

WHAT'S NEW AT
GOULD & RATNER CON'T.

Litigation. We have assisted our clients' attempts to resolve disputes in a wide variety of issues. These include shareholder and corporate governance disputes (including shareholder agreement disputes, intergenerational succession, and controversies of mismanagement and breaches of fiduciary duty), technology litigation (involving patent and medical technology, and license and technology transfer agreements), labor and employment (including race discrimination and various employment discrimination matters) and commercial foreclosure matters for various commercial lenders, and garden variety commercial matters such as warranty disputes and securities fraud.

Real Estate. Our lawyers have continued to actively aid clients in a multitude of real estate activities. These included acquisitions and divestitures of raw and developed land, refinancing of a major Chicago office building, leasing of office buildings throughout the country, annexation, zoning and other development matters, devising condominium and other associations, hotel construction, and assisting homebuilders acquire, develop and sell their lots.

Tax/Financial. Our Department has continued to actively assist clients in various areas. These include designing several key employee equity based compensation plans to attract and retain key executives, designing and structuring real property exchange transactions, assisting the proper tax structure of complex commercial acquisitions, divestitures and joint ventures, inter-family installment sales in various entities, succession planning for major family businesses, charitable giving planning, and the resolution of tax controversies and audits.

ASSESSOR REASSESSES CITY

All the real estate located within the city of Chicago is facing its triennial reassessment for tax year 2000. [These are not the assessments for the tax bills expected to be issued later in the summer. Those are for tax year 1999 (the south suburban triennial), and were recently finalized by the Board of Review.]

By mid-May the new proposed assessments for only the two northernmost townships in the city (Rogers Park and Lake View) had been published, but they contained disconcerting straws in the wind. For Lake View (north of Fullerton and east of Western Avenue), both the aggregate and the average assessments rose by more than 50%. Guesses vary as to the anticipated changes in the rest of Chicago; but it is likely that significant increases are in store. One rumor would have it that Loop office buildings are facing an approximately 25% hike.

What are the consequences of such assessment rises for the tax bills that will ultimately follow in the fall of 2001? The first thing to realize is that any tax increases will not be proportional to the assessment increases. This is true because the City of Chicago and the County of Cook are home-rule units without rate limits or tax caps. This means they will receive the amounts they levy regardless of changes in the size of the assessment base.

However, the second thing to remember is that the size of the assessment increase does affect how much of that tax burden the individual taxpayer pays. If the city-wide average assessment increase were to be, say, 28%, then any taxpayer

with an assessment increase of 35% would pay more taxes in 2001 even if the taxing bodies did not increase their levies. Conversely, a taxpayer with what appears to be a hefty assessment increase of 20% may not experience any tax increase at all.

Since the portion of city tax bills attributable to taxing bodies lying entirely within the city (Chicago Public Schools, Park District and the City) comprises over 80% of those tax bills, a jump in the city's assessments will have little skewing effect, vis-à-vis city vs. suburban taxpayers. For the county-wide bodies (County, Forest Preserve and Water Reclamation District), city taxpayers will pay a somewhat higher portion of those governmental burdens in 2001; but under our triennial system, that will be moderated and then reversed in the two succeeding years.

Finally, for the city taxpayer with an assessment increase that matches the city-wide average increase, there may be some increase in the schools' portion of his tax bill because of the way that statutory rate limits work: a higher assessment base allows more revenue to be raised with a fixed rate limit. However, due to the technicalities of the statutory budgetary procedures for the schools, even that boost in levying capacity may be deferred until the tax bills payable in 2002.

In short, rather than trying to figure out this very complex system, simply examine your assessment notice when it arrives. If it looks high to you, call us and we will be glad to check it out for you.

Fred Dempsey is an associate in our Real Estate Taxation Department. He may be reached at 312/899-1685 or at fdempsey@gouldratner.com.



ENCRYPTION AND SECURITY IN
E-COMMERCE TRANSACTIONS

Commercial transactions necessarily entail risk. Historically, the law has imposed some requirements intended to limit risk, which often become more stringent depending on the size and nature of the transaction. At times, legal requirements for enforceability of a commercial transaction include a signed writing.

In the context of the internet and electronic commerce, these writing requirements are becoming obsolete. As rapidly as the technology is changing, the law is changing. For electronic communications to serve as functional replacements for documents however, methods for "coding" and "decoding" electronic communications are employed as safeguards. Courts and legislators have begun to recognize standards for encryption of electronically transmitted messages. Through these means of

encryption, the law will recognize the sufficiency — and enforceability — of "paperless" electronic transactions.

