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

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TAX ADVISORY GROUP

FORMER DELOITTE PRINCIPAL RICHARD L. LIEBERMAN JOINS BURKE WARREN

Richard L. Lieberman, formerly with Deloitte Tax LLP, has joined Burke, Warren, MacKay & Serritella, P.C. as a partner in its tax practice. The former Big 4 tax principal from Deloitte's Chicago office has more than 25 years of tax controversy and consulting experience.

Richard L. Lieberman

"We are delighted to add a tax heavyweight like Rich to our talent pool," says Jeffrey D. Warren, Burke Warren's managing partner. "Rich is well known nationally for his work. He will be an extremely valuable resource for our clients."

"A reset is taking place in the way tax consulting is delivered in the US," says Lieberman. "Clients simply want the right expertise and accessibility

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After years of planning and design (and an Act of Congress necessary to narrow a navigable waterway), a section of the Chicago Riverwalk recently opened to the public. Located on the south bank of the river's main branch in downtown Chicago, the Riverwalk's under-bridge connections and new pathways pass beneath Michigan Avenue, Wabash Avenue, and State Street bridges and provide a continuous path all the way to Lake Michigan.

The firm's John Stephens serves on the Chicago Riverwalk Development Committee. "This new people-friendly space is part of Mayor Daley's redevelopment vision for the riverfront," says Stephens. "It's a fantastic new city asset and a great vantage point to appreciate Chicago's skyline."

BWM&S

BURKE WARREN PARTNERS WITH THE UIC FAMILY BUSINESS COUNCIL

In keeping with Burke Warren's longstanding commitment to representing family owned and closely held businesses, we are proud to announce that we are now the strategic law partner of the University of Illinois at Chicago Family Business Council ("FBC"). The FBC provides family owned and closely held businesses with peer-support and educational programs specifically designed for chief executives, their families and their businesses.

With a membership of more than 70 privately held companies, the FBC is the largest organization of its kind in the Chicago area.

"The Family Business Council plays an essential role in the success of many Chicago-area family owned and closely held businesses," says the firm's Jonathan W. Michael. "Serving the founders, leaders and families of closely held businesses is a core part of our firm's practice. The opportunity to partner

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NEXT ISSUE: The firm grows again and more…

Tax Update

Illinois Increases Replacement Tax on Partnerships

In June 2009, Illinois revised the computation of the replacement tax for partnerships by:

- No longer allowing a subtraction modification for personal service income or a reasonable allowance for compensation paid or accrued for services rendered by partners to the partnership; and
- No longer requiring an addition modification for guaranteed payments deducted for federal income tax purposes.

The changes are effective for taxable years ending on or after December 31, 2009, and will likely increase the replacement tax paid by businesses operating as partnerships. If the partnership changes impact your business, now is a good time to talk about compensation options that may lower your tax bill.

Conversion to Roth IRA will no Longer be Limited by Taxpayer's Income

In a traditional IRA, taxpayers receive an immediate deduction for annual contributions, but are taxed on the funds when withdrawn at a later date. A Roth IRA does not provide for a tax deduction at the time funds are contributed, but allows for virtually all income growth and withdrawals to be received tax-free.

Until now, many individuals interested in contributing to a Roth IRA were prevented from doing so by a modified adjusted gross income ceiling of $120,000 for individuals and $176,000 for couples filing a joint return (for 2009). Likewise, an individual was prevented from converting a traditional IRA into a Roth IRA if household income exceeded $100,000.

As part of the Tax Increase Prevention and Reconciliation Act enacted in 2006, Congress eliminated the ceiling on conversions of traditional IRAs into Roth IRAs beginning on January 1, 2010. As a result, more individuals will soon be able to take advantage of the benefits offered by Roth IRAs.

However, the benefits of converting to a Roth IRA come with a price. At the time of conversion, individuals will pay income tax on all pretax contributions and earnings included in the amount converted.

Individuals converting in 2010 are allowed a one time opportunity to spread the tax resulting from the conversion equally over the 2011 and 2012 tax years. Of course, if the option to defer the tax is not taken, the tax due on the conversion will be reported on the return due for 2010.

