

ABOUT DAVIDOFF MALITO & HUTCHER LLP

A Leading Full Service Corporate Law and Government Relations Firm with active practices in:

- Government Relations & Lobbying
- Corporate & Securities
- Mergers & Acquisitions
- Banking, Finance & Venture Capital
- Litigation
- Real Estate
- Land Use & Zoning
- Bankruptcy/Creditor's Rights
- Trusts & Estates
- Administrative Law
- Construction Law
- Computer & Internet Law
- Healthcare Law
- Labor & Employment Law

- Upcoming Events:*
- On **January 19, 2005**, founding partner **Robert J. Malito** and **Robert Boyle**, of DM&H affiliate **Empire Strategies LLC**, will co-chair Governor Pataki's **Pre-Inaugural Ball** at the St. Regis Sheraton Hotel in Washington, D.C.
 - On **December 7, 2004**, **Peter M. Ripin** will make a presentation entitled **Trademark Protection: The Latest on Protecting Your Brand On-Line** at a conference presented by the HSMIA Internet Marketing Strategy Conference, at 11:30 a.m. at the Millennium Biltmore Hotel in Los Angeles, CA.

- Recent Events:*
- In **November 2004**, **John C. Penn** was interviewed on the topic of **the Evolution of the Best Price Rule** by the DealLawyers.com.
 - On **October 23, 2004**, **John B. Kiernan** was the keynote speaker at the **2004 Annual Conference of the NYS Court Reporters Association**.
 - In **October 2004**, **Neil M. Kaufman** was named to the **Advisory Board** of the **Touro Law Center Institute for Business, Law & Technology**.
 - In **October 2004**, **Peter M. Ripin** was interviewed on the topic of **Pop-Up and Key Word Advertising**, which can be found at www.ahla.com or www.hospitalitynet.org/news.

For more information regarding any of these events, please contact Neil M. Kaufman at (516) 248-6400 or nmk@dmlegal.com.

The information contained herein is not to be construed as legal advice.

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CORPORATE CHRONICLE

NEW LEGISLATIVE SESSIONS
OPENING SHORTLY

The New York State Legislative Session will open on January 5, 2005 and the United States Congress will reconvene on January 4, 2005. Our government relations and lobbying professionals in Albany, Washington, D.C., New York City and Long Island are gearing up for the new legislative season. Many of our clients have already formulated their goals for the upcoming sessions, and we expect to hit the ground running when the sessions open.

Robert J. Malito, Senior Partner and Director of the firm's Albany government relations and lobbying group, recently noted that this is a critical period for businesses and organizations seeking legislative goals during the upcoming state and congressional legislative sessions. "Now is the time to develop your legislative and budgetary requests," Malito said. "We are meeting with many prospective lobbying clients who want to have an Albany and Washington presence as soon as the new sessions begin in January. The earlier in the sessions that we can begin mapping out a strategy, the more effective we can be for our clients. There is an old saying that 'you can't fight City Hall', but you really can if you get the right advice and go about it in the right way."

A more detailed description of our government relations and lobbying practice is included on page 2 of this newsletter.

DM&H ADDS CORPORATE
& SECURITIES PRACTICE

Davidoff Malito & Hutcher LLP has added Neil M. Kaufman, founder of Kaufman & Associates, LLC, Long Island's Corporate and Securities Law Firm, and the remainder of K&A's staff, to form a central component of the firm's new Corporate & Securities Practice Group.

Since its founding in 1997, K&A was widely recognized as providing the highest quality representation to middle market and smallcap public and private companies and investment banking firms in all types of public offering, private placement, merger and acquisition, lending, international finance and venture capital transactions, as well as in connection with SEC filings and regulation. The combination of K&A with DM&H, which also recently added highly respected corporate attorney Jeffrey A. Leighton, has resulted in DM&H becoming a full service corporate law firm providing a broad range of legal services to its clients, with the unique benefit of the firm's exceptionally strong government relations practice.

DM&H always has been committed to serving the needs of the business community. The addition of Neil Kaufman's well established corporate and securities practice, as well as Jeffrey Leighton's practice, is expected to be a key driving force in the growth of the firm's full service corporate practice.

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A MESSAGE FROM NEIL M. KAUFMAN

Dear clients and friends:

This first DM&H Corporate Chronicle newsletter is the successor to my previous K&A Corporate Chronicle. We will continue to keep you informed about recent developments in corporate and securities law, and we also intend to expand the scope of the new Corporate Chronicle to cover areas of interest in our firm's other practice areas as well.

In this issue, we have provided for your convenience summary descriptions of several of our more significant practice areas. If you are interested in any of these, please feel free to contact the partner at Davidoff Malito & Hutcher LLP with whom you have a relationship, or you may always feel free to contact me directly.

