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FIRM'S LEVIN NEGOTIATES END TO HIGH-RISE WINDOW WASHERS' STRIKE

Firm client Corporate Cleaning Services ("CCS"), the largest high rise window washing company in Chicago, represented by Firm partner Ira M. Levin, and the Window Cleaners Union (SEIU Local 1) recently reached



Ira Levin

an agreement on a new five-year collective bargaining agreement.

About 260 union window washers represented by the Union were covered by a three-year contract that expired on June 30, 2018. On July 2, 2018, the Union members went on strike. The strike ended on July 27, 2018.

"We were able to achieve an agreement that is beneficial to CCS, their employees and their customers,"

said Levin, who was successful in negotiating a five-year deal, instead of the traditional three-year deal, with the Union.

"Unfortunately, the Union chose to authorize a strike creating

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FIRM ATTORNEYS ATTEND "STRIKE OUT CANCER" FUNDRAISER



(From left) The Firm's Brad Ader, Shannon Lund, Joanne Casciaro, Aaron Stanton, Danielle Gould, Rachel Yarch and Nick Gowen with Cubs All-Star First Baseman Anthony Rizzo (rear) at the @properties Strike Out Cancer fundraiser held on June 7th at Architectural Artifacts in the west loop. Together with The Anthony Rizzo Family Foundation, founded by Rizzo, @gives back, the charity arm of @properties, hosted the event to raise money for cancer research and to provide support to children and their families battling the disease. BWS

NOT-FOR-PROFIT

BOOTCAMP FOR NOT-FOR-PROFIT DIRECTORS

Inaugural program prepares professionals for their new roles as directors

You've been elected to serve on a not-for-profit board — NOW WHAT?!

Many generations of seasoned professionals in Chicago and across the country have ventured beyond their working lives to share their energy, ideas, and expertise to advance the work of organizations dedicated to serving the greater good. Not-for-profit organizations address a broad array of public

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PARTNERS KENTRA AND GAMRATH JOIN BURKE, WARREN, BOOSTING FIRM'S LITIGATION AND REAL ESTATE CAPACITIES

The Firm welcomes Christopher E. Kentra and Robert L. Gamrath III, who recently joined the Firm as partners.

Chris Kentra's trial and litigation practice focuses on complex commercial



Christopher Kentra

Kentra was a partner at Philadelphia-based Cozen O'Connor. Gamrath was a partner at Milwaukee-based Quarles & Brady.

Kentra has more than 25 years of experience serving public and private clients, experience that includes the resolution of contract, fraud, and breach of fiduciary duty claims, defense of

actions against condominium and real estate developers, and disputes involving restrictive covenants. He has considerable experience counseling business owners, managers, and entrepreneurs on matters that include new venture formation and acquisitions, as well as taking action to protect trade secrets and related matters.

On moving his practice to the Firm, Kentra said, "Burke, Warren was a logical choice for me and my clients, given its outstanding reputation in Chicago and the breadth of its comprehensive practice groups. The Firm's recent aggressive recruitment of seasoned attorneys positions it for substantial growth and success."


Rob Gamrath serves the real estate and land use needs of corporate clients, institutional owners and operators of real estate, lenders, developers, builders, and real estate entrepreneurs. His clients are engaged in retail, industrial and warehousing, office, hotel and hospitality, insurance, private equity, banking, senior housing, health care, data centers, and higher education. He frequently



Robert Gamrath III

advises clients on zoning, subdivision and annexation rights, public incentives, development and construction contracts, public-private partnerships, condemnation, secured lending, and the purchase and sale of property.

"I have invested a couple of decades to building a diverse commercial real estate and land use practice and I have been aware of the quality and depth of the real estate team at Burke, Warren for many years," says Gamrath. "When the opportunity arose to join Burke, Warren, it was an easy choice that has provided immediate benefits to my clients."

Chris Kentra can be reached at 312/840-7112 or ckentra@burkelaw.com and Rob Gamrath can be reached at 312/840-7064 or rgamrath@burkelaw.com. 