There are many good reasons for converting a traditional IRA into a Roth IRA. Whether it makes good financial sense to convert a traditional IRA into a Roth IRA depends first and foremost on whether you have funds available to pay the tax. If you must rely on the funds in an IRA to pay the tax bill, a conversion is not a good idea.

The rules covering both Roth IRAs and conversions to Roth IRAs can be difficult to understand and include some potential traps. Obtaining sound financial and tax advice up front may make the long-term benefits of a Roth IRA that much better.

Reporting Requirements for Foreign Financial Accounts

Individuals with interests in any foreign financial accounts are required to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, with the Internal Revenue Service. While the IRS has made clear in the Form's instructions that shares in a foreign mutual fund are considered a financial account for purposes of the reporting requirements, it is uncertain whether an interest in a foreign hedge fund or private equity fund would be subject to the reporting requirement.

During a June teleconference hosted by the American Bar Association and the American Institute of Certified Public Accountants, representatives of the IRS suggested that the definition of financial account would include an interest in a foreign hedge fund. The penalties for failing to file a required report are substantial.

For those holding investments in a foreign hedge fund or private equity fund that have not filed a report for prior years, the IRS recommends those persons file a report for 2008 and the five preceding years (if applicable) by September 23, 2009. The IRS made clear that penalties for failure to file for the preceding years will not be imposed where taxpayers reported and paid tax on all their taxable income for those years.

For more information, please contact a member of the Firm's Tax Advisory Group: Rich Lieberman 312/840-7011 / rlieberman@burkelaw.com, Julia Turk 312/840-7033 / jturk@burkelaw.com or Greg Winters 312/840-7059 / gwinters@burkelaw.com.

BWM&S

Stanton named to *40 Under 40* list of top Illinois attorneys

The coveted *40 Under 40* list of top attorneys in Illinois includes the firm's Aaron Stanton in its 2009 listing. Published by Chicago Lawyer Magazine, The 40 Under 40 list is the top honor given to young lawyers in Chicago each year.

According to 40 Under 40 list editor, Adam Hrejsa, 2009 was the most competitive year yet, "In-house lawyers from many of the area's largest corporations weighed in on the nomination process. In all, more than 1,200 lawyers were nominated."

Stanton, a native of Evanston, was recognized by clients for his leadership in handling complex litigation matters and for his performance as outside general counsel. Aaron's clients include financial institutions, real estate developers, real estate brokers, pension funds, retailers, municipalities, and entrepreneurs. Stanton also serves as the corporate counsel, handling all legal matters for several businesses, including @ properties and Zacks Investment Research, Inc.

Since joining the Firm in 2005, Stanton has obtained numerous favorable results for clients including a recent $1 million judgment for a well known international heavy equipment manufacturer.

Aaron Stanton

"My goal has always been to become a trusted and valued legal and business advisor to clients," says Stanton. "Getting named to the 40 Under 40 list is an important honor for me and the firm."

Prior to joining the firm, Stanton served as a judicial law clerk for Judge Blanche M. Manning of the U.S. District Court for the Northern District of Illinois. Prior to that, Stanton was an associate with Jenner & Block. Stanton received both his undergraduate degree (economics with high honors, 1994) and his J.D., (magna cum laude, 1997) from the University of Illinois.

Stanton joins his previous "40 under 40" recipient partners John Darrow and Craig McCrohon. Stanton can be contacted at 312/840-7078 or astanton@burkelaw.com.

WEALTH & SUCCESSION PLANNING

Safeguarding your life savings from future creditors

Martin P. Ryan

Protecting assets from the claims of creditors has begun to assume a more prominent role in estate and financial planning due to the increasingly litigious nature of society. Potential creditors are all around from the thousands of drivers with whom you share the road to a neighbor who may slip and fall on your property or who may be injured by your minor child. Fortunately, there are a number of planning opportunities available to protect your life savings from the claims of these potential creditors. These range from transferring assets to a spouse who has less exposure to creditors' claims to sophisticated offshore trust planning. Following are some techniques to consider:

Transferring Assets to Spouse. A person engaged in a business that may result in personal liability, such as a doctor or attorney, will sometimes transfer assets to his or her spouse. Any such transfer should be made with caution as it could convert the property from marital property to the recipient spouse's separate property in the event of divorce.