We expect that our popular "Company Spotlight" feature will return in our next issue. If there are any other particular features that you would like to see, or if you have any other comments or suggestions about the contents or format of this newsletter, please feel free to contact me at nmk@dmlegal.com.



Neil M. Kaufman
Senior Partner,
Corporate & Securities
Practice

CORPORATE & SECURITIES

Our corporate and securities practice consists primarily of representing clients in all of their corporate and securities matters, whether on a transactional or an outsourced general counsel basis. We represent several public companies in connection with SEC reporting and compliance work. We are engaged in the structuring, negotiation and documentation of a wide range of transactions, including public offerings and private placements of securities representing both issuers and underwriters, mergers and acquisitions, venture capital, IDAs, secured and unsecured commercial lending and international finance.

Together with our litigation group, we represent issuers and other parties in connection with SEC and SRO investigations and enforcement proceedings, as well as parties to SRO arbitrations.

We also assist many clients with respect to business formations; stockholder, partnership or operating agreements; licensing agreements; and other commercial contract matters. With extensive experience in counseling management of public and private companies, we have expertise in all areas of corporate governance, executive compensation, stock options, restricted stock and similar matters. We often become closely involved with our clients' businesses, and thus are able to assist our clients with many quasi-legal, business and strategic matters, as well as their legal needs.

BANKRUPTCY/
CREDITOR RIGHTS

We represent a broad cross section of debtors, trustees, secured and unsecured creditors, and creditors' committees in all aspects of litigated and negotiated restructurings, bankruptcies, corporate workouts and reorganizations, and other transactions involving financially troubled companies and situations. We also represent purchasers of assets from insolvent businesses. Our creditors' rights attorneys are skilled in negotiating and drafting letters of credit, guarantees, security, consignment and other agreements for, and working with, credit departments of institutional clients.

LITIGATION

Our litigation practice is active in forums across the nation, from federal and state courts to regulatory agencies, arbitration tribunals and private mediations. Our litigators routinely handle high-profile, well publicized matters which require the utmost sensitivity. We are particularly well experienced in the following areas:

- **Complex commercial** litigation including virtually every type of corporate, partnership or contractual dispute, including those relating to corporate ownership, corporate governance, enforcement of restrictive covenants, shareholder agreements, franchise agreements, joint ventures and insurance coverage claims.
- **Securities, commodities and finance** matters involving federal, state and SEC investigations, proceedings and arbitrations relating to mergers and acquisitions, securities offerings or filings, takeovers and alleged securities fraud.
- **Real estate** litigation on behalf of major commercial and residential real estate owners and property managers, including contract and lease enforcement disputes, foreclosures and title disputes.
- **Employment** disputes involving wrongful termination, discrimination and harassment claims and unfair competition matters such as the recruitment of a competitor's employees, protection of customer lists, trade secrets, theft of corporate opportunities, and the enforcement of non-disclosure and restrictive covenants.

INTELLECTUAL PROPERTY

Our intellectual property and information technology practice involves assisting our clients in protecting some of the best known brand names in the world. We provide both strategic and general legal advice on the protection of intellectual property, including proprietary information, software, trademarks, works of authorship and inventions. We also actively litigate intellectual property ownership and infringement disputes on behalf of domestic and foreign clients in a wide variety of forums.

GOVERNMENT RELATIONS
AND LOBBYING

We are one of the leading government relations and lobbying firms in New York City and Albany, where we are consistently ranked among the top five lobbying firms. We also work with other local governments and the federal government. We have two full-time lobbyists in Washington, D.C. and full-time lobbying staff in Albany, in addition to our larger offices in New York City and on Long Island.

Our government relations services involve legislative and budget issues and contract, regulatory and administrative matters with a wide array of government agencies. We closely monitor and provide continuous updates to our clients with respect to legislative and regulatory developments across all disciplines. The expertise and experience of our government relations professionals, garnered through experience on the front lines of government, are unparalleled.

Our government relations clients include businesses ranging from Fortune 500 companies to small businesses, as well as major cultural and educational institutions and other not-for-profit organizations. The firm is unique in that it has government relations teams in Albany, New York City, Long Island and in Washington, D.C. Accordingly, we can serve a client in any location where a problem or need may exist.

TRUSTS & ESTATES

Our Trusts and Estates attorneys advise individual and corporate fiduciary clients on estate and gift tax planning, wealth transfers, valuation issues, administration of trusts and estates, family business planning, charitable giving (including the organization and administration of charitable foundations), estate accounting, and planning for retirement and disability. In addition, we have substantial experience in Surrogate's Court litigation and represent clients before the I.R.S. and the U.S. Tax Court. The trusts and estates practice benefits greatly from our ability, through our government relations practice, to monitor those changes in federal and state tax laws which affect our clients' ability to maximize the benefits of gift, estate and intergenerational transfer tax planning.

