

FAMILY FINANCIAL PLANNING PROGRAM

On Thursday, October 19, Gould & Ratner and Blair Capital Management co-sponsored a conference which was held at Chicago's Metropolitan Club. Tom Korman of Gould & Ratner's Tax and Financial Group presented a case study which addressed family wealth transfer and succession planning goals and related strategies. Tom's presentation covered various issues associated with family financial planning, such as future financial needs, cash flow planning, estate and gift planning, retirement planning, investment analysis and strategies, charitable giving strategies, risk management and insurance planning, and income tax planning.

If you are struggling with wealth transfer and succession planning and related financial planning issues, and would like to make arrangements to hear this presentation, please contact Laura Thompson at 312/899-1660 or at lthompson@gouldratner.com.

SUPREME COURT CLIPS WINGS OF WETLANDS PERMIT PROGRAM

A recent decision by the U S Supreme Court in a Chicago area wetlands case has clipped the wings of the Army Corps of Engineers. The Court struck down the "Migratory Bird Rule" which claimed that the federal wetlands program, as administered by the Army Corps of Engineers, covers any and all waters within the United States which could provide habitat for migratory birds. In SWANCC v. U.S., 2001 WL 1533 (U.S.) the majority held that the federal wetlands program does not cover the waters in abandoned sand and gravel pits, even though those waters are breeding habitat for migratory birds.

The suit was brought by a consortium of Cook County municipalities (SWANCC) seeking to develop a landfill for baled non-hazardous solid waste. The proposed site for the "balefill", near Bartlett, Illinois, contains several abandoned sand and gravel pits that are overgrown and filled with water. The Cook County Board had approved the site for a landfill. The Illinois EPA had reviewed and modified SWANCC's plans for the balefill and issued a development permit. At that point, the Army Corps of Engineers asserted jurisdiction over the project under the federal wetlands regulations because the abandoned sand and gravel pits provide habitat for the blue heron and other migratory birds. The Army Corps of Engineers decided that, from its perspective, the balefill would not be in the public interest and declined to issue a wetlands permit. It deemed that the anticipated impacts on the bird population to be "unmitigatable" and judged the supposed risks of groundwater contamination to be "unacceptable".

The issue presented to the U S Supreme Court for decision was not whether these conclusions about the effect of the balefill were correct, but whether the federal Clean Water Act gives the Army Corps of Engineers lawful authority to make these decisions. The Court said, "No!" In its opinion the majority notes that the Clean Water Act authorizes the Army Corps of Engineers to regulate the discharge of fill material into "navigable waters" and goes on to define "navigable waters" as "waters of the United States". The Court recognizes that the Act requires the Army Corps of Engineers to continue to regulate filling activities in non-navigable wetlands adjacent to open waters and navigable rivers. However, the majority of the Court found no lawful basis for extending the wetlands regulations to isolated wetlands and to abandoned sand and gravel pits.

So, now we know that the reach of the Army Corps of Engineers is not limitless after all! The federal wetlands program does have boundaries. We just don't know where those boundaries are yet.

Richard Reese Elledge is a partner in our Environmental Law Group. He may be reached at 312/899-1623 or at relledge@gouldratner.com.



MEDIATION OR LESSONS TO BE LEARNED FROM "THE UNTOUCHABLES"

"I want him dead. I want his family dead. I want his house burnt to the ground." Robert DeNiro as Al Capone in the movie "The Untouchables" spoke these words in formulating a strategy to resolve a particular dispute. In my meetings with clients to discuss litigation strategy, some have echoed similar approaches.

While adhering to Capone's strategy has a certain allure all its own, there are those pesky criminal impediments to consider. A rapidly growing alternative to the "beat your opponent into submission" approach is mediation. Mediation has generally been described as a "facilitated negotiation". The setting is defined by the use of a neutral third person called a mediator - often a retired judge - whose job it is to assist parties in facilitating a settlement of their dispute. Two critical components of mediation are that it is non-binding and the mediator is not a decision-maker. This results in the parties maintaining responsibility for their own

decisions and if they are unable to settle their conflict, they are not prejudiced by an adverse judicial ruling.