APPELLATE LAW

SUSAN HORNER SELECTED AS A DIRECTOR OF THE APPELLATE LAWYERS ASSOCIATION

Burke, Warren, MacKay & Serritella partner Susan Horner has been selected by the Appellate Lawyers Association (ALA) to serve on its board of directors. Formed 50 years ago, the ALA is an association of more than 400 lawyers across the state of Illinois who practice in the courts of review, and of judges who serve on those courts.

"It's an honor to be selected to serve on the board of the ALA," Horner said. "I'm excited to help advance the ALA's mission to promote communications between appellate judges and the bar, and to enhance the administration of justice in the state and federal reviewing courts throughout Illinois."

Susan also co-chairs the ALA's Committee for the Guide to Illinois Civil Appellate Procedure and serves on the ALA's Rules Committee. She has been involved with the ALA since 2011.

Susan is the chair and founder of Burke, Warren, MacKay & Serritella's Appellate group. She is a graduate of Notre Dame Law School. Susan can be reached at 312/840-7082 or shorner@burkelaw.com. 



Susan Horner

FIRM'S SCHUSTER, VANDERPLOEG COMPLETE CONTESTED CONDO DECONVERSION

The Firm's recent success in completing a commercial condominium deconversion in the face of opposition illustrates the importance of experienced real estate lawyers working in collaboration with skillful litigators to help real estate developers and investors unlock value without picking unnecessary fights.



Steve Schuster

The client engaged real estate partner Steve Schuster to develop and implement a plan for acquiring and deconverting a multi-unit commercial condominium development that was struggling to attract individual buyers. Most units remained unpurchased and unbuilt years after the building's completion, and the client recognized that its value could best be realized by purchasing the property and deconverting the units from condominiums to rental units.



Eric VanderPloeg

In the current real estate market, condominium deconversion offers lucrative opportunities for developers and unit owners alike. Typically, a deconversion under Sections 15 and 16 of the Illinois Condominium Property Act involves a single buyer first acquiring the entire property directly from the condominium association, often allowing unit owners to obtain above-market values in the

process. Approval of 75 percent of unit owners is required for an offer to be accepted and the sale consummated. However, the process can be derailed by unit owners who refuse to participate, even when the sale has been lawfully approved by fellow unit owners.

In this particular transaction, Schuster's experience allowed him to identify potential obstacles the client faced to successfully purchasing and deconverting the property. Armed with that analysis, Schuster was able to craft an approach that put the client in the strongest position to counter anticipated resistance from commercial unit owners opposing the sale.


Having foreseen the dispute, Schuster also sought the assistance of firm litigator Eric VanderPloeg early in the transaction to analyze anticipated objections from a dispute perspective. Instead of running into court headfirst, Schuster

Schuster and VanderPloeg helped the client thoughtfully adjust its strategy and carry out the sale in a way that could withstand challenges from owners who opposed it.

and VanderPloeg helped the client thoughtfully adjust its strategy and carry out the sale in a way that could withstand challenges from owners who opposed it.

When litigation finally ensued, the approach the client had taken allowed VanderPloeg to obtain a favorable court ruling in the early stages of the litigation, avoiding a protracted—and even more costly—fight that would have drained value and perhaps scuttled the deconversion entirely.

“Condominium deconversions have been making headlines lately along with issues arising from holdout owners,” said Schuster. “This outcome was the result of a client who invested the time to team with Eric and me. We crafted a strategy that fit these circumstances. We stayed with our plan, allowing our team to see things through to a successful conclusion.”


Steve Schuster can be reached at 312/840-7113 or sschuster@burkelaw.com. Eric VanderPloeg can be reached at 312/840-7129 or evanderploeg@burkelaw.com. 

LEVIN

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unreasonable expectations among its members.” Although the Union held several rallies and press conferences at City Hall, Levin said that CCS remained firm in its position, and, ultimately, “the deal we offered before the strike was nearly identical to the deal eventually reached.”

Under the new five-year agreement, window cleaners will receive a wage increase. In addition, among other improved benefits, CCS increased the amount it will pay for its portion of employees' health insurance and life insurance costs.

Levin was assisted in the negotiations by Firm associate Elizabeth Pall. He can be reached at 312/840-7065 or ilevin@burkelaw.com. Liz Pall can be reached at 312/840-7099 or epall@burkelaw.com. 



