



**LLCs, Partnerships and Unincorporated Entities Committee
2015 LLC Institute
November 12 – 13, 2015
Agenda**

Thursday, November 12, 2015

- 7:20 a.m. - 8:00 a.m. Breakfast (included in registration)
- 8:00 a.m. – 8:05 a.m. Welcome; Housekeeping
- 8:05 a.m. – 8:45 a.m. **Prepared remarks from and Q&A with Senator Grassley** (*Iowa, senior member of the Committee on Finance and member of the Joint Committee on Taxation*)
- 8:45 a.m. - 10:45 a.m. **Program (2 hrs.) Case Law Review**

This panel will discuss recent LLC and partnership cases on various topics of significance, including cases dealing with fiduciary duties and veil piercing and cases illustrating pitfalls in drafting operating agreements.

Chair: Prof. Elizabeth “Beth” Miller, Prof. of Law,
Baylor Law School, Waco, TX

Presenters: Lou Hering, Morris, Nichols, Arsht & Tunnell LLP,
Wilmington, DE
Christina Houston, DLA Piper, Wilmington, DE

- 10:45 a.m. - 11:00 a.m. Break

- 11:00 a.m. - 12:30 p.m. **Program (1.5 hrs.) Legal Opinions Not In Delaware**

Transaction docs most often are governed by laws other than Delaware, so that was why I made that change. Otherwise, you da best.

Opinion letter practice is typically focused upon Delaware entities. Notwithstanding the view that Delaware is the "dominant" jurisdiction, it is a simple fact that most LLCs nationwide are not organized in Delaware. Join us as we review both similarities and pitfalls in rendering opinions on LLC's and other unincorporated entities organized outside of Delaware.

Chair: Christina Houston, DLA Piper LLP, Wilmington, DE
Presenters: Anna Mills, The Van Winkle Law Firm, Charlotte, NC
Bill Callison, Faegre Baker Daniels LLP, Denver, CO
Johnny Lyle, Adams and Reese LLP, Birmingham, AL
Cristin Keane, Carlton Fields, P.A., Tampa, FL

12:30 p.m. - 1:45 p.m.

Luncheon with Keynote Speaker Prof. Robert Thompson
(Georgetown Law Center, Washington, DC)

2:00 p.m. - 3:30 p.m.

Program (1.5 hrs.) [The Legal Death of a LLC: A Nationwide Hodgepodge of Rules and Practices](#)

This panel focuses on LLC dissolution, wind-up, and termination. The presentations and discussion are designed to address, among other things, the statutory differences in dissolution schemes as among various states, the policy reasons underlying these differences, and how the differences work in theory and practice.

Chair: Prof. Joan Heminway, The University of Tennessee
College of Law, Knoxville, TN
Presenters: Prof. Carter Bishop, Suffolk University Law School,
Boston, MA
Prof. Doug Moll, University of Houston Law Center,
Houston, TX

3:30 p.m. - 3:45 p.m.

Break

3:45 p.m. - 5:15 p.m.

Program (1.5 hrs.) [What Is An Operating Agreement and Why Do We Care?](#)

Like Shimmer Floor Wax, which was both a floor wax and dessert topping (N.B. <http://www.nbc.com/saturday-night-live/video/shimmer-floor-wax/n8625>), one of the many questions about the operating agreement is whether it is a contract, the organic formation constitution of a business organization, or something else (like a business plan or statement of intention). Of course in some cases it is all of these and in others of more limited effect. But in any case it is critically important in understanding the tax and business relationship that is an LLC. This panel will consider some of the important questions of what the operating agreement is (or are in the case of multiple components), how it comes into being, what its function is in various contexts (among the members, with the LLC, and under different legal regimes such as tax and bankruptcy), and how we go about determining its contents and explaining what it is and how it works to others.

Chair: Robert Keatinge, Holland & Hart LLP, Denver, CO
Presenters: Kelley Bender, Chapman & Cutler, Chicago, IL
Ann Conaway, Widener University School of Law,
Wilmington, DE
Elizabeth S. Fenton, Saul Ewing, Wilmington, DE
Joan Heminway, University of Tennessee College of Law,
Knoxville, TN
Jessica Liou, Weil, Gotshal & Manges LLP, New York, NY

6:30 p.m. - 7:30 p.m.

Cocktail Hour – Cash Bar

7:30 p.m. - 10:00 p.m.