For electronic communications to substitute for traditional transaction documents, contracting parties need several assurances:

- Authenticity. Can the recipient be assured that the sender is who he or she claims to be?
- Integrity. Can the recipient be assured that the message has not been altered in transit?
- Non-repudiation. Can the sender deny having sent the communication?
- Confidentiality. Is the communication open for the entire internet world to see?
- Enforceability. If necessary, will a court enforce the transaction?

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A Newsletter from
the Law Firm

GOULD & RATNER

G&R Review is published by the law firm of Gould & Ratner to update clients and friends on legal trends and developments of interest. The material contained in this newsletter is only a synopsis of recent cases and legislative developments and is not legal advice. If you have a question or an individual claim involving a topic covered in this newsletter, you should seek a legal opinion based on the law as a whole and the facts of your particular case.

Comments, questions, and requests for additional copies of this newsletter can be directed to Laura W. Thompson at Gould & Ratner, 222 North LaSalle Street, Eighth Floor, Chicago, Illinois 60601. (312) 236-3003 or lthompson@gouldratner.com.

WHAT'S NEW AT GOULD & RATNER

Gould & Ratner has been fortunate to assist its clients during the past quarter achieve some very significant accomplishments. Below are some highlights of a very busy three months of activities.

Gould & Ratner attorneys Robert Carson and Louis Bernstein successfully arbitrated a claim on behalf of a major Illinois coal producer. The claimant, an electric utility company, sought to terminate a long-term coal supply agreement, which runs for another ten years. The claim, including the request for termination, sought damages in excess of \$100,000,000.

After a six-week trial, an inspection of the coal mine by the arbitration panel and post-hearing briefs, the panel of arbitrators, which included a retired Federal Appellate Judge and former White House Counsel, denied the request to terminate the contract and also rejected their requested damages.

Corporate/Commercial. We have assisted clients in major acquisitions and divestitures, venture capital investments, loans and various creditor rights matters. These transactions included a roll up of an information technology company, a sale of an advertising agency, sales of various cellular telephone companies throughout the country, a joint venture with a giftware manufacturer, the purchase of several radio stations, a joint venture with a European entity in the telecommunications infrastructure area, the purchase and refinance of several golf course businesses throughout the country, and the acquisition of a software engineering firm. Our venture capital work included assisting several private equity firms make significant early stage investments in ceramic filters and various web design companies, and assisting several early stage companies in the robotics, competitive local exchange area and retailing. We have also represented prominent banks make significant commercial loans and borrowers receive such loans.

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[ENCRYPTION AND SECURITY IN E-COMMERCE TRANSACTIONS continued from page 1]

To address these concerns, the e-commerce marketplace has adopted security encryption standards for "coding" and "decoding" of electronic communications. These encryption standards, based on complex mathematical algorithms, provide necessary assurances in these areas, to permit electronic commerce to grow and flourish. These encryption technologies encompass two basic principles: (1) private key encryption, and (2) asymmetric or public key encryption.

Private key encryption requires that two parties exchange a secret electronic "key" in advance of the transaction. Private key encryption is useful for small scale, repetitive transactions between the same parties, or for storage and retrieval of one's own files. However, this type of system is difficult and carries substantial risk if used with someone whom you do not trust, as the assurance of secrecy is the essence of the protection.

A more practical and widely accepted methodology is known as asymmetric, or public key, encryption. In this system, a different electronic "key" is used by the sender and recipient. The sender uses a "public" encryption key which is known and available to all. The recipient uses a secret, private key for decryption. The decryption key "decodes" the public key encrypted messages, but the private key remains secret, and cannot be determined from the public key.

The use of asymmetric key encryption technology is also used to create digital signatures—essentially by running the public key encryption system in reverse. In this manner, a unique message is created only using your private key, but that message can be decrypted by anyone

using a public key. The message is not necessarily secret, but since only the private key can be used to write the message, the recipient has the all important assurances of (1) the identity of the sender, and (2) that the message has not been altered in transit.

Through these encryption technologies, standards for unalterable and authenticated electronic communications have been created. Encrypted electronic communications form the basis of e-commerce transactions and effectively substitute for the traditional paper used to create a purchase order, a written confirmation, terms and conditions of sale, a signed contract, or the myriad of other documents which make up traditional paper transactions.

Last year, the Illinois legislature adopted the Illinois Electronic Commerce Security Act, 5 ILCS 175/1-105 *et seq.* (July 1999). This statute recognizes the encryption standards as outlined above. Under this legislative scheme:

- * Electronic information, records and signatures will be accorded legal effect;
- * Electronic records will satisfy the legal requirement of a writing;
- * Electronic signatures will satisfy the legal requirement of a signature;
- * Electronic records are admissible into evidence and accorded a rebuttable presumption of genuineness; and
- Secure electronic records and signatures create enforceable obligations.