REAL ESTATE GROUP HOSTS 4TH ANNUAL ARCHITECTURE TOUR

The Firm's Doug Wambach discusses the London Guarantee Building (left), currently occupied by the LondonHouse Chicago Hotel, on the corner of Wacker Drive and Michigan Avenue as part of the Firm's 4th Annual Chicago Architecture Tour. On July 17, Doug led a midday walking tour to view Chicago landmarks. This year's tour focused on effects of Chicago's Zoning Code on the city's architecture. 

FIRM WELCOMES NEW ASSOCIATES

Burke, Warren, MacKay & Serritella welcomes associates Breanne Vaclavik and Pamela Gros.

Breanne Vaclavik is an associate in the Firm's Corporate and Real Estate practices.



Breanne Vaclavik

corporate and business transactions. She also advises clients on commercial and multi-family real estate leasing, sales


and loan transactions. Breanne earned her B.A. from University of Michigan in 2010 and her J.D. and Health Law Certificate from DePaul University College of Law in 2014. She can be reached at 312/840-7042 or bvaclavik@burkelaw.com.

Pamela Gros is an associate in the Firm's Corporate and Real Estate practices.

Pamela focuses her practice on domestic and international M&A, general corporate and business transactions. She has substantial experience in commercial real estate transactions, including leasing, purchases, sales and retail developments. Pamela earned her B.A. from Loyola University Chicago in 2009, her J.D. from The John Marshall Law School in 2014 and her LL.M. in



Pamela Gros

International Trade and Business with a Certificate of Concentration in International Corporate and Finance Law from The John Marshall Law School in 2015. She can be reached at 312/840-7107 or pgros@burkelaw.com. 

RECENT MINISTERIAL EXCEPTION DECISION INVOLVED AN INTERESTING TWIST

The recent decision issued by Judge Edmund Chang of the U.S. District Court for the Northern District of Illinois granted summary judgment to the Archdiocese of Chicago in an employment discrimination case brought by a parish music director who was demoted to a “mere organist,” and then terminated. The plaintiff alleged national origin discrimination, retaliation, and age discrimination. The court granted summary judgment on the grounds that whether as a music director or “mere organist,” the plaintiff was a “minister” within the meaning of the

“ministerial exception” to the federal employment discrimination laws, and therefore was barred by the First Amendment from contesting his demotion or termination.

This case had an interesting twist. The Archdiocese moved to dismiss the lawsuit on the pleadings, arguing that the ministerial exception clearly applied to both the demotion and the termination. Judge Chang granted the motion in part, agreeing that the demotion claim was barred because the complaint itself made clear that the music director was a “minister.” However, Judge Chang found an issue of fact, at least at the pleading stage, as to whether the plaintiff was still a minister after his demotion. The plaintiff argued that merely playing music at mass did not make him a “minister” as defined by the Supreme Court in *Hosanna-Tabor Evangelical Lutheran Church & School*



Jim Geoly




Alex Marks

v. E.E.O.C., 565 U.S. 171 (2012). Judge Chang rejected the arguments at the motion to dismiss stage that (1) even playing music at mass — irrespective of who selects such music — was a form of worship and therefore ministerial, and (2) separating the demotion from the termination deprived a religious organization of discretion in the way it chose to discipline clergy (i.e., is a suspended clergyman no longer a minister?). Instead of deferring to the church on these questions, Judge Chang ordered limited discovery and invited a summary judgment motion.

On summary judgment, the court’s approach was

The court granted summary judgment on the ground that whether as a music director or “mere organist,” the plaintiff was a “minister” within the meaning of the “ministerial exception” to the federal employment discrimination laws, and therefore was barred by the First Amendment from contesting his demotion or his termination.

