

Freeborn &amp; Peters LLP

**Counsel Connections**  
*Your Business and the Law*

**Spring 2008**

Welcome to the latest issue of Freeborn & Peters' *Counsel Connections*. This publication focuses on current developments and trends in business law. We welcome your suggestions for issues you would like us to address and ways we can make this resource more valuable to you. Feel free to e-mail the editors: Cindy Bergmann at [cbergmann@freebornpeters.com](mailto:cbergmann@freebornpeters.com), or Jeff Mattson at [jmattson@freebornpeters.com](mailto:jmattson@freebornpeters.com).

## In This Issue

- [ABA's Mergers and Acquisitions Deal Points Summary](#)
- [Expanded Time Off for Military Families](#)
- [In re Evanston Northwestern Healthcare Corp.: An Important FTC Decision Affecting M&A](#)
- [PBGIC Ruling Affects Private Equity Funds](#)

## ABA's Mergers and Acquisitions Deal Points Summary

Semi-annually, the American Bar Association ("ABA") publishes the Mergers & Acquisitions Deal Points Study, a report that summarizes typical provisions in publicly available acquisition agreements. The ABA did not publish the report last year, but issued three reports this year summarizing the following types of transactions:



1. Acquisitions of private company targets by public companies.
2. Acquisitions of public companies by strategic buyers (public company or otherwise).
3. Acquisitions of public companies by private equity firms.

As one of the few available benchmarks in the M&A industry, the F&P Business Law Group analyzes these reports to compare the terms we negotiate for our clients to terms negotiated in other deals. Instead of gauging the "market" from personal experience and discussions with colleagues, we are able to derive conclusions from empirical, objective data, facilitating our understanding of evolving market trends.

[Click to continue...](#)

## Expanded Time Off for Military Families

As of January 28, 2008, employers must provide extended leave to family members to care for ill or injured members of the military. The National Defense Authorization Act for fiscal year 2008 (the "NDAA"), signed into law by President Bush on January 28, 2008, amended the Family and Medical Leave Act of 1993 (the "FMLA") to permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 weeks of unpaid leave to care for a "member of the Armed



This e-newsletter is prepared by Freeborn & Peters LLP to provide information on current business topics and the business law services group of Freeborn & Peters LLP. This publication is not intended to provide legal advice for a specific situation or to create an attorney-client relationship. We would be pleased to provide you with legal counsel. Call us at 312-360-6000 to discuss your specific needs.

© 2008 Freeborn & Peters LLP, all rights reserved. Permission is granted to copy and forward all articles and text as long as proper attribution to Freeborn & Peters LLP is provided.

Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness." This new law more than doubles the amount of FMLA available to such families, who were previously limited to the 12-week standard that was applicable to all eligible employees of FMLA-covered employers.

[Click to continue...](#)

---

## ***In re Evanston Northwestern Healthcare Corp.: An Important FTC Decision Affecting M&A***

On August 2, 2007, the Federal Trade Commission issued its decision in *In re Evanston Northwestern Healthcare Corp.* (Docket No. 9315). This decision has important implications for mergers and acquisitions, and contains valuable lessons for management contemplating a merger.

In 2000, Evanston Northwestern Healthcare Corp. ("ENH") merged with Highland Park Hospital. Prior to the merger, ENH owned Evanston Hospital and Glenbrook Hospital. The FTC did not seek to enjoin the merger at that time. However, four years later, the Commission issued an administrative complaint challenging the merger under Section 7 of the Clayton Act.



Most challenges to mergers under Section 7 are prospective. Indeed, Section 7 of the Clayton Act is forward-looking, condemning mergers or acquisitions the effect of which "may be substantially to lessen competition or to tend to create a monopoly." The antitrust agencies and the courts try to predict whether the merger will have anticompetitive effects in the future. The *Evanston* case challenged the merger four years after it was consummated. This allowed the agency not only to examine pre-merger evidence, but also to look at post-merger evidence.

[Click to continue...](#)

---

## **PBGC Ruling Affects Private Equity Funds**

In an important decision for private equity funds, the Pension Benefit Guaranty Corporation recently held that a private equity fund was jointly and severally liable for the \$3.2 million in unfunded liabilities of a pension plan maintained by one of the fund's bankrupt portfolio companies. The PBGC determined that the fund, organized as a limited liability partnership, was engaged in a trade or business (not merely a passive investment vehicle), that the fund was in a parent-subsidiary controlled group of trades or businesses along with its portfolio companies, and that, accordingly, the fund and its other portfolio companies had joint and several liability for the pension underfunding.



[Click to continue...](#)

Freeborn & Peters LLP is a full-service law firm headquartered in the heart of downtown Chicago and has a core practice platform in business law, litigation, real estate and land use, government and regulatory law, and bankruptcy, reorganization, and creditors' rights. With more than 120 attorneys, the firm is committed to providing exceptional legal counsel to clients while maintaining efficiency, an advanced level of responsiveness, and individual attention.

Chicago Office  
312.360.6000 ph • 312.360.6520 fx

Springfield Office  
217.535.1060 ph • 217.535.1069 fx

[www.freebornpeters.com](http://www.freebornpeters.com)

**POWER** & *finesse*