Tenancy by the Entirety. Under Illinois law, a husband and wife may own their primary residence in "tenancy by the entirety." Tenancy by the entirety is a form of joint ownership that provides for rights of survivorship for the surviving spouse. If held in tenancy by the entirety, the residence may not be sold to satisfy any judgment entered against only one spouse, thus protecting the equity in the residence.

Liability Insurance. Homeowners and automobile insurance policies are an important aspect of your financial plan and will provide protection with respect to certain actions that may be brought against you. Nevertheless, exposure remains because of caps on damages that will be paid and limitations on actions that will be covered.

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Beware of employment policies that violate the NLRA

A March 2009 opinion from the First Circuit Court of Appeals confirms that even non-union employers have significant exposure under the National Labor Relations Act (Act) for not only publishing a confidentiality policy (typically in an employee handbook), but also discharging an employee for his violation of the policy. In *Northeastern Land Services v. NLRB*, the court extended the law, finding a confidentiality provision in an employment agreement illegal.

Section 7 of the Act guarantees employees the right to form, join, or assist unions, or to engage in other concerted activities for their mutual aid and protection (like union organizing efforts). A violation of the Act is enforced through the filing of an unfair labor practice (ULP) charge with the National Labor Relations Board (NLRB). One violation of Section 7 is a restriction of an employee's right to discuss wages or other terms and conditions of employment. Northeastern Land Services (NLS), like many non-union employers, required its employees to sign an employment agreement that provided that the "[e]mployee … understands that the terms of this employment, including compensation, are confidential to Employee and [NLS]. Disclosure of these terms to other parties may constitute grounds for dismissal."

Fred Mendelsohn

NLS fired one of its employees for discussing with an NLS customer the failure by NLS to timely pay wages and expense reimbursements. Upholding the NLRB (in an otherwise controversial opinion as only two of five NLRB members presided over the case), the First Circuit upheld a ULP finding, and rescinded the confidentiality provision, ordered NLS to notify its employees of the decision, reinstated the discharged employee, and awarded the employee full back pay (including benefits). The ruling follows other fairly recent NLRB precedent finding that the mere publication of employment policies — like non-fraternization, non-disclosure, confidentiality and no-access policies — violate Section 7 of the Act where they chill employees in the exercise of their rights and/or can be reasonably construed to prohibit Section 7 activity (like the discussion of wages, etc.). The NLRB has found these types of policies violative of the Act even where the (1) language did not explicitly prohibit Section 7 activity, (2) policy was not understood by employees to restrict Section 7 rights, and (3) employer never applied the policy in a restrictive fashion.

In light of *Northeastern Land Services v. NLRB* (and given what is a seemingly increasingly charged union organizing environment), employers should:

- Draft employment policies and/or agreements that balance protecting a company's legitimate business interests (like protecting trade secrets and proprietary information) without restricting the rights of employees to discuss their wages, hours and other terms or conditions of employment;
- Define confidential information in narrow ways, remove any (even inadvertent) restrictions on Section 7 rights, and consider a savings clause to clarify that such rights and not subject to any improper restriction; and
- Ensure that other employment practice statements (e.g., employee handbooks) do not run afoul of the Act (like the right to have a co-worker present for investigatory interviews) or EEOC protections on reporting or discussing EEOC incidents.

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

LIEBERMAN *Continued from page 1*

for the right value. More than ever, clients realize that the best talent is no longer locked away in extra-large firms with extra-large fees. Burke Warren, a high quality entrepreneurial law firm, provides the right platform for me and my clients."

Lieberman will focus his law practice on the tax aspects of complex business transactions (including advising on and structuring acquisitions and dispositions), tax controversy and litigation, and general business tax advice and planning. His clients are engaged in manufacturing, consumer goods, healthcare, and retail, among other industries. They include several Fortune 100 companies.

Lieberman has regularly been named as a "Leading Individual" by International Tax Review in its annual review of the world's best tax practitioners.

Rich Lieberman can be reached at 312/840-7011 or rlieberman@burkelaw.com.

