



RAISING THE BAR

Recent Awards

GableGotwals Announces the 2013 Slate of Officers and Directors for the Firm.

- *David Keglovits-Chair and CEO*
- *Sid Swinson-President*
- *Richard Carson-Secretary*
- *Dale Cottingham-Treasurer*
- *Terry Ragsdale*
- *Rob Robertson*
- *Scott Rowland*
- *Amy Stipe*

International Gaming Law

GableGotwals shareholder Dean Luthey has been elected a general member of the International Masters of Gaming Law. IMGL is an international, invitation-only society of general member private practice lawyers and associate member gaming regulators, accountants, consultants and in-house counsel. General members, who have achieved recognition in gaming matters over a lengthy period of years, must be nominated by three current general members, receive a super majority vote of the membership committee, and be elected by the general members. Currently IMGL has 51 U. S. general members and 62 general members from other countries. Dean, one of two Oklahoma general members, joined IMGL at its recent banquet at the Inner Temple Hall in London.

Fellows of the American Bar Foundation

GableGotwals has been recognized as the leading Oklahoma law firm in the American Bar Foundation with eight members. In addition, Graydon Dean Luthey has been recognized with the Outstanding Chair award for his work in 2008. The award recognizes the Fellows State Chair who demonstrated a dedication to the work of the Foundation and the mission of the Fellows through exception efforts. American Bar Foundation members include:

James M. Sturdivant – Life Patron Fellow

John A. Gaberino, Jr. and Graydon Dean Luthey – Sustaining Life Fellow

Steven L. Barghols, Sidney G. Dunagan,

Oliver S. Howard and Joseph W. Morris – Life Fellow

Renee Demoss and Drew Edmondson – Fellow

The Fellows of the American Bar Foundation is an honorary organization of attorneys, judges and law professors whose professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal foundation. The American Bar Foundation works to advance justice through research on law, legal institutions, and legal processes. Current research covers such topics as end-of-life decision making, the value of early childhood education, how lawyers in public interest law organizations conceptualize and pursue their goals, what people think of the civil justice system against the backdrop of the politics of tort reform and the changes in the law that have resulted from the tort reform movement, and the factors that play a psychological role in laypersons' decisions about justice and responsibility.

G. Blaine Schwabe, III Joins as OKC Of Counsel Attorney



G. Blaine Schwabe, III joins GableGotwals as a new Of Counsel attorney in the Oklahoma City office. Blaine's practice will focus on business litigation, bankruptcy and insolvency law, commercial law, telecommunications, debtor-creditor relations and insurance company insolvency.

Blaine is widely known for his expertise in bankruptcy and insolvency law, having guided numerous clients through difficult and complex Chapter 11 cases across a wide range of industries. Blaine understands the intricacies of bankruptcy litigation from both the debtor and creditor perspective, giving him unique insight into these difficult cases.

Blaine received his J.D. from the University of Oklahoma College of Law in 1974 and his B.B.A. from the University of Oklahoma in 1970.

Contact Blaine:

(405) 235-5589 · gschwabe@gablelaw.com

Rania A. Nasreddine Named Shareholder



Rania A. Nasreddine has been named a Shareholder with GableGotwals in the Tulsa office. Rania has been an Associate with the Firm since 2005. Prior to that time, she served as a law clerk to the Honorable Joe Heaton, United States District Court Judge for the

Western District of Oklahoma. Rania's commercial litigation experience includes representing several major energy clients and assisting with complex contractual issues. Her transactional practice includes constructing and negotiating leases as well as assisting small businesses with general legal issues. She received her J.D. from The University of Oklahoma College of Law and her B.A. in Economics and Political Science from Emory University.

Contact Rania:

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Robert J. Getchell Joins as Tulsa Of Counsel Attorney



Robert J. Getchell joins GableGotwals as a new Of Counsel attorney in the Tulsa office. Bob's practice will focus on real estate law, particularly in the areas of litigation, bankruptcy and transactional matters. Having spent almost 20 years as staff attorney and general

counsel for abstract and title companies, Bob's experience includes residential, commercial and investment-related real estate transactions. Bob is also an experienced litigator having represented various individual, investment and corporate clients, including some of the country's largest banks, in adversarial matters covering a wide range of real estate matters. Bob received his J.D. from Oral Roberts University's O.W. Coburn School of Law in 1985 and B.A. in History from Oral Roberts University in 1982.

Contact Bob:

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Certified Fire and Explosion Investigator



Jeff Curran, Of Counsel in Oklahoma City, is now a Certified Fire and Explosion Investigator in addition to being a member of the National Fire Protection Association. He offers our clients, particularly in the energy industry, a unique service should there be a need for proactive recommendations or after-the-fact investigation.

