lips Sink Ships: Tips for Testing the Market for Capital

Businesses confront a common dilemma when launching a program to sell stock or debt securities. If they wait for their lawyers to draft the perfect 100-page document that discloses everything and complies perfectly with securities rules, investors will be long gone. If they slap together a few slides and aggressively promote the stock to strangers, they have exposed themselves to significant personal liability should the company fail to deliver the promised returns.

Craig McCrohon

Companies need a middle way — a solution to test the waters for investors without triggering onerous disclosure requirements and liability. While the only bullet-proof solution is the hefty disclaimer-laden offering memorandum, businesses can limit their liability while testing the waters by honoring a few simple rules. Thus, they can use a short business summary, a deck of PowerPoint slides and a brief speech to a private group without unduly exposing themselves to claims of misrepresentation and improper securities sales.

1. Keep the Presentation Simple

For companies testing the waters before a private offering, short and simple is best. This means a business plan of about ten pages, or a general PowerPoint deck of less than 20 slides. Financial information should be general, but not misleading. Projections should be as tight as possible, preferably no more than three years. Businesses often blurt their secrets — whether a secret-sauce process or a business arrangement. Resist the temptation. This is only a preliminary presentation. If the investors want more information, you can either give them a full offering prospectus later or permit them to review the books and records of the company as part of a formal due diligence investigation.

2. Stick to the Anchors

Just as shopping centers have department stores as anchor tenants, most private offerings have two or three major purchasers as anchor investors. When discussing the business plan with potential investors, it is safer to skip the friends-of-friends-of-friends. Companies should focus on serious investors who would purchase a significant portion of the offering. The smaller investors can wait until the company has completed a more formal private offering memorandum available for broader distribution. Also, by sticking with anchors, businesses will less likely be speaking to potential competitors or toxic investors on the prowl for an unlucky company to sue. Firms selling securities also have the luxury of negotiating the basic terms with serious anchor investors. Once these terms are finalized, the company will have far more confidence in the structure of the offering and the chances that they will sell the shares needed.

3. Manage Paper and Protect Emails

Disgruntled investors seeking reimbursement often assert that the company selling the stock aggressively solicited many, many people. This triggers a variety of state and Federal laws that expose the persons selling securities to liability. Companies should undertake a course of conduct that creates a clear record of precision and care in disseminating materials. These precautions protect against claims that the issuer of securities effectively "advertised" the offering and should be subject to heightened standards of disclosure. Therefore, companies should (a) password protect electronic copies of documents, (b) stamp documents as confidential (preferably in color), (c) require confidentiality agreements from the recipients, (d) number the copies of documents distributed, (e) warn recipients against re-distribution, and (f) require that only the company or its designated advisor may distribute any information.

4. Aim to Disclaim

Companies should use some of the standard disclaimers for preliminary offering materials. These include disclaimers concerning (a) the use of "forward-looking statements" such as projections, (b) the qualification of the materials by a definitive offering memorandum, (c) the incompleteness of the information, (d) the absence of a formal offer to sell the securities, (e) the absence of any intended registration of the securities under state or Federal law, and (f) the high risk of the company and the chance that any purchaser of the stock could lose all of the purchaser's money.

5. Be Exclusive

Companies often present preliminary business plans to small groups of investors at invitation-only meetings, whether at law firms or in hotel suites. Businesses should confirm with the organizers that the persons have been invited and have a pre-existing relationship with the organizer. Open-call meetings, especially those posted on the internet, mass mailings or newsletters, create the appearance that the company was indiscriminately "advertising" the opportunity to any stranger who would listen. Instead, companies should stick to private and well-controlled meetings.

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REAL ESTATE LAW

Many Developers and Investors Overlook FHA Approval Benefits

Aimed at revitalizing a sagging housing market, recent Federal Housing Administration (FHA) regulations benefit condominium developers along with investors, lenders, owners and buyers.

FHA approval is essentially a guarantee of easier buyer qualification for loans on properties. The government's backing makes lenders more willing to loan to borrowers who might not otherwise qualify for conventional mortgages.