RELIGIOUS & HUMAN SERVICES

Appellate Court rules for Firm client after IL Supreme Court grants firm motion in pivotal religious freedom case

The Firm recently won a victory in a case involving core first amendment religious freedom rights. In *Stepek v. Doe* (910 N. E. 2d 655, 1st Dist. 2009), the Illinois Appellate Court ruled in favor of the Firm's client, the Archdiocese of Chicago, which sought the dismissal of a priest's defamation lawsuit against individuals who provided complaints about the priest to the Archdiocese's Review Board.

Jim Geoly

Susan Horner

The Review Board is an important part of the Archdiocese's process to evaluate claims of clergy sexual abuse of minors, and to discipline clergy in such cases. It is a component in a larger framework of policies stemming from the U.S. Bishops' Charter for the Protection of Youth and related canon law requirements.

The Archdiocese prevailed because the statements at issue were made solely within the clergy disciplinary process, a zone protected by the Free Exercise Clause, where a person has the right to say anything to a church, and a church has a corresponding right to receive any such communication, without the threat of civil litigation. The Archdiocese moved to dismiss the lawsuit in the trial court, but that motion was denied, and the trial court refused to certify the question for immediate appeal.

Faced with the threat that the litigation could derail its groundbreaking system for compassionate response to victims of clergy sexual abuse, the Archdiocese took the unusual step of filing a motion for supervisory order from the Illinois Supreme Court, essentially asking the Supreme Court to step in and correct the trial court's error immediately, in order to prevent irreparable harm.

The Supreme Court granted the motion, and ordered the trial court to certify the question to the appellate court, which accepted the appeal and then ruled in the Archdiocese's favor. The Firm's Jim Geoly and Susan Horner represented the Archdiocese. Geoly, who argued the case for the Archdiocese, said, "We were never in doubt about the merits of our position, but our procedural posture was very challenging. I was both surprised and delighted when the Supreme Court intervened to give us a chance to bring the case to the appellate court. As a result of this decision, religious organizations can safely communicate within internal religious tribunals, which are at the very core of their right to the free exercise of religion."

The plaintiff priest has requested an appeal from the Illinois Supreme Court, which request is still pending. A more detailed version of this article is posted at burkelaw.com.

For more information, please contact Jim Geoly at 312/840-7080 / jgeoly@burkelaw.com or Susan Horner at 312/840-7082 / shorner@burkelaw.com.

WEALTH & SUCCESSION PLANNING

MacKay leads discussions of key topics at recent seminars

On July 16, Karen MacKay addressed the 12th Annual Advanced ALI-ABA Course of Study for the Estate Planner, Litigator, and Corporate Fiduciary Counsel. Karen's topic was how to protect the trustee from liability when the trustee transfers assets from one irrevocable trust to a new irrevocable trust. The seminar in which Karen participated was a two-day program held in Chicago and broadcast live via webcast throughout the U.S.

On June 17, Karen MacKay was a featured speaker at a Chicago Estate Planning Council Young Members Workshop, "What Discretionary Standards/Language Really Means." Karen, along with Hugh Magill, Executive Vice President and Chief Fiduciary Officer at The Northern Trust Company, discussed how trustees make decisions regarding distributions under various standards such as "health, education, support, or maintenance," "best interests and welfare," and other distribution standards. Karen also discussed how drafters of estate planning documents make decisions as to which discretionary standard should be used and how to avoid estate, gift, or income tax pitfalls that can arise if a trust beneficiary will also be serving as sole or co-trustee of the trust.

Karen MacKay

Karen can be reached at 312/840-7009 or kmackay@burkelaw.com.

Hope and Change for Private Broker Dealers

SEC ruling exempts main street acquisitions advisors from Wall Street

Business acquisitions advisors have long waited for exemptions in securities rules that govern their business. However, based on recent economic and regulatory developments, professionals should understand and accept existing law, rather than hope for the get-out-of-jail-free card that may never come.

Over the last decade, trade and legal organizations have battled for reform of broker licensing laws that impose the full Wall Street broker registration on middle-market mergers and acqusitions brokers and advisors. Trade associations and the American Bar Association have lobbied for the better part of a decade for new rules that impose rules more fitting for Merrill Lynch than private business acquisitions advisors. Now, these mid-market acquisitions professionals must often register as if they were a Wall Street brokerage house selling retail investments.

