

5<sup>th</sup> Annual

*Negotiating and Drafting*

# MAJOR BUSINESS AGREEMENTS

*Bulletproof Your Documents*

UPDATED  
FOR 2005!

## PROGRAM CHAIR

**David A. Bronner**

Partner, Co-Chair of the  
Private Equity and Emerging  
Companies Practice

Ungaretti & Harris LLP

October 27-28, 2005 • The Drake Hotel • Chicago

*Our faculty of leading attorneys, including senior corporate counsel, will examine the issues, challenges and business agreements you encounter most frequently in today's changing economy. Attend to learn:*

- Critical principles of negotiating and drafting
- Top mistakes to avoid in drafting agreements
- Creative and effective drafting solutions for major business agreements
- Translating the "deal" to paper without being a prisoner of forms
- Customizing agreements to reflect your objectives
- Alternative strategies for achieving the client's or company's needs
- Anticipate and prevent future conflicts through good drafting
- International business – papering deals for a global marketplace
- How to handle the most important and contentious aspects of business agreements

You will also receive valuable precedents, checklists and model agreements

*and much more...*

### PLUS, PRE-CONFERENCE WORKSHOPS – WEDNESDAY, OCTOBER 26, 2005

#### A – Best Practices in Drafting Business Agreements

David A. Bronner, Partner, Co-Chair of the Private Equity and Emerging Companies Practice, Ungaretti & Harris LLP

#### B – Effective Negotiating Tactics for Business Agreements

W. Michael Ryan, Partner, Sonnenschein Nath & Rosenthal LLP

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ALM



## WHO SHOULD ATTEND

- *Corporate Counsel*
- *Corporate/Commercial Lawyers*
- *Corporate Executives*
- *Contract Managers*
- *Commercial and Investment Bankers*
- *Business Consultants and Brokers*
- *Private Equity Investors*

### *Why you don't want to miss this Conference*

One of the most important tasks for which clients look to their lawyers is the preparation of written agreements that reflect the precise terms of significant business transactions. As the architects of these major business agreements, you not only define the deal, but also set the stage for the parties' ongoing relationship.

**Insight Information – ALM Events Canada** is pleased to present the 5th Annual Negotiating and Drafting Major Business Agreements conference. **We have assembled a faculty of highly sought-after attorneys, and updated the program for 2005 to reflect current business realities with a focus on delivering "need to know" information on negotiating and drafting major business agreements.**

The speakers will discuss the business agreements you encounter most frequently in your day-to-day practice. You will receive practical advice on important transactional documents, including:

- Confidentiality agreements and letters of intent
- Asset, share and merger agreements
- Shareholders' agreements
- Operating agreements for limited liability companies
- Distribution and supply agreements
- Technology agreements, licensing agreements and outsourcing
- Effective drafting of employment agreements

**For added value, attend the in-depth pre-conference workshops which will address common problems in drafting business agreements, as well as effective techniques in negotiating complex business deals.** Through discussions and interaction with a leading attorney, you will learn how to avoid common errors, and how to achieve clarity in your drafting. In addition, learn the negotiating techniques that leading attorneys use to get the results their clients demand, including assessing the environment to determine which negotiating style will work the most effectively, and achieving the best results by knowing the strengths and weaknesses of your negotiating position.

This conference always proves popular, both with corporate counsel and attorneys in private practice, and provides an excellent opportunity to network with your colleagues. Seats will go quickly – register today!

*Delegates will receive a set of original materials that will serve as a valuable reference source after the program.*

### **A – Best Practices in Drafting Business Agreements**

**David A. Bronner**, Partner, Co-Chair – Private Equity and Emerging Companies Practice, **Ungaretti & Harris LLP**

*This workshop is an interactive session on how to avoid drafting errors. Using specific examples, sample and model clauses and case scenarios, David Bronner will address the best practices to adopt and the pitfalls to avoid. Topics to be discussed in-depth will include:*