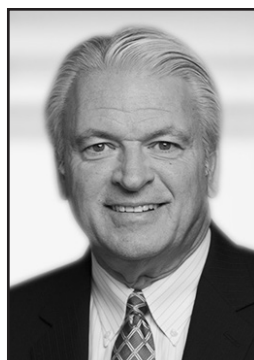
entirely different. Judge Chang accepted the Archdiocese’s own definition of what constituted religious activity and, therefore, what constituted a minister within the church. The Archdiocese’s expert testified that even a “mere organist” leads prayer by playing the organ, and does so as one of the participants in the liturgy. The expert relied on “Sing to the Lord,” the definitive liturgical statement of the U.S. Conference of Catholic Bishops, which states that “all pastoral musicians — professional or volunteer, full-time or part-time, director or choir member, cantor or instrumentalist — exercise a genuine liturgical ministry.” Despite the plaintiff’s contention that his “robotic” playing of music was not ministerial, the court found that the plaintiff could not create an issue of fact by contesting the church’s definition of its own liturgy and its designation of its own ministers. As Judge Chang held, “there is only so much that a federal court may do in questioning a church’s view of its own religious doctrine.”

The Firm’s Jim Geoly was assisted on this matter by Alex Marks. Jim can be reached at 312/840-7080 or jgeoly@burkelaw.com. Alex can be reached at 312/840-7022 or amarks@burkelaw.com. 

THE FIRM'S DAVE WELCH LEADS PANEL DISCUSSION OF INDUSTRY LEADERS AT NATIONAL MEETING FOR BANKRUPTCY AND INSOLVENCY

Earlier this summer, the Firm's Dave Welch led a panel discussion at the Central States Workshop in Lake Geneva, Wisconsin, one of the largest annual national gatherings of industry professionals. The workshop is designed for lawyers and other professionals involved in bankruptcy and insolvency matters practicing in Illinois, Wisconsin, Michigan, Indiana, Ohio and Iowa.

Welch's panel, which included a federal



Dave Welch

judge from Detroit and lawyers from Indianapolis and Columbus, focused on emerging issues in insolvency relating to small and closely held businesses. Panel members

addressed issues that included lending and cash flow, administering membership interests in limited liability companies in all types of insolvencies, and the ultimate decision of whether or not to commence a receivership or to file a bankruptcy case.

For more information, contact Dave Welch at 312/840-7122 or dwelch@burkelaw.com.

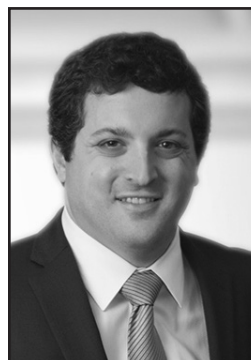
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ROTER NAMED TO 36 UNDER 36 LIST BY OY!CHICAGO

Blake Roter was named to the 2018 Double Chai in the Chi: Chicago's Jewish 36 Under 36 list of talented, difference-making Jewish young adults.

Presented by the Jewish United Fund of Metropolitan Chicago's Young Leadership Division (YLD) and Oy!Chicago, the list shines a spotlight on the faces of Chicago's Jewish future and recognizes the accomplishments of this generation. The young professionals featured are noted for making a difference through their work, giving back in their free time, and earning distinction in the Jewish community and beyond.

The Jewish United Fund of Metropolitan Chicago is the one organization that impacts every aspect of local and global Jewish life, providing human services for Jews



Blake Roter

and others in need, creating Jewish experiences and strengthening Jewish community connections.

The 36 winners were honored at YLD's "WYLD" party at 7 p.m. on Thursday, August 16 at Early Society/Chelsea Room, 221 N. Clark St. Full profiles of each honoree are available on the Oy!Chicago website. Congratulations, Blake!

Blake can be reached at 312/840-7116 or broter@bukelaw.com.

BOOTCAMP

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needs, with critical guidance provided by private sector professionals who serve on their boards of directors.

So, what exactly will it mean for you, now that you have been elected to a not-for-profit board? What additional obligations and liabilities might you now have? Such questions from clients have inspired Burke, Warren's not-for-

profit attorneys to develop a "Bootcamp" program designed to meet the needs of not-for-profit directors.

Burke, Warren's inaugural Bootcamp for Not-For-Profit Directors will be held Thursday, October 25, from 2:00 to 5:00 pm, in the Firm's Conference Center on the 21st Floor of 330 North Wabash in Chicago.

"We created the bootcamp to help our clients and other friends of the Firm better understand their new

roles, liabilities and opportunities in connection with joining not-for-profit boards," says Jim Serritella, chair of the Firm's religious practice. "There is a big need within the not-for-profit director community and we are in a position to help. We are calling it a "bootcamp" because we intend to cover a lot of material in a short period of time."