With a bigger pool of potential buyers, developers have more opportunity to sell remaining units. For many developers, FHA approval is a marketing tool since it helps their condos stand out from other properties. However, due to the perceived high cost of approval, developers are not taking advantage of it.

The firm's Joseph E. von Meier has significant experience in obtaining FHA approval for condominium developments. "In this market, every opportunity should be explored, and FHA approval is one where developers can reap important benefits," von Meier explains.

Two important aspects of the 2010 regulations should be highlighted. Federal regulations no longer permit spot approval — loans granted on a unit-by-unit basis — and now require blanket approval for the entire development project for any transaction to be FHA approved. Secondly, the FHA can guarantee loans for up to 96.5 percent of the property value, which means buyers can purchase property with down payments as low as 3.5 percent of the property value.

Below is a list of the main requirements to qualify for FHA approval.

1. **50 percent of the total units in the project must be owner occupied (the 50 percent threshold is not required under the Temporary Guidelines in effect through 12/31/10).**

2. **50 percent of the total units in the project must be presold (only 30 percent is required under the Temporary Guidelines in effect through 12/31/10).**

3. **No single investor may own more than 10 percent of the total units in the project.**

4. **No more than 30 percent of the total units can have FHA approved loans at any one time (this is increased to 50 percent under the under the Temporary Guidelines in effect through 12/31/10).**

For more information about FHA approval, contact Joe von Meier at jvonmeier@burkelaw.com or 312/840-7063.

COMMUNITY INVOLVEMENT

Wanroy Joins Joffrey Ballet Circle Associates Board

Rachel Wanroy

Growing up in ballet shoes and dance studios, it is only natural that Burke, Warren's Rachel D. Wanroy, a member of the firm's Real Estate Group, has joined the Joffrey Ballet Circle Associates.

The Joffrey Ballet Circle Associates is an auxiliary board for Chicago's young professionals with a passion for dance. The members, who are in their twenties and thirties, support the Joffrey Ballet by spreading awareness and interest about the company.

Since joining the Circle Associates in 2009, Wanroy has been a part of planning social events such as a closing night party for the dancers and fundraising events like last year's Costume Vault Sale. In addition to supporting the Joffrey, Wanroy has also gotten the opportunity to sit in on rehearsals and performance previews.

"Sitting in on rehearsals is an amazing experience because it is so different from watching a polished final performance," Wanroy explains. "You get to be a fly on the wall and watch the creative process unfold and evolve."

For more information about the Joffrey Ballet, please contact Rachel D. Wanroy at 312/840-7079 or rwanroy@burkelaw.com.

Firm Names Two New Partners

Burke, Warren, MacKay & Serritella, P.C. is pleased to announce the promotion of Kimberly A. Cloud and Joseph E. von Meier to partner.

Ms. Cloud is a member of the firm's Litigation group and has represented individuals and businesses in commercial disputes, including disputes involving the automobile industry and commercial real estate and leasing matters. Ms. Cloud represents clients in state and federal court, before administrative agencies, and in binding arbitrations through the American Arbitration Association.

Kim Cloud

"It is a great honor to have achieved this milestone in my professional career," she said. "BWMS has provided me with great opportunities, and I am thankful to the attorneys at BWMS who have mentored me along the way."

Ms. Cloud was awarded her J.D. degree from Indiana University School of Law. She was a firm summer associate in 2001.

For more information, please contact Kimberly A. Cloud at kcloud@burkelaw.com or 312/840-7052.

Mr. von Meier is a member of the firm's Real Estate group and focuses his practice on commercial real estate matters. He represents multiple Chicago-based and national residential developers in all aspects of single-family, condominium and apartment building transactions. He also represents tenants and landlords in industrial, office and retail lease negotiations, as well as large real estate holders in acquisition and disposition of real estate inventory.

Joe von Meier

Mr. von Meier also represents industrial property developers in land use and zoning issues. He assists in the firm's representation of an Illinois municipality as corporate counsel to the Zoning Board of Appeals in areas that include reviewing petitions for special use permits and zoning code variances and general enforcement of their zoning and building code. Mr. von Meier was recognized in the 2009 and 2010 Editions of *Illinois Super Lawyer's* magazine as a "Rising Star" in Real Estate law.

