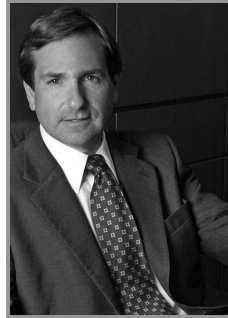


Managing Partner's Message

**Rooted in Experience,
Focused on Clients**

by David P. Rosenblatt



Dear Friends and Colleagues:

Stability and client service are the hallmarks of any successful law firm and at Burns & Levinson as we begin the new year, we're proud to let everyone know that those issues top our docket. For starters, we recently signed a lease that will keep us at our current Boston headquarters through 2020. This commitment is important on several levels. From a purely physical standpoint, it means that we are updating and renovating office space, building a new conference center and creating more usable space for our attorneys and clients. The amenities will be first-rate and functional and will serve everyone well.

But perhaps just as important, we are deepening our foothold near South Station in Boston's Financial District. And that's no small feat. Consider that over the past decade our office building

has been surrounded by ongoing construction due to the Big Dig and ancillary projects. Now, with the construction finally complete, the immediate area surrounding our Summer Street headquarters will have plenty of green space, parks and amenities that are brightening a once downtrodden area. The area has been reborn and it shows. Just as we have grown and developed, our surroundings have also been revitalized.

At the same time, we continue to provide top-notch legal counsel and client service at all of our New England locations, including an expansive office in Providence, R.I., and office sites in Massachusetts in Hingham and Waltham. As we deepen our roots in Boston and beyond, we have created a solid foundation from which to serve all of the various business interests of our clients nationally and internationally.

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This means that client service – always a trademark of Burns & Levinson – will rise to a new level in the new year. We are pursuing many exciting initiatives in 2008 and our firm, our clients and our prospects will see those unfold over the course of the next several months.

Best wishes for a happy and healthy 2008.

Sincerely,

David P. Rosenblatt
Managing Partner

**BURNS
& LEVINSON LLP**

*Amazing Clients*SM

**Michael Schlow, Chef
and Restaurateur –
*A Recipe for Success***

For a memorable meal and hospitable warmth that melts a cold New England chill, many people dine at Radius, Boston's only 4-star restaurant to rate a top-25 national ranking by *Gourmet* magazine.

Michael Schlow, creator, chef and managing proprietor of Radius, says that his French cuisine restaurant uses only the finest and freshest seasonal ingredients as part of a unique menu that changes frequently with creative whimsy.

"Our goal is to provide a great meal, great ambience and fantastic service so that the passion for what we do comes through to our guests," he asserts, adding that Radius has no dress code because it aims to attract an eclectic clientele by being "upscale but not stuffy."

The man once named "top chef in the northeast," as the winner

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You Have Been Named as a Trustee – Are You Ready?



by Malcolm Starr

The honor of being named a Trustee in a trust created by a family member or close friend may wear off in minutes, but the responsibility may last a lifetime, so before you accept the appointment or agree to serve as a Trustee or Co-Trustee, you should carefully examine what the position requires and what the unique circumstances may be. The ideal individual Trustee would be equal parts trust lawyer, tax CPA, Chartered Financial Advisor, bookkeeper and psychologist, with the wisdom of Solomon and the patience of Job. You could find this list daunting, but some preparation and professional advice may help you fill the bill.

First, the Trustee of an irrevocable trust, whether created under will or by agreement, should become familiar with the terms of the trust and the objectives of the Donor creating the trust. There are many ways a Trust can be drafted. A beneficiary may be entitled to all income by right, or the distribution of both income and principal among one or more beneficiaries may be entirely in the Trustee's discretion, or the Donor of the Trust may have included directions to guide the Trustee. The Trustee may need legal guidance to interpret the document as different situations arise or to reconcile competing interests.

Trusts usually benefit a variety of family members, often over two or more generations. The Trustee owes a duty of impartiality to all beneficiaries, so may frequently have to exercise sound judgment to balance competing interests in order to properly carry out the terms of the trust. The Trustee must know all the family members and their various needs and concerns. In a real sense, the Trustee may be considered a surrogate parent (or spouse) for financial matters.

Beneficiaries are entitled to know all the trust transactions that occur in the course of administration of the trust, so

an accurate accounting must be distributed to them, usually at least annually. For some trusts, a periodic accounting to the probate court may also be necessary.

An irrevocable trust is often a separate taxpaying entity and must file a fiduciary income tax return (Form 1041) each year. While the tax rates are the same for trusts as for individuals, the brackets are compressed, so trusts with as little as \$11,000 in retained income will pay ordinary income tax at the highest bracket of 35%. The Trustee may have to consider tax planning every year, given the nature of trust accounting and taxation.

