

Spring 2017

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Business Law Section Council Members (2016-2017):

Jacqueline Akins <i>USAA FSB</i>
E. Steve Bolden II <i>Mahomes Bolden PC</i>
Shanna Nugent Cobbs, <i>Law Offices of Shanna Nugent, P.C.</i>
John Fahy <i>Whitaker Chalk Swindle & Schwartz LLP</i>
Irene Kosturakis (Chair) <i>BMC Software, Inc.</i>
Christina Marshall <i>Chalack Miltra Group</i>
Carol B. Mattick <i>Carol Bavousett Mattick, PC</i>
Matthew T. Moran <i>Gardere Wynne Sewell LLP</i>
F. John Podvin, Jr. <i>Shapiro Biegling Barber Otteson LLP</i>
Cheryl Crandall Tangen <i>JPMorgan Chase Bank, NA</i>
Stephen C. Tarry <i>Vinson & Elkins LLP</i>
Evan Young <i>Baker Botts LLP</i>



Spring Newsletter 2017

Message From The Chair



Dear Business Law Section Members:

I am writing on behalf of your Section's leadership. It gives me great pleasure to tell you what we have accomplished so far this 2016-2017 Bar Year as section leaders.

First and foremost, to communicate on a timely basis the Section's accomplishments, we have improved our website tremendously. You can find it at <http://texasbusinesslaw.org/>. Log in by using your bar number as a username and the password you personally set. There, you will find a wealth of resources, including presentation papers and slide sets from past CLE courses the Section has sponsored, as well as past newsletters, and other practice aids.

Specifically, under the heading "Research Resources," you can find the latest issue of the Texas Journal of Business Law, including articles on defeating class certification, the Texas margin tax, and shareholder oppression. Past Journal issues are being digitized and will be posted as soon as they are ready. That will allow you to recycle your paper copies, should you so desire.

Through March 24, 2017, over 8,300 pieces of legislation, including resolutions, have been filed at the Texas Legislature during this session. How do you know which are important to your business law practice? Under the "Research Resources" heading in the website, you will find your Section's Texas Legislative Update in the form of a report. In the Legislative Update, your Section tracks bills pertinent to ten business law subject-matter categories, including: Business Entities, Securities, Financial Institutions, Real Estate, Taxation, and Choice of Law. Also included are bills that the leadership of your Section prepared, such as amendments to the Texas Business Organizations Code related to Corporations, Non-Profits, Partnerships, and LLCs, as well as amendments to the Texas Uniform Trade Secrets Act. A new Update report will be posted weekly during the Legislative session, so be sure to check the Section's website every Friday.

Other materials found on the website are various non-profit business entity forms and documents, such as example by-laws, and a Policy on Conflicts of Interest and Disclosure of Certain Interests.

Your Section's leaders, who make all this happen, are identified under the "Committees" heading. I thank them and congratulate them for what they have accomplished this 2016-2017 Bar Year. You will find several committees need vice chairs. I invite you to contact the Chair of the committee in which you may have an interest to become involved, or contact me directly. I have been a member of your Section's leadership for over two decades. Like me, I am sure you will find your involvement rewarding, educational, and helpful to your business law practice!

Irene Kosturakis
Chair, Business Law Section
2016-17 Bar Year
irene_kosturakis@bmc.com