- Key principles of good drafting technique
- Top drafting mistakes
- The purpose and importance of boilerplate
- Drafting with prevention in mind
- Representations and warranties – which ones do you need and why?
- The purpose of indemnities
- Achieving clarity
- The use of plain language
- An overview of the function of legal opinions in commercial transactions

***David A. Bronner** is a partner in the Chicago office of Ungaretti & Harris LLP and serves as Co-Chair of its Private Equity and Emerging Companies Practice. He concentrates on M&A, private equity/venture capital, securities and general corporate law. He served as the Vice Chair of the Committee on Negotiated Acquisition, and presently serves as the Chairman of the Ad-Hoc Committee on Industry Consolidations and Roll-Ups. Mr. Bronner is an active member of the Task Force on Public Company Acquisitions of the Business Section of the American Bar Association. As Co-Chair of the Editorial Committee of the ABA's Committee on Negotiated Acquisitions, Mr. Bronner played a significant role in drafting the Model Stock Purchase Agreement with Commentary, a highly-regarded source for M&A lawyers.*

### **B – Effective Negotiating Tactics for Business Agreements**

**W. Michael Ryan**, Partner – Sourcing and Technology Group, **Sonnenschein Nath & Rosenthal LLP**

*This workshop will teach the effective uses of negotiating tactics in a business deal context. Using case studies, fictional scenarios and interactive exercises, Mike Ryan will provide critical insights into how to achieve maximum benefits from the negotiating process. Topics to be covered in-depth will include:*

- Logistics and environment
- Co-operative and competitive styles – how do you decide which to use and why?
- Persuading the opponent: argue or appeal; threaten or promise
- Controlling the agenda
- Knowledge is power
- How to get, give and control critical information
- Using the client to your advantage
- When to concede

***W. Michael Ryan** is a Partner at Sonnenschein Nath & Rosenthal LLP in Chicago, Illinois. Mike specializes in outsourcing agreements and technology-related transactions of all forms. He has represented both customers and service providers in evaluating, structuring, negotiating and documenting complex outsourcing arrangements involving some of the world's leading companies in a variety of industries. These transactions have included the outsourcing of information technology infrastructure and services, call center outsourcings supply chain management services, procurement services, finance and accounting services, document management services and distribution centers. Mike has extensive experience with transactions involving global delivery models and the receipt of services throughout the world.*

# THURSDAY

OCTOBER 27, 2005

**8:15 Registration and Continental Breakfast**

**9:00 Welcoming Remarks from Insight Information**

**9:05 Chair's Opening Remarks**

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**David A. Bronner**

*Partner, Co-Chair of the Private Equity and Emerging Companies Practice  
Ungaretti & Harris LLP*

**9:15 Recent Developments in Contract Law**

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**Hal J. Wood**

*Partner  
Horwood Marcus & Berk Chartered*

*This session will consider the impact of recent case law on the drafting of general business agreements.*

**10:00 Confidentiality Agreements and Letters of Intent**

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**Russell I. Shapiro**

*Partner  
Levenfeld Pearlstein, LLC*

**Jon R. Burney**

*Vice President, General Counsel and Secretary  
FTD Group, Inc.*

- Protecting secrecy of discussions
- What to disclose and when
- Two-way disclosures
- Protecting your secrets
- Advantages and disadvantages of a letter of intent
- What to do when the deal dies
- Reviewing the essential elements of a sample annotated confidentiality agreement and letter of intent

**10:45 Refreshment Break**

**11:00 Asset, Stock and Merger Agreements**

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**David A. Bronner**

*Partner, Co-Chair – Private Equity and Emerging Companies Practice  
Ungaretti & Harris LLP*

- Structure of a transaction
- Key considerations in an asset purchase vs. stock purchase vs. merger agreement
- Significant considerations in merger agreements
- Tax implications of asset vs. stock purchases vs. merger agreements
- Structure of an agreement
- Representations and warranties – which ones do you need and why?
- Covenants
- Closing conditions
- Termination provisions
- Indemnification
- Review of annotated asset and share purchase agreements