Investing for a trust involves far more responsibility than investing for yourself, regardless of your own experience. The Trustee is a fiduciary and must ordinarily adhere to the Prudent Investor standard, which essentially adopts modern portfolio theory, focusing on total return. Thus, the Trustee must diversify between growth and income investments as well as asset classes, and balance risk and reward for the entire portfolio. Many Trustees will delegate this task to an investment advisor, as agent, but will still be responsible to regularly review the portfolio and all the transactions.

Unfortunately trust beneficiaries can become unhappy about the management of their trust from any number of perspectives and can seek legal recourse. The best defenses are to know your duties, carry them out, and communicate often and clearly with the beneficiaries, documenting everything. When difficult questions or situations arise, seek counsel.

Costs are always a concern to the beneficiaries and they will be for you. Some individual Trustees take a Trustee's fee and others do not. All the professional advisors to the Trustee will expect to be paid. Nonetheless, the cost of good advice and qualified represen-

tation may be greatly outweighed by the cost of mistakes and neglect. You, as Trustee, must coordinate their efforts.

The task of being a Trustee can be rewarding or onerous. Look before you leap! If someone asks if you would be willing to serve at some point in the future you should condition your agreement to serve on first obtaining a copy of the trust and having an experienced trust and estates attorney review it. If the position is imminent (usually triggered by a death or resignation) it is even more important to have the trust and its assets reviewed before accepting the position. You should be certain you have the right to resign and that your actions will be indemnified. The trust should also contain a clear and simple process for appointing a replacement Trustee (for you, in the event of your resignation) without the expense and delay of going to court.

Malcolm W. Starr is Of Counsel in the Firm's Trusts & Estates Group.

What's New

Recent Articles & Publications

"Rhode Island Estate Tax Can Be Avoided" by Joseph R. Marion III, Nov. 2007, *Providence Business News*

"Identify Risks Associated with Identity Theft" by Henry Chace, CIO, Nov. 2007, *Rhode Island Lawyers Weekly*

Securities Update

SEC Liberalizes Resales of Restricted Securities by Amending Rules 144 and 145

Client Update

§409A: Update on Avoiding Penalty Taxation on Deferred Compensation

To read more, visit burnslev.com

Amazing Clients

Michael Schlow, Chef and Restaurateur – A Recipe for Success

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of the coveted James Beard Award for Excellence, has enjoyed quite a career, preparing special meals for local and international celebrities, including various Boston sports heroes, Mick Jagger, and even leading culinary artists like the late Julia Child.

Schlow credits his success to passions he picked up and values he learned as a child growing up in Brooklyn, New York, as well as his “ground-up” training in the hospitality industry.

“My mom was a great cook, and I was already doing things in the kitchen when I was 10,” he recalls, adding that his father taught him the value of giving his best to any endeavor. “I remember getting ready to leave the house for an interview to get a job at a car wash, and my dad stopped me from going in a t-shirt and jeans,” says Schlow. “He made me change into slacks and a buttoned shirt and told me to ‘show the job some respect.’” Boston’s best chef also credits his parents for “using the dinner table to teach manners, politeness and respect.”

Schlow applied what he learned about respect to every job he held, starting as a dishwasher at age 14. Growing up, he continued to hold down various restaurant jobs, mostly while working through college (where he also worked on a 90 mile-per-hour fastball until he suffered an unfortunate baseball injury).

By the time he left college and then graduated from the Academy of Culinary Arts in Mays Landing, New Jersey, Schlow had swept floors, bussed tables, served drinks as a bartender, and done prep work for numerous chefs. “That experience taught me that no job is beneath me, and it forced me to learn every job in the restaurant business before I opened my own restaurant,” he recalls. “Even today, I will still grab a broom or slice garlic because it is so important for staff to see the owner’s attitude about doing whatever needs to get done for your guests.”

After completing his schooling, Schlow got a chance to assist and learn from some of the best chefs in Washington, D.C. and the city of New York. Then, in 1995, he came to Boston as the chef and manager of Café Louis on Newbury Street, and that is where he set the template for his future success.

“I always said, ‘You have to check your personal life at the door in this business, and take care of your guests,’” he remembers, adding that “you have to take immediate care of all their problems and needs and put them first.”

One summer evening at 11:30 p.m. after Schlow had closed the register and started cleaning the kitchen, he got to put those words into action. “I saw three people coming up the

Featured Client



MICHAEL SCHLOW
Chef and Restaurateur

stairs, and when they saw us closing, they started to walk away,” he recalls. But when he learned that they had spent hours waiting for a table at another restaurant only to wait for another 90 minutes without being served, he couldn’t turn them away.