Highlights of the Texas Journal of Business Law: Vol. 47 No. 1

Domonique Broadus
Managing Editor
Texas Journal of Business Law

Issue 47:1 features articles on *Halliburton II*, Texas's margin tax, and shareholder oppression. Mr. Roger B. Greenberg & Mr. Zach Wolfe attended an oral argument hearing in the Fifth Circuit in August 2016 regarding Halliburton and class certification. Mr. Greenberg and Mr. Wolfe have previously written articles for the Journal following the case history and development of Halliburton. Their most recent article, *Halliburton II*, focuses on a narrow appeal regarding whether defendants may prove a lack of "correctiveness" to defeat class certification. Though the parties have settled out of court prior to the Fifth Circuit rendering a formal opinion, their analysis is very fruitful for future federal securities fraud cases involving sufficiency of pleadings at the class certification stage. Ms. Nikki L. Laing analyzes the Texas's franchise or "margin" tax, specifically its expansion to entities never-before subject to the tax and alteration of how the tax is now calculated. Ms. Laing's article reviews constitutional challenges to the margin tax in the Texas Supreme Court, varying commentary on the margin tax's categorization as an income tax, and applicability of "costs of goods sold" deductions. In part one of this two-part article, Mr. Eric Fryar re-examines the history of shareholder oppression in Texas and how the court's ruling in *Ritchie v. Rupe* has affected protection afforded to minority shareholders against oppressive conduct by controlling shareholders. Part two of Mr. Fryar's article will be included in Issue 47:2.

In addition, this issue includes recent business developments summarizing cases involving: (1) whether arbitration clauses in engagement letters are binding when the client doesn't sign and the party suing is doing so derivatively; (2) whether UCC Article 4 in Texas preempts common law fraud and breach of contract claims in the relationship between a bank and its customer; (3) whether an agreement to arbitrate disputes is illusory and thus unenforceable when one party has the power to terminate its obligation at any time, effective immediately without advance notice of termination; and (4) whether a court should mandate arbitration pursuant to an agreement when the movant challenges the formation of that contract.

Stay tuned for the electronic publication of Issue 47:2 with Filling in the Gaps: Shareholder Oppression After *Ritchie v. Rupe*: Part 2; Nuisance Cases Against Energy Companies in Texas, Pennsylvania, and Other Areas with Significant or Developing Oil and Gas Exploration; and Series LLCs Part 1—Current Status, Multi-State Issues and Potential Uniform Limited Liability Company Protected Series Act!

This issue and past issues can now be found on the Business Law Section Website: <http://texasbusinesslaw.org/resources/business-law-journal>

Time to Submit Your Nominations for the Section's Leadership

The Business Law Section membership will vote for the Section's Leadership positions at the State Bar of Texas Annual Meeting, which will be held at the Hilton Anatole - Dallas on Thursday, June 22, 2017.

To register for the Annual Meeting (June 22-23, 2017), please see:

https://www.texasbar.com/AM/Template.cfm?Section=Annual_Meeting_Home&Template=/CM/HTMLDisplay.cfm&ContentID=30096.

Pursuant to Article IV, Section 1 of the Business Law Section's Bylaws, nominations for Council members to succeed those Council members whose terms will expire at the close of the Annual Meeting, and to fill vacancies for unexpired Council member terms, may be made by Section members if made in writing and delivered to the Chair not less than sixty (60) days prior to the Annual Meeting. The Section has five Council member positions for terms expiring on June 23 and one position to fill the vacancy for an unexpired term.

Please submit your nominations for these positions by close of business April 28, 2017 to:

Irene Kosturakis
Chair, Business Law Section
2016-17 Bar Year
Irene_kosturakis@bmc.com

UPCOMING CLE PROGRAM

Advanced In-House Counsel & In-House Counsel 101 Courses
August 16-18, 2017 at the Hyatt Hill Country Resort & Spa, San Antonio

Register Here:

<http://texasbusinesslaw.org/events>



CLE Credit: Don't miss the Business Law Section sponsored CLEs listed here and on the Website!

texasbusinesslaw.org

The Business Law Section Visits Law Schools

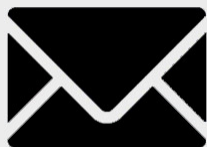
This Spring, members of the Business Law Section visited several law schools and made presentations to law school students interested in a transactional business law practice. The presentations were in a panel format over lunch. Panelists spoke to students about various aspects of a career as an attorney. The information presented included what it's like to be a business law attorney, having a transactional versus a litigation career, what to do in school to prepare for a successful career, and the responsibilities and daily life of an attorney.