**11:45 Shareholders' Agreements**

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**Imad I. Qasim**

*Partner  
Sidley Austin Brown & Wood LLP*

- Term sheets and issue lists
- Capital contributions
- Admission of new members
- The board of directors
- Shareholder votes
- Transfer restrictions
- Tag along and drag along rights
- Shareholder competition and sharing information
- Dispute resolution through mediation and arbitration
- Dissolution provisions and mandatory transfers
- Analysis of annotated sample shareholders' agreement

**12:30 Networking Luncheon**

**2:00 Private Equity Agreements and Venture Capital Investment Agreements**

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**Peter H. Lieberman**

*Partner - Chair, Chicago Corporate & Securities Practice  
Greenberg Traurig LLP*

*Key issues in the documentation of private equity and venture capital transactions, including:*

- Deal structure
- Term sheet/letter of intent
- Due diligence – how much is enough?
- Equity purchase agreements
- Registration rights agreements
- Equity terms
- Warrants – when are they appropriate?
- Management equity
- Downroad financing issues
- Analysis of key clauses in sample private equity agreements and VC investment agreements

- Why is an operating agreement appropriate?
- Overriding state default rules
- Protecting your limited liability status
- Management structures and agency issues
- Fiduciary duties
- Capital contributions and returns of capital
- Other distributions
- Allocation of profit and losses
- Voting and approval rights
- Transfer restrictions
- Mergers and conversions involving LLCs
- Dissolution, winding up and termination
- Checklist for effective drafting of operating agreements

**2:45 Refreshment Break**

**3:00 Joint Ventures – Strategic Alliances**

**Gary I. Levenstein**

*Partner and Chairman of the Corporate, Securities and Finance Department  
Ungaretti & Harris LLP*

- Contractual joint ventures
- Corporate joint ventures
- Partnership joint ventures
- Definition of business objectives
- Degree of participation and management of roles of each party
- Contribution of capital and ownership rights to property
- Division of the profits and losses
- Dispute resolution
- Termination/liquidation of JVs and buy-out provisions
- Confidentiality provisions
- Indemnification clauses

**3:45 Operating Agreements for Limited Liability Companies**

**James L. Jerue**

*Partner  
Horwood Marcus & Berk Chartered*

*An operating agreement is important in an LLC to help avoid financial misunderstandings, ease the operation and management of the LLC and ensure that the business is governed by the owners' rules, not the default rules of the state.*

**4:30 Conference Adjourns for the Day**

# FRIDAY

**OCTOBER 28, 2005**

**8:15 Continental Breakfast**

**9:00 Chair's Opening Remarks**

**David A. Bronner**

*Partner, Co-Chair of the Private Equity and Emerging Companies Practice  
Ungaretti & Harris LLP*

**9:15 International and Cross-Border Agreements**

**Jerry J. Burgdoerfer**

*Partner  
Jenner & Block LLP*

*The drafting of effective international and cross-border agreements can raise unique considerations for attorneys more familiar with the documentation commonly used in domestic transactions. This seminar will consider:*

- What are the special concerns to take into account in negotiations?
- How do you effectively deal with local laws and governmental requirements?
- When are the choice of law and jurisdiction provisions most important?

- What are the key considerations and strategies for establishing joint ventures?
- How do you identify and manage special risks in international transactions?
- Best practices to protect your client in preparing for possible disputes
- When is it appropriate to resolve a dispute through the use of an arbitration panel under NAFTA?
- Has the Ontario Court of Appeal's decision in *Karpa* made it safe to use Canada as a venue for NAFTA arbitrations?
- Avoiding common drafting pitfalls in cross-border agreements

### 10:00 Loan and Credit Agreements

**John N. Oest**

*Partner*

**Lord, Bissell & Brook LLP**

- Pick your battles
  - hierarchy of issues
  - identify goals early
  - articulate the business case
- Follow the money
  - what do you have to do to get it?
  - how long can you keep it?
  - what can you spend it on?
- Pricing traps for the unwary
  - rate triggers
  - the cost of covenant compliance
  - cost reimbursement
  - indemnities
- The push to standardize
  - by trade groups
  - by borrowers
- The role of common sense
- Practical checklists for drafting loan and credit agreements

