

WHAT'S NEXT: **LAW**

Farrell Fritz Counsels Disputing Partners with Business Divorce Practice Group

A business partnership breakup – commonly referred to as a “business divorce” – shakes the very foundation upon which the partners have built their legacy. Knowing every business divorce requires unique resolutions involving a range of legal disciplines, Farrell Fritz, with offices in Uniondale, New York City, Hauppauge and Water Mill, has added a business divorce practice group to its many practice areas serving the business community.

Leading the firm’s business divorce practice group is Peter A. Mahler, a senior litigation partner in the firm’s New York City office. Peter has more than 25 years’ experience representing clients in business divorce matters and frequently lectures on the topic. Mahler, who also has authored hundreds of articles on the firm’s widely followed blog, *New York Business Divorce*, is considered one of the region’s most sought-after business divorce attorneys.

“Business divorce cases are highly emotionally charged, and even more so when dealing with a family-owned business pitting parent against child, or sibling against sibling, and so on,” Mahler said. “In many cases, each workday the feuding owners have to go into the office and make business decisions together at the same time they’re suing each other, which almost invariably creates ongoing clashes and requires far more intensive legal counseling than with other types of business litigation.”

“One of the greatest challenges in business divorce litigation,” Mahler added, “is to maintain the client’s focus on the business aspects of what they are dealing with and try not to have their judgment clouded by emotion.”

According to Mahler, business divorce lawyers also have to advise clients on the changing landscape when it comes to choice of business entity and its effect on co-owner rights and remedies. “The business divorce landscape has changed dramatically in New York in the last two decades with the advent of the LLC — limited liability company,” Mahler said. “LLCs in New York and elsewhere are governed by separate statutes consisting mostly of default rules that owners are free to modify or eliminate as they see fit by written agreement. This gives LLCs a distinct advantage over traditional corporations and partnerships, which are subject



Pictured (l. to r.) are members of Farrell Fritz’ Business Divorce practice group: Lyle Mahler, Lou Vlahos, Aaron Zerykier, Peter Mahler, Jim Wicks, Steve Melore and Matt Donovan.

to the mandatory rules of their governing statutes.” Mahler added, “This is particularly true when it comes to the enforcement of fiduciary duties and the rights of LLC members to exit the company or to seek judicial dissolution.”

Farrell Fritz’ business divorce practice group employs an interdisciplinary approach to dispute resolution. In most instances, Mahler pointed out, such disputes sooner or later lead to a buyout agreement in which the litigator coordinates with the Group’s corporate, real estate, and tax attorneys as needed to design and complete the most advantageous transaction for the client.

Asked for an example of a business divorce situation with which he was involved, Mahler described one matter in which he brought a client “out of the total darkness” concerning a company in which the client was a minority shareholder. For decades the company owned and operated an outdoor Manhattan parking lot. “Over the years, he stopped receiving information from the majority owner; he came to me asking what can he do. He gave me the address; I looked it up in the public records and discovered the property had been sold by the majority owner two years before for \$9 million. The client was in shock.”

Even though the majority owner put up every conceivable roadblock, in the end Mahler and his client did prevail. “We were successful in getting the judge to dissolve the corporation, which still owned significant real estate,” he noted. “We got a very large judgment against the majority owner, and we worked with the court-appointed receiver to recover monies for our client.”

Not every business divorce makes it into court – or needs to. Farrell Fritz’ business divorce group works with clients whenever possible to resolve partnership disputes before they result in litigation. “Our mission is to see if we can resolve the problem with a business-oriented solution without the necessity of litigation,” Mahler said. “At the same time, however, litigation can be unavoidable, either because of the personal enmity between the partners or because of the disparity in their assessments of company value. This is why an owner involved in a broken relationship with his or her business partners needs to have lawyers at their side who know business divorce law inside out and have the experience and credibility to take the case all the way to trial if the case can’t be settled.”

While business partners have been falling ‘out of love’ with each other since the beginning of time, the business divorce attor-

ney is a relatively new concept reflecting the growing sophistication and expertise necessary to devise and implement strategies that best enable clients to attain their goals. One such area of expertise concerns business valuation. As Mahler explained, “In a business divorce involving a viable company with going concern value, chances are ultimately someone’s going to buy out someone else, either through negotiation or a judicial appraisal proceeding, which means as a lawyer you need to work closely with a business appraiser and to fully understand appraisal concepts and methodology.”

“Our goal is to provide the best possible solutions for business owners when they need to separate from their business partners,” Mahler said. “Whether it means selling or buying someone else out, or dividing company assets, ultimately that’s what the practice of business divorce law is all about.” To do that successfully, the lawyer must develop a close working relationship with the client, educating the client at every step of the process. “You want your client to understand that the upheaval and intense anxiety they’re experiencing will end, and that a business solution will be achieved that allows them to get on with their lives and pursue their entrepreneurial or other goals,” Mahler said.