Schools visited this Spring included the law schools at Southern Methodist University, the University of Texas, the University of Houston, Texas Tech, and Baylor University. The career services offices of these schools were very grateful for these visits, and the students who attended were gracious and attentive.

The Section's Membership Committee leadership would like to thank those Business Law Section members who were panelists and made these visits a resounding success, including Carol Mattick, Mike Godfrey, Frank Garcia, Lindsey Reinhard, Brad Whitlock, Adriana Lopez-Ortiz, Briana Parramore Cooper, and Sam Hawthorne.

Next Fall, the Section will continue these law school visits to TAMU Law, Texas Southern University, University of North Texas Dallas, and South Texas College of Law Houston. Section members interested in participating as a panelist will find it to be a rewarding and memorable experience and can volunteer by contacting Christina Marshall, Chair of the Membership Committee of the Business Law Section.

Christina Marshall
Membership Chair, Business Law Section
cmarshall@sunfinitysolar.com

**Keeping Your Email Address Updated**

With the electronic distribution of the newsletter, it will be important for every Section member to keep an updated email address with the State Bar of Texas since that agency will distribute the email on behalf of the Section. You may update your email address at the [MyBarPage](#) of the State Bar's website. Please note that the Section will not sell or distribute your email address to anyone, including the State Bar's CLE Division.



Spotlight on a Business Law Section Leader: Evan Young

Evan Young is the Business Law Section's 2017-18 Chair Elect. Evan Young is a partner with Baker Botts L.L.P., focusing his practice on trial and appellate litigation. He comes from an impressive background as a law clerk to U.S. Supreme Court Justice Antonin Scalia and Judge J. Harvie Wilkinson III of the United States Court of Appeals for the Fourth Circuit.

Evan's experience includes being Counsel to the Attorney General at the U.S. Department of Justice under Attorneys General Alberto R. Gonzales and Michael B. Mukasey. Although most of his time while serving in this role was spent at Main Justice in Washington, he also served for most of a year in the U.S. Embassy in Baghdad, Iraq, where he was the Deputy Rule of Law Coordinator. In that position, he worked with the Iraqi government to strengthen Iraq's legal infrastructure, primarily focusing on Iraq's courts and prison system.

After his time at the Department of Justice, Evan and his wife Tobi returned to Texas. Evan joined the Austin office of Baker Botts in 2009.

Until this year, Evan has been the Chair of the Business Law Section's Judicial CLE Committee. (He recently ceded this position to the current Chair of this committee, James P. Sullivan, a Senior Associate at King & Spalding). In July 2015, the Texas Supreme Court issued an order signed by all its justices appointing Evan to the Supreme Court Advisory Committee, a group of judges, practitioners, and professors who are asked to study the various rules of the Texas courts and make recommendations to the Supreme Court to improve them.

Recently, Evan received an additional testament to his excellence as an attorney. He was appointed by Governor Abbott to become one of six citizen members of the Texas Judicial Council (TJC). Chaired by Chief Justice Nathan Hecht, the TJC is the policy-making body for the State's judiciary. The Legislature created it in 1929 to continuously study and report on the organization and practices of the Texas Judicial Branch.

According to its website at, <http://www.txcourts.gov/tjc.aspx>, the TJC "studies methods to simplify judicial procedures, expedite court business, and better administer justice. It examines the work accomplished by the courts and submits recommendations for improvement of the system to the Legislature, the Governor and the Supreme Court."

Congratulations to Evan Young, a Business Law Section Leader!

Newsletter Submissions

If you would like to submit an article for inclusion in the Business Law Section's Newsletter, please email it to our Newsletter

Committee Chair,
Louann Richard at
louann.richard@bakermckenzie.com

The Newsletter Committee reserves the right to edit contributions for clarity and content.