### 10:45 Refreshment Break

### 11:00 Distribution and Supply Agreements

**Jon P. Christiansen**

*Partner*

**Foley & Lardner LLP**

**Raymond M. Coyne**

*Senior Counsel*

**U.S. Cellular**

*This session will describe the fundamentals of drafting distribution contracts and the process by which contracts are implemented. Among the topics to be discussed are the following:*

- Fundamental terms of the distribution arrangement including term, appointment, territory and exclusive dealing
- Electronic commerce problems and solutions
- Creating and measuring performance obligations
- Suppliers' obligations
- Terms of sale, warranties, confidentiality and trademarks
- Termination, notice and cure
- Dispute resolution
- Other distribution agreements
- Amending the distribution agreement

### 11:45 Drafting Effective Employment Agreements

**Linda M. Doyle**

*Partner*

**McDermott Will & Emery LLP**

- Compensation and stock options
- Restrictive covenants
- Trade secrets, confidential information and non-solicitation provisions
- Blue-penciling
- Termination provisions and releases
- Creations, inventions and intellectual property
- Ethical issues and obligations
- No-sue severance agreements
- Non-compete provisions
- Checklist for drafting bullet-proof employment agreements

### 12:30 Networking Luncheon

### 1:45 Technology Agreements

**Vincent A. Sanchez**

*Partner, Co-Chair, Technology and*

*Sourcing Practice Group*

**DLA Piper Rudnick Gray Cary US LLP**

- Types of technology agreements – overview
- The technology landscape
  - what works, what doesn't
  - the business cycle and software development

- Strategies in approaching technology deals – software licensing vs. acquiring business solutions
- Keys to understanding the technologies underlying the deal
- Pitfalls to consider when contracting for technology

- Outsourcing complexities
- Checklist for drafting effective licensing agreements

**2:30 Refreshment Break**

**2:45 Licensing Agreements**

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**Rebecca S. Eisner**

*Partner*

*Mayer, Brown, Rowe & Maw LLP*

**William J. Bowe**

*Executive Vice President and General Counsel  
Encyclopaedia Britannica, Inc.*

- Grant of license
- Acceptance testing/integration
- Compensation
- Confidentiality
- Warranties
- Limits on liability
- Indemnification
- Implementation services
- Ongoing maintenance
- Source code escrow

**3:30 Outsourcing Agreements**

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**W. Michael Ryan**

*Partner – Sourcing and Technology Group  
Sonnenschein Nath & Rosenthal LLP*

*Many organizations now pursue the outsourcing of non-core business processes as a key component of their business strategy. Driven to reduce costs, improve the quality of services and enhance enterprise flexibility, companies are outsourcing a wide variety of business processes. This session will consider:*

- When is outsourcing appropriate?
- How does outsourcing differ from conventional contracting?
- What are some of the most commonly negotiated issues and how are they resolved?
- What are the additional considerations for a global service delivery model?
- Why do outsourcings fail and how can the parties minimize the likelihood of failure?

**4:15 Conference Concludes**

***Upcoming Insight Information – ALM Events Canada Conferences...***

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Refunds will be given for cancellations received in writing by **October 6, 2005** subject to an administration fee of \$200.00. If your fees have not been paid and you are canceling, you are still liable for the cancellation fees of \$200.00.

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**Insight Information** is a **State Bar of California** approved MCLE provider. This conference qualifies for MCLE credit by the State Bar of California in the amount of 11 hours and a maximum of 3 hours for Workshop A / maximum of 3.5 hrs for Workshop B. Insight certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing Minimum Continuing Legal Education.

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This activity has been approved by the **Iowa Supreme Court Commission on Continuing Legal Education** for 10.5 Hours. Workshops A and B have been approved for 3 hours each of credit.

This activity has been approved by the **Indiana Commission for Continuing Legal Education** for 10.5 hours of credit. Workshops A and B have been approved for 2.8 hours each of credit.

This program has been approved by the **Supreme Court of Wisconsin** for 12 hours of credit. Workshops A and B have been approved for 3.5 hours each of credit.

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