The program will address topics important to directors that will include

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U.S. SUPREME COURT UPHOLDS CLASS ACTION WAIVERS IN EMPLOYMENT ARBITRATION AGREEMENTS

Employers' use of arbitration agreements has become more prevalent in recent years, and the agreements often require that employees arbitrate any disputes in individualized proceedings to avoid class action or collective action lawsuits. Arbitration proceedings are usually less costly and present less risk for employers than traditional court proceedings. In addition, the ability of the employer to avoid a class or collective action generally reduces the expense of defending the suit and helps the employer avoid the risk of large payouts for class awards.

The United States Supreme Court recently upheld employers' ability to require individualized arbitration proceedings to resolve disputes with their employees. In *Epic Systems Corp. v. Lewis*, employees challenged the use of class action waivers, arguing that they violated the National Labor Relations Act, which guarantees workers the right to join forces in "mutual aid and protection." However, the majority rejected that argument, finding that class action waivers in employment arbitration agreements may be enforced based upon federal law favoring arbitration and court precedent.

The authority underlying the Supreme Court's decision in *Epic* is the Federal Arbitration Act (the FAA), which establishes the validity and enforceability of arbitration agreements, compels judicial enforcement of such agreements and is generally found to preempt state laws that limit or bar arbitration agreements. The FAA sets out a strong federal policy in favor of arbitration, and the majority left it to policymakers to legislate any alteration to existing law.

The ruling is undisputedly a major win for employers, potentially affecting an estimated twenty-five million employment contracts and decreasing the likelihood of often costly class action litigation.




Danielle Gould



Alex Marks


Arbitration agreements can be accomplished in a variety of ways in the employment context, including an employee contract, standard employment forms and documents, a job application or an employee handbook or procedure manual. It is critical, however, that employers correctly phrase the language in the arbitration provision and include a class action waiver if they want to require individual arbitration proceedings. Employers must also ensure that any agreement is not otherwise invalid under general contract principles, such as duress or unconscionability. In addition, employers must take steps to enforce the arbitration agreement when faced with a lawsuit brought by an employee by promptly moving to compel arbitration.

The attorneys in the Labor & Employment practice group at Burke, Warren, MacKay & Serritella, P.C. have extensive experience counseling and representing clients in a variety of matters, and we are available to assist in reviewing your current employment agreements or in drafting agreements to take advantage of beneficial arbitration provisions. For more information, please contact Danielle Gould at 312/840-7070 or dgould@burkelaw.com or Alex Marks at 312/840-7022 or amarks@burkelaw.com. 

corporate and employment issues, risk management, litigation, cybersecurity, and more. The presenters of the various sections of the three-hour program are included among Burke, Warren's highly

specialized attorneys who serve the wide-ranging needs of the Firm's religious and not-for-profit clients. Presenters include Firm partners Jim Geoly, Jessica Cox, Susan Overbey, Rachel Yarch, and Jeff

Rambach. Each will tailor their remarks with a focus on the role of not-for-profit directors. Jim Serritella will provide opening remarks.

The program is provided as a service to clients and other friends of the Firm. We anticipate a strong response so if you or your fellow board members are interested in attending, please reserve your seat by contacting Cy Griffith at 312/840-7035 or cgriffith@burkelaw.com. 

Many generations of seasoned professionals in Chicago and across the country have ventured beyond their working lives to share their energy, ideas, and expertise to advance the work of organizations dedicated to serving the greater good.



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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 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. ©2018 Editor: Cy H. Griffith, Director of Marketing.

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FIRM SPONSORS *HAVE MERCY!* EVENT

For the third year in a row, BWMS sponsored Mercy Home for Boys and Girls' Have Mercy! fundraising event, which took place April 28 at the Grand Banking Hall. Mercy Home provides safe, nurturing residential treatment housing to boys and girls in the Chicagoland area. Children living at Mercy Home receive social services, school support and career advancement training from caring and thoroughly trained staff. Pictured above (from left) Josh Cauborn, Kate Cauborn, Eric VanderPloeg, Sara VanderPloeg, Jake Jumbeck, Julie Roter and Blake Roter. Josh Cauborn is a member of Mercy Home's Associate Board. 