With the financial meltdown and changing administration, federal and state comments to representatives of the American Bar Association and other trade groups suggest that any easing of the rules may be a much slower process than expected. This slowdown means that the industry must continue to rely on SEC 2006 Country Business, Inc. no-action letter. This SEC ruling provided that small- and mid-market business acquisitions advisors may assist companies sell their stock, so long as the advisor satisfies certain conditions. See http://sec.gov/divisions/marketreg/mr-noaction/cbi110806.htm. This ruling, primarily negotiated by the firm's Craig McCrohon, exempted acquisition advisors from registration with the Securities and Exchange Commission as a broker-dealer.

Craig McCrohon

Among the more significant restrictions are that the business qualify as a "small business" under the rules of the small business administration. In addition, while the advisors may provide the typical valuation assistance, introduction to banks, and management of the transaction, they must not cross the line and negotiate the final terms of a stock purchase. In cases involving the sale of a company's assets, no registration is required. For the size standards applicable to the ruling, see http://www.sba.gov/contractingopportunities/officials/size/index.html.

McCrohon represented Country Business, Inc. before the Securities and Exchange Commission in negotiating the letter, and has spoken on panels to various national organizations regarding the implication of the ruling for both advisors and the businesses they represent.

Business acquisitions advisors should understand and accept existing law, rather than hope for the get-out-of-jail-free card that may never come.

Until the Country Business, Inc. ruling, advisors and their clients contended with inconsistent court cases and letter rulings to determine whether registration was required. The only other applicable ruling was issued by the Securities and Exchange Commission 20 years earlier, in 1986, and was of very limited applicability. Regulators in several states have also indicated that they will apply the ruling to the federal securities laws to the laws of their own states.

Absent registration, laws subject the advisors to potential fines, disqualification for future registration, and the possibility that the clients can rescind their agreements with the advisor and with the purchase of the business being sold. After the issuance of the Country Business, Inc. ruling, staff at the Securities and Exchange Commission has publicly acknowledged that regulators need to better appreciate the distinction between the highly regulated world of brokering retail securities from that of advising a company on its sale.

Based on a technicality — that the form of the sale was that of a "stock" security — advisors inadvertently triggered the onerous registration rules under the Securities Exchange Act. This letter ruling, regulators have acknowledged, more logically separates the securities activities of the Wall Street investment banks from the main street independent mergers and acquisitions professionals.

For more information on the Country Business, Inc. ruling, as well as the status of other rules affecting brokers of private placement investment securities, please contact Craig McCrohon at 312/840-7006 or cmccrohon@burkelaw.com.

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with the FBC is a natural fit for our firm. We view our strategic partnership with the FBC as a great opportunity to showcase the talents and skills of our attorneys who have many years of experience working with family owned and closely held businesses. Because every business is unique, we also look forward to learning from the members of the FBC and improving the services we offer to our clients."

Jeffrey D. Warren

The FBC is a member-led and staff-run organization, with member-volunteers serving in leadership roles and on the FBC's board of directors. The FBC was founded in 1992.

"Learning best practices from other CEOs, strategic FBC partners and the UIC-College of Business Administration has been essential to my professional and personal development," says Cari A. Murray-Kremer, President and CEO of Mellish & Murray, Inc., who is also serving as President of the UIC Family Business Council. "FBC's approach is holistic. We look to continually develop a better leader, spouse, parent and, ultimately, to be better to ourselves by creating balance and harmony among the demands of business, family and personal issues."

Jonathan Michael

The Family Business Council provides a wide range of educational and social networking experiences, an outstanding peer network and access to many of the resources of the UIC-College of Business Administration.

The FBC's CEO & Peer Forums offer an ongoing opportunities for members to discuss issues that arise in family owned and closely held businesses. Each forum is comprised of approximately 12 members who meet regularly to discuss business issues on a confidential basis.