Lubaroff Award Dinner - (this event is a separately ticketed event--
\$125.00 - obtain through the registration process)

Friday, November 13, 2015

7:30 a.m. - 8:30 a.m. Breakfast (included in registration)

8:30 a.m. - 10:30 a.m. **Program (2 hrs.) [Navigating the Ethical Maelstroms When the Law Firm Ship is Going Down](#)**

The profession has seen a number of law firms dissolve in the last few decades. When law firms fail, a number of ethical and risk management issues surface that require careful and conscious planning to successfully navigate. These issues relate to everything from client property and client files, to conflicts of interest, client confidentiality, billing and collection of legal fees, and migration of lawyers and staff. This program will address many of these issues by reviewing hypotheticals to pose rules-based and practical solutions to ethical issues."

Chair: George Coleman, Bell Nunnally & Martin LLP, Dallas, TX
Co-Presenters: Susan S. Fortney, Texas A&M University School of Law, Fort Worth, TX
A.J. Singleton, Stoll Keenon Ogden PLLC, Lexington, KY

10:30 a.m. - 10:45 a.m. Break

10:45 a.m. – 12:15 a.m. **Program (1.5 hrs.) [Unfinished Business Doctrine](#)**

Drawing upon the experience of some large law firm bankruptcies and other recent decisions, this presentation will discuss claims by creditors and former partners seeking repayment of prior distributions or for profits earned by other firms after the dissociation of the attorneys handling the matter from, or dissolution of, the firm and will focus on potential liability issues and the pertinent ethical issues presented by such claims.

Chair: Robert Keatinge, Holland & Hart LLP, Denver, CO
Presenters: Barbra Parlin, Holland & Knight LLP, New York, NY
Christopher Murray, Diamond McCarthy LLP, Houston, TX

12:15 p.m. - 1:00 p.m. **[Luncheon: Working Committee Discussion \(this event is a separately ticketed event - \\$35.00 - obtain through the registration process\)](#)**

1:00 p.m. - 1:15 p.m. Break

1:15 p.m. - 3:15 p.m. **Program (2 hrs.) [S-Corp LLCs](#)**

It is increasingly common for limited liability companies to elect taxation as subchapter S corporations. Traditionally, LLC operating agreements have been drafted on the assumption that the entity will be taxed as a partnership under subchapter K, or, in the case of single member LLCs, as a disregarded entity. While pass-through taxation is a common attribute of both partnerships and subchapter S corporations, there are

significant differences between these two tax regimes. This panel will discuss issues associated with the de-coupling of the form of an entity from its taxation and associated planning considerations in the context of LLCs that elect to be taxed as S corporations or as qualified subchapter S subsidiaries. Among other topics, it will address the characteristics of subchapter S corporations, factors influencing the choice of S corporation tax status, operating agreement provisions tailored to the subchapter S tax regime, the implications of “disregarded” entity status (and loss of that status), fundamental differences between qualified subchapter S subsidiaries and LLCs that are disregarded under the check-the-box regulations, and implications for acquisitions, dispositions and succession planning.

Chair: Dan Sheridan, Stark & Stark, Lawrenceville, NJ
Presenters: Martin J. McMahon, Jr., James J. Freeland Eminent Scholar in Taxation and Professor of Law, Fredric G. Levin College of Law, University of Florida, Gainesville, FL
Warren P. Kean, Shumaker, Loop & Kendrick, LLP, Charlotte, NC

3:15 p.m. - 3:30 p.m. Break

3:30 p.m. - 5:00 p.m. **Program (1.5 hrs.) [Did you really mean what you wrote in that IRR distribution waterfall?](#)**

This panel will discuss the prevalent use of internal rate of return (IRR) in distribution waterfalls and how it compares to more traditional “preferred return” waterfalls. The speakers will explain the economic and tax considerations, including concepts of compounding, time value of money, use of Excel references, benefits of IRR waterfall provisions, and common drafting errors. The speakers will compare and contrast many sample waterfalls and determine if there really is a difference in the current varied definitions of IRR in documents.

Chair: Prof. Brad Borden, Brooklyn Law School, Brooklyn, NY
Presenters: Steve Schneider, Goulston & Storrs, Washington, DC
Thomas Kaufman, Goulston & Storrs (invited), Washington, DC
John Grumbacher, Goulston & Storrs (invited), Boston, MA

5:00 p.m. - 5:15 p.m. **Wrap-Up**