"As a summer associate I became aware of the firm's legal talent, challenging work assignments and sophisticated client base," said Mr. von Meier. "But what really sold me was the professionalism and camaraderie that permeated the office. I knew then that Burke, Warren offered the type of career that I was hoping for, and I could not be more happy with my advancement to partner."

Mr. von Meier was awarded his J.D. from the University of Wisconsin, Madison, and he was a firm summer associate in 2001.

For more information, please contact Joe von Meier at jvonmeier@burkelaw.com or 312/840-7063.

BWM&S

GM AND CHRYSLER DEALERS *Continued from page 1*

Bill Kelly

or thumbs down. More than 1500 terminated dealers have filed to enter arbitration, which must be completed by mid-June of this year.

"In many cases, the dealer's very existence depends on a favorable outcome at the arbitration," the firm's Ira M. Levin explains. "Some of the terminated dealers had been in business for decades and through generations of family members, and others had actually invested millions of dollars in state-of-the-art facilities with the encouragement of General Motors or Chrysler, only to be told they were not in their future plans."

Ira Levin

Bill Kelly and Ira Levin, leaders of the firm's automobile franchise practice, are joined by Christina Nelson, Alex Marks, Kim Cloud and Nora Couri representing dealers in Illinois, Indiana, Michigan and Iowa. Arbitrations will take place in the states where dealers are located.

For more information, please contact Bill Kelly at wkelly@burkelaw.com and 312/840-7061 or Ira Levin at ilevin@burkelaw.com and 312/840-7065.

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

22nd Floor
330 N. Wabash Avenue
Chicago IL 60611-3607

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LOOSE LIPS

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6. Leave "Don't Ask Don't Tell" to the Army: Disclose Significant Problems

With company officers pressured to raise funds, discussing a flaw with the business plan or a past failure is as painful as announcing an embarrassing personal medical condition. Rather than avoid the problem, companies should address the situation and solution directly. For example, companies often gloss over losses, a negative net worth or lack of an operating history. Alternatively, the critical piece of intellectual property might be licensed from a third party. This will arise sooner or later — might as well have a convincing story up front. Companies need not give all the confidential details — names, dates and terms — but should be open about the general situation.

7. Beware the Unregistered Finder

Companies might use the services of an agent to find investors. At times, firms might use an agent that is not a registered broker dealer with the Securities Exchange Commission or has not passed the necessary examinations required for securities licenses. When unregistered finders represent a company and distribute the preliminary business plans, the entity issuing the securities might lose the benefits of exemptions from registration. The result — investors receive an easy excuse to demand their money back, with interest. It's better for the company itself to simply promote the securities or use a registered broker-dealer.

8. Walk Away Empty Handed

Nothing suggests that a company was selling securities more than taking a check or having a prospect sign a subscription agreement. If the firm is still testing the waters and feeling out potential investors with preliminary business plan presentations, then closing the sale should come later. If a company would like to take the check, it will not only need a full private offering memorandum, but the potential investor should receive the document with enough time to read the memorandum and ask follow up questions of the management. Acceptance of payment should await formal delivery of an offering memorandum or purchase agreement with robust disclosure schedules.

9. Stay Close to Home

Each state has its own set of securities laws. While state rules are generally consistent regarding testing of the waters and preliminary disclosures, variations are possible. If the company solicits investors outside of their home state, the firm should review the securities requirements of the other state. Places such as California, Texas and Florida pose particular problems for out-of-state firms selling their stock. A company should double-check these rules to avoid accidentally triggering claims that it was advertising or selling securities.

10. Other Than Death and Taxes, Nothing is Certain

Firms eager to sell stock commonly brag that they can guaranty investors a return on investment. In addition, companies assert that they "will" achieve a particular milestone, without qualification. These overconfident assertions of certainty are the cyanide of securities offerings. Investors time and again file complaints with the government or courts citing such promises. Definitive statements are like poison to an effective defense that a company never promised anything. Better to use softer words such as "anticipates" or "is likely" or "may". Unless it is death or taxes, companies should guaranty practically nothing.

For more information, contact Craig McCrohon at cmccrohon@burkelaw.com or 312/840-7006.