In addition, the FBC holds three General Meetings each year, plus an annual Family Business Day, which provide opportunities for the entire membership to gather to learn, network and interact with other member business owners and the faculty and staff of the UIC-College of Business Administration. General Meeting keynote presentations include well known business and cultural leaders. Past FBC keynote presenters include: Michael P. Krasny, the founder of CDW Computer Centers, Inc.; Dr. Stephen R. Covey, author of *The 7 Habits of Highly Effective People*; Jamie Dimon, the Chairman and Chief Executive officer of JP Morgan Chase; Christie Hefner, the former Chairman and Chief Executive Officer of Playboy Enterprises, Inc.; Doris Christopher, the founder and Chairman of The Pampered Chef; and Diane Swonk, the Chief Economist of Mesirow Financial.

If you have any questions about the FBC, or if you might be interested in attending an event as a guest, please do not hesitate to contact Jeffrey D. Warren, Jonathan W. Michael, or any of the other attorneys at BWM&S.

WEALTH & SUCCESSION PLANNING

Firm's Michael Presents on Business Succession Planning and Challenges Facing S Corporations

The Illinois Institute for Continuing Legal Education's 52nd Annual Estate Planning Short Course, considered the leading estate planning conference in Illinois, took place April 27 & 28 in Chicago and on May 14 & 15 in Champaign. The firm's Jonathan W. Michael was a featured speaker. His presentation focused on business succession planning and unique issues related to S corporations.

"Business succession planning is a very important aspect of estate planning. It is often the case that the underlying business interests are a client's most valuable asset. The ultimate division and distribution of closely held business interests requires careful analysis and planning. Under the Internal Revenue Code, there are very specific rules that apply to Subchapter S corporations," says Michael. "The presentation was designed to address many of the business succession issues that are exclusive to S corporations, including creative solutions for the disposition of S corporation stock during the owner's lifetime and at death."

The Short Course is designed to provide attendees, primarily attorneys practicing in the estate planning area, with an intensive review of important estate planning topics. Jonathan W. Michael can be reached at 312/840-7049 or jmichael@burkelaw.com.

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SAFEGUARDING *Continued from page 3*

Statutory Exemptions. State and federal bankruptcy laws will exempt certain assets from creditors' claims. These assets include cash values in life insurance policies, certain qualified plans and IRAs. Transferring assets into these vehicles should provide protection for these assets.

Irrevocable Trusts. An irrevocable trust is an excellent vehicle to shield substantial amounts of wealth from a creditor's claims. Assets transferred to an irrevocable trust for the benefit of family members should no longer be subject to the claims of your creditors or the creditors of your family members.

Family Partnerships/LLCs. Family partnerships and limited liability companies enable you to transfer wealth to family members while at the same time protecting assets from the claims of their creditors. Assuming the governing documents do not provide otherwise, a judgment creditor of a limited partner of a partnership or a non-voting member of an LLC should not have the ability to force a liquidation of the entity in satisfaction of a judgment.

Alaska/Delaware Trusts. Certain states, such as Alaska and Delaware, have enacted legislation that enables a person to establish a self-settled trust and retain a beneficial interest while at the same time receiving creditor protection. There are strict requirements for establishing such a trust. For example, one Trustee must be a resident of the State and trust records and all or a portion of the trust assets must be located in the state. The legislation authorizing such trusts is somewhat new and, consequently, there is uncertainty with respect to the efficacy of such trusts.

Offshore (Foreign) Trusts. An offshore trust is a trust established in a foreign jurisdiction (e.g., Bahamas, Cayman Islands, Bermuda). The laws in such jurisdictions typically provide greater protection from creditors than do the laws of the United States with regard to trusts in which the grantor retains a beneficial interest. Unfortunately, such a trust requires relinquishing control of assets to a foreign trustee.

The ideal time to implement these strategies is when there are no creditors. Once the creditor is at your doorstep, your ability to implement many of these strategies will be greatly diminished. Often, assets transferred or other steps taken after a creditor appears are deemed fraudulent transfers and the assets are eventually held to be subject to the creditor's claims. Therefore, in the event you are concerned about protecting your assets from the potential claims of creditors, the sooner you take action the better protected you will be.

Martin P. Ryan is a partner at Burke, Warren, MacKay & Serritella, P.C. in Chicago and represents closely held business owners focusing on tax, trust, estate planning and corporate matters. Marty can be reached at 312/840-7060 or mryan@burkelaw.com.