“I sat them at a table outside, brought them a house wine to serve for themselves, and whipped up a pretty basic salad and pasta dish so they would not go away hungry,” Schlow remembers, adding that he charged nothing for the “quickie” meal. The three patrons became life-time customers and friends, following Schlow to his Radius opening in 1998 and to other restaurants he has opened since then.

That commitment to building relationships is something the Boston chef values in his lawyers too. “It’s all about the relationship with Joe Volman [of Burns & Levinson], and I respect that,” says Schlow, who notes that “we had an easy, mutual understanding right away” after being introduced by a mutual friend.

“I know that Joe is on my team and not just looking for ways to bill me,” Schlow elaborates, adding that “he kind of reminds me of my dad, who believed that clients will come back because you treat them right, just like guests.”

In fact, after setting up his corporate entities, Schlow has come back for extra servings of legal assistance with real estate leasing, trademarks, licensing agreements, and all kinds of contracts and general advice. “Joe has a creative mind, and he figures out not just how to protect me but how to elevate my business and profitability,” says Schlow.

The renowned chef now has three newer business concepts that also benefit from periodic legal assistance: *Via Matta*, located across from the Park Plaza Hotel and featuring authentic Italian dishes inspired by cooking in Tuscany and the Amalfi coast; *Great Bay*, located in the Hotel Commonwealth of Kenmore Square and offering fresh, seasonal seafood dishes as part of a creative menu that changes daily; and *Alta Strada*, located in Wellesley Square (and soon coming to Foxwoods) offering casual Italian food and market goods.

Not one to sit still, Schlow has even authored a cookbook now called, “It’s About Time: Great Recipes for Everyday Life.” He credits his parents for inspiring his work, saying that “a great meal is more than just a meal – it’s something that brings people together.”

*This article was contributed by
John Cunningham, freelance writer/editor.*

Think “Insurance” When Facing An IP Claim



by Mark Schonfeld

Let's say you've been sued for copyright or trademark infringement or violation of trade secrets. Where do you turn first? Your lawyer, of course. But the second place you should turn to is your insurance policy. Many business owners and even their lawyers are not aware that a commercial insurance policy may have coverage for intellectual property (IP) claims. If you have insurance coverage, the insurer should cover both the cost of defending the lawsuit and any amounts you are required to pay.

The typical Comprehensive or Commercial General Liability (CGL) policy provides coverage for four types of claims: (1) bodily injury, (2) property damage, (3) personal injury, and (4) advertising injury. A claim for IP infringement may trigger coverage for “advertising injury.”

Advertising injury is usually defined to cover the following claims, if committed by the insured in the course of advertising:

- Slander, libel or disparagement;
- Violation of the right of privacy;
- Misappropriation of advertising ideas or style of doing business;
- Infringement of copyright, title or slogan.

The insured can, therefore, obtain coverage for copyright infringement and certain trademark infringement claims if the insured's advertising was involved. Even trade secrets claims may trigger coverage if the trade secrets are related to marketing or advertising.

The broad reach of the internet can expand what is considered “advertising.” The contents of your website may suffice to trigger “advertising injury” coverage. Almost every business today has an internet presence. You should consult with counsel to determine whether a claim relating to your internet content is considered “advertising.”

Even some patent claims occasionally may be covered by insurance. There are specialized patent insurers that will cover patent infringement claims. Some insurers offer insurance policies to provide funding for plaintiffs' litigation against patent infringers.

If you are facing an IP claim, you should immediately check your insurance policy and consult a lawyer familiar with IP coverage issues. Insurance coverage can save you hundreds of thousands, if not millions, of dollars. Do not delay in reviewing your policy because you must promptly notify the insurer of the existence of a claim. A failure to notify could result in a denial or limitation of coverage.

*Mark Schonfeld is a Partner
and Co-Chair of the Firm's
Intellectual Property / SciTech Group.*

BURNS & LEVINSON LLP

POWER OF AN IDEA® Scholarship Contest

The 3rd annual scholarship contest commenced earlier this fall, inviting all Boston public high school and charter school students to create an invention for the chance to win a \$15,000 scholarship for higher education and legal patent services. Students are guided through the process by patent attorneys David Gomes and Anne Pareti, who lead coaching sessions to help the students prepare for the final report submission and judging. The awards ceremony will be held in Spring 2008. For more information about the contest e-mail us at poi@burnslev.com or visit our website.

Focus

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