LABOR & EMPLOYMENT LAW

Our Labor & Employment Law attorneys work with employers and management to address a wide variety of employment law issues that arise in the workplace. We represent clients before administrative agencies, including the United States Equal Employment Opportunity Commission, New York State Division of Human Rights and various city and county human rights commissions. We also litigate employment issues in all state and federal courts relating to, among other things, Title VII of the Civil Rights Act of 1967, Age Discrimination in Employment Act, Americans with Disabilities Act, Fair Labor Standards Act, and Family Medical Leave Act, as well as all state and local labor and human rights laws.

For many of our clients, we prepare or review employee manuals, policies and procedures and provide advice on training our clients' employees, including human resources personnel, to both prevent and defend against discrimination or other employee claims.

REAL ESTATE/
LAND USE/ZONING

Our Real Estate Department represents a wide range of clients in the acquisition, development and sale of both commercial and residential properties, including office buildings, retail stores and shopping centers, as well as condominium and cooperative offerings, filings and conversions. We counsel entrepreneurs and institutions in all aspects of real estate finance, mortgage foreclosures and work-outs, debt restructurings, construction, land assemblage, leasing and subleasing of office, retail and other commercial space, property management, brokerage, and subdivision applications.

We also represent a number of commercial lending institutions. As a result, we can be instrumental in assisting our clients who seek financing for their projects. As an added benefit, we are able to provide essential assistance with regard to zoning, land use, air rights transfers and environmental regulatory matters, and represent our clients at administrative proceedings, including license and tax certiorari hearings.

CURRENT NEWS & NOTES

SEC Proposes
Securities Offering Reform

On October 26, 2004, the United States Securities & Exchange Commission unanimously proposed modifications to the registration, communications, and offering processes under the Securities Act of 1933. These proposals include those relating to:

- permitting additional selling efforts, including written communications filed with the SEC, during the waiting period;
- registration and other related offering procedures;
- liability provisions under Sections 11, 12(a)(2) and 17(a)(2); and
- delivery of information to investors.

Certain proposals are only applicable to "well-known seasoned issuers", which would constitute Form S-3/Form F-3 eligible issuers with either \$700 million of public common equity float or those, for limited purposes, that have issued \$1 billion of registered debt within the preceding three years.

SEC Charges GE with a Failure to
Adequately Disclose
Executive Compensation

On September 3, 2004, the SEC announced that it had settled enforcement proceedings against General Electric Company relating to a failure to fully and accurately describe its former chairman's retirement benefits, including access to a company office and its aircraft, cars, apartments and financial planning services, in its proxy statements and annual reports. The SEC noted that the disclosure provided indicated that the executive's retirement benefits would entitle him to "continued lifetime access to company facilities and services comparable to those which are currently made available to him by the company," and it also noted that the disclosure failed to detail the forms of the compensation or to quantify the value of the benefits. The company consented to cease and desist from violating proxy solicitation and periodic reporting provisions of the federal securities laws.

Limitation of Safe Harbor Protection
For Static Risk Disclosure

On July 29, 2004, the Seventh Circuit U.S. Court of Appeals, which has federal jurisdiction over courts in Illinois, Indiana and Wisconsin, rendered a decision in *Asher v. Baxter Int'l Inc.*, 377 F.3d 727 (7th Cir. 2004), that could limit public companies' ability to invoke the safe harbor protection for forwarding-looking statements under the Private Securities Litigation Reform Act of 1995 when making motions to dismiss. The plaintiffs alleged, among other things, that the defendant failed to disclose certain important factors that could cause the company's actual results to deviate from its projections. The district court held that the company's projections constituted forward-looking statements accompanied by sufficient cautionary language, finding that the safe harbor protections of the PSLRA applied. In reversing the district court's decision, the circuit court held that there was no acceptable reason to preclude plaintiffs from conducting discovery to determine whether the factors disclosed in the company's cautionary language were important in explaining a possible discrepancy between the company's actual results and its projections. In its analysis, the Seventh Circuit focused on the fact that the company's cautionary language remained static even amid changes to its business, including the closure of principal plants. This case emphasizes the risks of static forward-looking statements that are not adjusted to properly reflect material corporate changes.

SEC Requires Hedge Fund Registration

On October 26, 2004, the SEC, in a 3-2 split decision, voted to adopt new Rule 203(b)(3)-2, which will require certain hedge fund advisers to register with the Commission under the Investment Advisers Act of 1940 by February 1, 2006. SEC Chairman Donaldson indicated that the new rule will be adopted "substantially as proposed," and the SEC indicated that the new rule will also eliminate the ability of hedge fund advisers to rely on an exemption from registration designed for advisers providing advice to a small number of clients. The compliance date for the new rule will be February 1, 2006. For details of this new rule, please refer to the K&A Corporate Chroni-