

LLCs, Partnerships and Unincorporated Entities Committee
2017 LLC Institute
November 2 – 3, 2017
Agenda

Thursday, November 2, 2017

7:20 a.m. - 8:00 a.m. Breakfast (included in registration)

8:00 a.m. - 8:15 a.m. Welcome; Housekeeping

8:15 a.m. - 10:15 a.m. **Program (2 hrs.) Case Law Update (Non-Delaware)**

Prof. Elizabeth “Beth” Miller (Baylor Law School Waco, Texas), Dan Sheridan (Stark & Stark – Lawrenceville, New Jersey), Sean Ducharme (Hunton & Williams – Richmond, Virginia), and Kelley Bender (Chapman and Cutler – Chicago, Illinois)

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

10:15 a.m. - 10:30 a.m. Break

10:30 a.m. - 12:00 p.m. **Program (1.5 hrs.) Tax Reform Affecting Pass-Through Entities – What’s Happening, or Not-Happening?**

Moderator: Louis T. M. Conti (Holland & Knight – Tampa, Florida)

Panelists: Robert R. Keatinge (Holland & Hart – Denver, Colorado), Bahar A. Schippel (Snell & Wilmer – Phoenix, Arizona), and James B. Sowell (KPMG – Washington DC)

This panel will discuss the potential impact of the 2017 Tax Reform Proposals and/or provisions (if enacted) which affect pass-through business entities and their equity-holders. The focus will be on partnership tax law changes, as well as disregarded entity and compensation/self-employment changes and planning.

12:15 p.m. - 1:30 p.m. **Luncheon**

Keynote address by J. William Callison (Faegre Baker Daniels – Denver, Colorado)

In 2013, the United Nations Commission on International Trade Law requested that its Working Group I commence deliberations on reducing legal obstacles encountered by micro, small and medium sized businesses (MSMEs) in entering the formal economy, maximizing their economic

potential and, indirectly, assisting with sustainable development and rule of law application. Working Group I has spent several years focusing on legal standards for the organization of MSMEs and may, after more time, prepare some form of model international statute for use in developing countries. Bill Callison is an NGO delegate to the Working Group and is a member of the Secretariat's expert advisory committee. He will discuss the process, politics, perspectives and possibilities of this project which, in some senses, is like the original LC statutory drafting process, with the addition of civil, common and other legal perspectives, entirely different domestic approaches and agendas, pre-NCCUSL and without tax law definition.

1:30 p.m. - 3:30 p.m.

Program (2 hrs.) Allocations & Substantial Economic Effect

Prof. Walter D. Schwidetzky (University of Baltimore), Professor Roberta Mann (University of Oregon, Mr. & Mrs. L.L. Stewart Professor of Business Law), Bahar A. Schippel (Snell & Wilmer – Phoenix, Arizona), and Ross Cohen (Bingham Greenebaum Doll – Louisville, Kentucky)

This panel will lay out the basics of the “substantial economic effect” safe harbor for tax allocations and discuss when business lawyers can, and cannot, dispense with tax allocations provisions in their LLC agreements. The program then will discuss some more advanced topics, including when an LLC might choose not to comply with the substantial economic effect rules.

3:30 p.m. – 3:45p.m.

Break

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

Program (1.5 hrs.) USACafes (Alternative Veil Piercing)

Prof. Mohsen Manesh (University of Oregon), Prof. Joshua Fershee (West Virginia University), and Carmen Fonda (Venable – Baltimore, Maryland)

This program will address LLC veil piercing in both the traditional context and the special USACafes context, in which individuals acting on behalf of a legal entity that exercises control over an LLC (arguably) owe a fiduciary duty to that LLCs and its owners.

6:00 p.m. - 7:00 p.m.

Cocktail Hour

7:00 p.m. - 9:00 p.m.