Other states have adopted similar "legality of electronic commerce" statutes. The National Conference of Commissioners on Uniform State Laws has recently proposed a "Uniform Computer Information Transactions Act," covering much of the same subject matter. The Uniform Act has been adopted in Maryland and Virginia, and

has, in 2000, been introduced (but not yet adopted) in Delaware, Hawaii, Oklahoma, and the District of Columbia, as well as Illinois. It is expected that this Uniform Act will gain growing acceptance across the 50 states.

Most recently, on June 30, 2000, President Clinton signed the Electronic Signatures in Global and National Commerce Act, Public Law 106-229. This new federal statute states that in transactions affecting interstate or foreign commerce, electronic signatures and electronic contracts must be accorded legal affect, validity and enforceability. Notably, the law states it does not require

any private party to use or to accept electronic signatures or transactions. Rather, it requires courts and government agencies to accept them. This new federal statute takes effect on October 1, 2000.

Just as the business world adapts to new technologies, the law must adapt as well. Clients who embark on e-commerce ventures (and their lawyers!) are well advised to become familiar with security and encryption standards, which form the foundation for internet commerce.

Bob Carson is a partner in our Litigation Department. He may be reached at 312/899-1633 or at rcarson@gouldratner.com.

RECENT GOULD & RATNER ENTREPRENEUR INSTITUTE CONFERENCES HIGHLIGHT CUTTING EDGE ISSUES

The Gould & Ratner Entrepreneurs Institute has hosted two recent Conferences dedicated to highlighting crucial issues confronting entrepreneurs in this fast paced business climate. The Institute hosts, as a public service, conferences to address vital themes underlying our economy.

The Entrepreneurs Institute's April Conference focused on three major items facing an internet pioneer as he or she builds and ultimately disposes of his or her business. The speakers discussed ways to design compensation programs to attract, incentivize and retain key executives, protect and preserve valuable intellectual property and trade secrets, and various strategies for successfully selling the business. Steve Gustafson of our Tax Department, Barry Hyman of our Litigation Department and Fred Tannenbaum of our Corporate/Commercial Department provided guidance on these topics.

The Entrepreneurs Institute's July Conference highlighted major issues an entrepreneur confronts in starting any business. Bill Fox of our Tax Department

analyzed the panoply of considerations in assessing the proper choice of entity for the new business. Brian Gilbert of our Corporate Department discussed many "nuts and bolts" issues involved in forming and planning the new venture. Dave Arnburg of our Real Estate Department relayed strategies for dealing with landlords and providing flexibility as the entrepreneur's business grows. Lou Bernstein of our Litigation Department offered suggestions for minimizing litigation risks inherent in any start-up venture.

We would be delighted to provide anyone interested with handouts from these Conferences.

We hope that you are looking forward to, and will attend, our February session of the Gould & Ratner Entrepreneurs Institute. We will again be featuring themes of keen interest to entrepreneurs and their advisors to assist their businesses to thrive. Please call Fred Tannenbaum or Laura Thompson of our office if you have any questions or would like any information regarding the Gould & Ratner Entrepreneurs Institute.

EXPERIENCED SECURITIES LAWYER JOINS GOULD & RATNER

Gould & Ratner enthusiastically welcomes Chuck Salowitz to lead our Securities Law Practice. Chuck has over 23 years experience in a wide range of securities law matters including initial public offerings, secondary offerings, private placement memorandums, thwarting takeover attacks, and a myriad of other securities related matters. Chuck's breadth of experience also includes electronic commerce, intellectual property and a whole range of high profile joint venture, merger, acquisition and divestiture activities.

Chuck practiced law at a private firm in Milwaukee for six years. He then joined Inland Steel and worked there for many years, ultimately rising to the level of Associate General Counsel and Secretary. Chuck received his undergraduate education from the University of Michigan's School of Engineering and his law degree from the University of Illinois.

Chuck Salowitz may be reached at 312/899-1628 or at csalowitz@gouldratner.com.

JOHN MAYS NAMED CHAIR OF THE CHICAGO DISTRICT COUNCIL OF THE URBAN LAND INSTITUTE

John Mays has been elected Chair of the Chicago District Council of the Urban Land Institute. ULI is an independent nonprofit education and research institute that is supported and directed by its members. It provides responsible leadership in the use of land in order to enhance the total environment.

John is a member of the Firm's Management Committee and former chair of Gould & Ratner's Real Estate Practice Group. John's practice focuses on real estate development, construction law and land use. He represents clients in all phases of the land development process, from the acquisition, financing and zoning of property through its ultimate leasing or disposition. John's clients include homebuilders, office and industrial developers and construction companies.

John Mays may be reached at 312/899-1618 or at jmays@gouldratner.com.