Mediation is not for everyone or for every dispute. I recently engaged in a pre-trial with a judge to consider settlement. The other side made such outrageous demands that the judge responded, "I think they need to feel more pain before we discuss settlement". Make no mistake about it, litigation is painful. It is expensive, time-consuming and draining of both emotions and personnel. Since statistics show that more than 90% of all civil litigation will settle prior to trial, many clients and attorneys are asking themselves if the Nike slogan of "No pain, no gain" should be reserved for exercise. Mediation offers a quicker, informal and cheaper alternative to litigation. It usually only takes hours or days, discovery is either non-existent or limited and it often takes place either prior to litigation or in its early stages. Even if a mediation does not [continued on page 2 sidebar]

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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.

"THE UNTOUCHABLES"

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result in a settlement, it is still often successful. Since the parties present their positions at the mediation proceeding, each party has an opportunity to explore the theories of its opponent and determine the strengths and weaknesses of its own case by requesting feedback from the mediator.

In responding to Capone's "dispute resolution strategy", Sean Connery, in "The Untouchables", stated that the best available remedy was to handle it "The Chicago Way". "He pulls a knife, you pull a gun, he sends one of yours to the hospital, you send one of his to the morgue". Since neither strategy proved all that effective for Capone or Connery, perhaps it is time to consider a different approach. Mediation - "The New Chicago Way"?

Louis D. Bernstein is both a trial lawyer and certified mediator. He is a partner in Gould & Ratner's Litigation Practice Group. He may be reached at 312/899-1667 or at lbernstein@gouldratner.com.

- EITHER A BORROWER OR A LENDER? - PERFECTING LIENS UNDER NEW ARTICLE 9

Effective July 1, 2001, a new version of Article 9 of the Uniform Commercial Code (UCC) will go into effect in Illinois. Article 9 of the UCC is the law which governs the taking of security interests in most kinds of personal property. Most of the other states have adopted the new law, and it is hoped by the drafters that all states will have done so by the July 1 effective date. The changes to Article 9 are broad ranging and will have significant effects on borrowers and lenders alike. Some of the principal changes are as follows:

1. After the effective date, UCC financing statements will no longer be required to be signed by the debtor. Execution of an appropriate written security agreement or other "authenticated record" by the debtor will constitute authorization in favor of the secured party to file a conforming UCC financing statement. This is intended to facilitate electronic filing of these documents.
2. Conversely, in some cases, termination statements will not have to be signed by the secured party. If the secured party is obligated to file a termination statement evidencing the termination of its security interest but fails to do so after being requested in writing to do so by the debtor itself, the debtor itself will be able to file the termination statement. The lender may still want to inquire as to the circumstances surrounding debtor-filed termination statements.
3. The rules on where UCC financing statements must be filed have also been revised. With respect to a state chartered organization, such as a corporation, limited partnership or limited liability company, filing will now be effective as to all collateral (except fixtures, as-extracted collateral and timber to be cut) if the financing statement is filed in the state of incorporation or organization. Previously, financing statements as to goods owned by such registered entities were generally

required to be filed in the state where the goods were located. This change should eventually simplify lien searching for lenders. For the five years following the effective date, however, would-be lenders will need to search for liens under both the old and new rules because the priority of liens perfected under the old law will generally be preserved.

4. Certain types of property, such as commercial tort claims, previously were not subject to Article 9. As to such collateral to which Article 9 was inapplicable, you may now need to take action to protect your rights.
5. Under the new law, it will become even more important for anyone extending credit to make sure to use the precise name of the debtor on financing statements. Filing under the debtor's trade name, as opposed to the actual name of a registered entity such as a corporation, will be of little value under the new law. It will be important to obtain up-to-date evidence of the name of the debtor entity as currently on file in its state of organization when preparing financing statements.
6. Other clarifications and changes in new Article 9 include the following: (i) clarifying that once software is embedded in goods the software will be treated as "goods", and (ii) reclassifying certain types of collateral to permit perfection by filing in cases where previously possession of the collateral was the only way to perfect a security interest in such collateral.

If you have any concerns about whether your lien on personal property will be affected by the new law, you may wish to check with legal counsel.

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GERALD RATNER ATHLETICS CENTER UNIVERSITY OF CHICAGO

Gerald Ratner, our senior partner, has donated \$15 million to his alma mater, the University of Chicago, for the construction of the Gerald Ratner Athletics Center. The building was designed by Cesar Pelli, the world-renowned architect, who also designed the world's tallest building in Malaysia and the World Finance Center in New York. The building will be located at the north entrance to the University campus in Hyde Park, Chicago, extending one block from 55th to 56th Streets.