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

Friday, November 3, 2017

7:30 a.m. - 8:00 a.m. Breakfast (included in registration)

8:05 a.m. - 10:05 a.m. **Program (2 hrs.) Delaware and Bankruptcy Case Law Update**

Tarik J. Haskins (Morris, Nichols, Arsht & Tunnell – Wilmington, Delaware), Matt O’Toole (Potter, Anderson, Corroon – Wilmington, Delaware), and James J. Wheaton (Chesapeake, Virginia)

This panel will discuss recent LLC and partnership cases from Delaware on various topics of significance, including cases dealing with fiduciary duties and veil piercing and cases illustrating pitfalls in drafting operating agreements. Jim Wheaton will provide an update on recent bankruptcy decisions of interest.

10:05 a.m. - 10:15 a.m. Break

10:15 a.m. – 12:15 p.m. **Program (2 hrs.) Fiduciary Duties**

Moderator: Professor Carter Bishop (Suffolk University – Boston, Massachusetts)

Panelist: Tammy L. Mercer (Young Conaway Stargatt & Taylor – Wilmington, Delaware), Prof. Joan Heminway (University of Tennessee), Prof. Mohsen Manesh (University of Oregon), and Melissa K. Stubenberg (Richards Layton & Finger – Wilmington Delaware)

This panel will discuss the role of fiduciary duties in structuring LLC operating agreements. Topics will include accidental contractual resurrection of a fiduciary duty eliminated, aiding and abetting a fiduciary duty contractually eliminated, and using a majority in interest amendment provision to eliminate a fundamental fiduciary duty of the minority. Time permitting, the panel will also discuss disclosure duties connected to voting decision making.”

12:15 p.m. - 12:45 p.m. **Luncheon: Working Committee Meeting (included in registration)**

12:45 p.m. - 2:15 p.m. **Program (1.5 hrs.) Good Faith**

The Honorable Collins J. Seitz, Jr. (Justice, Delaware Supreme Court), Former Vice Chancellor, Donald F. Parsons, Jr. (Morris, Nichols, Arsht & Tunnell LLP – Wilmington, Delaware), Lisa R. Jacobs (DLA Piper – Philadelphia, Pennsylvania), and Srini Raju (Richards Layton & Finger – Wilmington, Delaware)

This panel will discuss the various concepts of good faith—contractual

good faith, fiduciary good faith, and the implied covenant of good faith and fair dealing—in the context of LLCs and partnerships. The panel will discuss recent case law regarding good faith and various transactional scenarios involving LLCs and partnerships in which issues of good faith may arise.

2:15 p.m. - 2:30 p.m.

Break

2:30 p.m. - 4:00 p.m.

Program (1.5 hrs.) State and Local Tax Matters

Erica L. Horn (Stoll Keenon Ogden – Lexington, Kentucky), Steven Wlodychak (Ernst & Young – Washington DC), and Marianne Evans (KPMG – Washington DC)

The Bipartisan Budget Act of 2015 enacted a new federal audit regime for partnerships, which gives the IRS the authority to audit partnerships at the entity level AND to assess and collect tax deficiencies directly from the partnership. Full implementation of these new rules is fast approaching. The first IRS audits under the new rules are anticipated to begin as early as 2020 for taxable years beginning after December 31, 2017 (i.e., January 1, 2018 for calendar year filers). The IRS has issued proposed regulations and a technical corrections bill has been widely discussed. While changes from the federal perspective will be significant, those changes may pale in comparison to the problems that may be experienced by the states and thus, state tax liability for the partnership and its partners. The panelists will provide a brief overview of the new federal partnership rules and then turn to the serious implications for the states. The Multistate Tax Commission and state tax authorities are already working with stakeholders such as the Tax Executives Institute, ABA, Tax Section SALT Committee, Council On State Taxation, AICPA, and the Institute of Professional in Taxation to develop model legislation that will help taxing authorities and taxpayers alike with the inevitable state audit complications created by the new federal audit rules.

4:30 p.m. - 5:00 p.m.

Wrap-Up