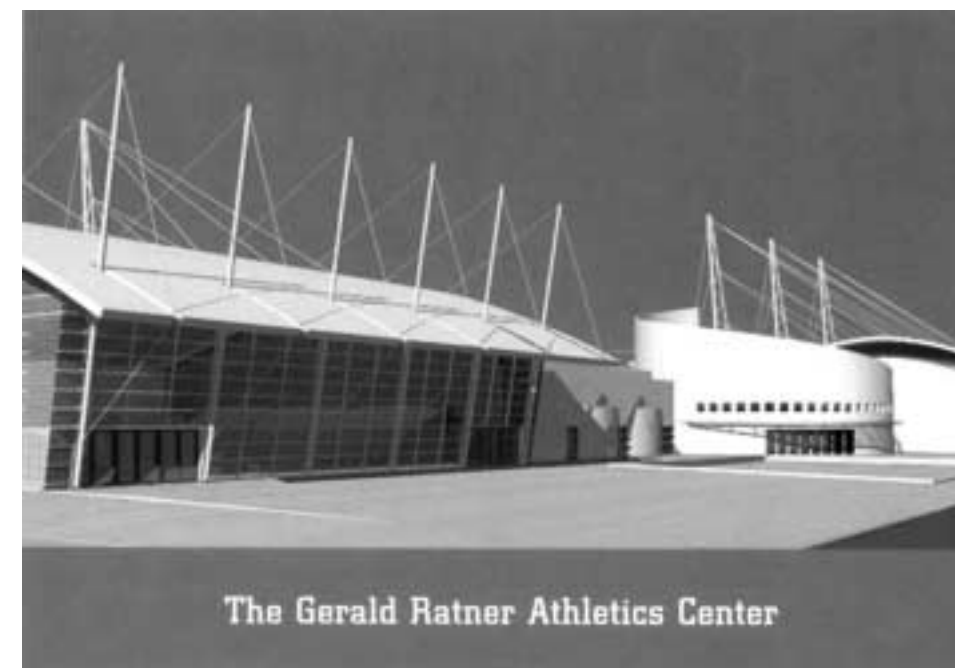
Pelli's tradition-breaking design features a roof which will appear to float in the air, suspended by cables attached to soaring masts. The building's expressive curves will create a sense of motion. It will have a richly detailed surface of multi-colored brick and glass.

An Olympic-sized pool will be at the north end. The south end will include competition and practice gymnasiums. Additional elements of the complex will include a health and fitness center, work-

out rooms, classrooms, locker rooms, offices, and a Hall of Fame for former athletes, beginning with the legendary Coach Alonzo A. Stagg. The building will also have a circular atrium lobby, which is expected to be a gathering place for students. Three new dormitories are being constructed immediately south of the Athletics Center. It is anticipated that the new Center will be the second most-used building on the campus, after the Library.

The ground-breaking ceremony for the Gerald Ratner Athletics Center was held on October 28, 2000. Completion is scheduled for the Fall 2002.

Gerald Ratner is an alumnus of the University of Chicago (Ph.B. 1935, J.D. 1937). He was a varsity baseball player for the U. of C. Maroons in the Big Ten conference during the 1930s. He was elected to Phi Beta Kappa as an undergraduate, and to the Order of the Coif in the U. of C. Law School. He received the Distinguished Law Alumni Award from the Law School in 1999.



The Gerald Ratner Athletics Center

THOMAS KORMAN NAMED
VICE PRESIDENT OF
THE JEWISH CHILDREN'S
BUREAU OF CHICAGO



Tom Korman, a partner in our Tax and Financial and Corporate/Commercial Groups, has been named Vice President of the Jewish Children's Bureau of Chicago. Founded in 1893, the JCB is a comprehensive child welfare agency which provides help for children, teenagers and their families. Services include short-term initial counseling, diagnostic evaluation and planning, counseling, and placement services for adoption and foster home care. Tom has been an active member of the Jewish Children's Bureau for eight years, having served on the Executive Board for the past five years, and on the Administrative and Finance Committee, Program and Practice Committee and Resource Development Committee. He is currently Chairman of the Resource Development Committee and President of the Jewish Children's Bureau Endowment Foundation.