Contact Jeff:

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Non-Compete Agreements Must Be Narrowly Drafted

Erin K. Dailey and Diana Tate Vermeire recently moved for and won dismissal in a case seeking to enforce an overbroad non-compete agreement that constituted an illegal restraint on trade. As the case illustrates, non-compete agreements must be narrowly drafted in order to be upheld and employers seeking to bind employees with such agreements must be careful in drafting them.

Our client, a former independent contractor providing services as a Certified Registered Nurse Anesthetist (“CRNA”), was recently sued by an entity for which she had worked as an independent contractor seeking to enforce its standard non-compete agreement. The client had left her position as an independent contractor and accepted full-time employment as a CRNA with a new organization. The plaintiff sought to enforce the unnegotiated non-compete agreement and prevent the client from continuing her employment while requesting nearly \$500,000 in damages.

The non-compete agreement at issue in the case far exceeded the scope of what is permissible under Oklahoma law. As drafted, the agreement purported to preclude the client from practicing as a CRNA for two (2) years immediately following her separation from the former employer and within a three hundred (300) mile radius of the former employer’s headquarters and within one hundred (100) miles of any facility where the former employer provided professional services, effectively covering the entire state of Oklahoma, as well as portions of Arkansas, Kansas and Texas. The agreement constituted an illegal restraint on trade not only because of its overbroad geographic scope provision, but also because of its lengthy list of prohibited activities. Finally, the agreement and the suit brought to enforce it sought to preclude the client from maintaining her *full-time employment* in a position providing anesthesia services that the client had formerly provided on an independent contractor basis.

Oklahoma’s public policy supports the freedom of individuals to exercise their chosen profession. The Oklahoma Legislature has allowed only very narrow exceptions to the rule that agreements purporting to restrain the free exercise of a lawful profession are void, allowing agreements between an employer and employee – not an independent contractor – that prohibit “**direct solicitation**” of the sales of goods or services from “**established customers**” and restrictions in agreements that involve the dissolution of a partnership or sale of goodwill. 15 O.S. §§ 217; 219A (emphasis added).

Accordingly, and as evidenced by the recent successful dismissal of the case, employers seeking to restrain employees from directly competing with the employer after employment has ended must be careful in crafting non-compete or non-solicitation agreements that conform to the narrow exceptions permitted under Oklahoma law. Employers must be mindful to have narrowly drafted provisions related to prohibited activities, geographic scope, and time. In addition, employers must also ensure that their agreements do not seek to ban employment in its entirety for the former employee and that they are mindful that independent contractors are not the same as employees under the law.



Oklahoma Capital Gains Deduction Held Unconstitutional

The decision overruled an Oklahoma Tax Commission decision denying allowance of the capital gains deduction for sale of Oklahoma assets of an out-of-state business. The court held the Oklahoma law enacted in 2005 as an economic and business development incentive violated the Commerce Clause of the U.S. Constitution by facially discriminating against out-of-state businesses.

The law allows capital gains deductions for Oklahoma income tax purposes for sales of stock, ownership interests, and business real and tangible and intangible personal property assets of an Oklahoma-based business after owning those items for three (3) years, while allowing the deduction for out-of-state businesses for sales of business real and tangible personal property assets only after a five (5) year ownership period.

The court found this is improper “economic protectionism” by benefiting in-state economic interests by burdening out-of-state competitors. The court held this discrimination made the law invalid under the Commerce Clause.

The taxpayer in the case had claimed a capital gains deduction on its Oklahoma income tax return for the year of sale of capital assets of a business that had been owned in Oklahoma for more than three (3) years, but was denied the deduction by the Tax Commission because it did not have its primary headquarters in Oklahoma.

Taxpayers in a similar position may also be entitled to relief and a refund of Oklahoma income tax for a prior year in which they sold capital assets but did not receive a corresponding deduction from state income tax. The Oklahoma Tax Commission has filed for rehearing of the above case, requesting, among other things, that the Court reverse its original holding and/or limit application of the decision to prospective cases. A final decision may take time, so taxpayers who may be entitled to relief and a refund of Oklahoma income tax for a prior year are encouraged to consider filing a protective refund claim before the three-year statute of limitations period runs.

This is a summary of the court decision provided for general information purposes. It is not intended as and should not be relied upon as legal advice.

If you have questions about this decision, please contact Sheppard F. Miers, Jr. or Melissa S. Taylor at Gable Gotwals, 918-595-4800.

The Oklahoma income tax capital gains deduction favoring in-state businesses, 68 O.S. § 2358(D), has been held to be unconstitutional by the Oklahoma Court of Civil Appeals. CDR Systems Corp. v. Okla. Tax Comm’n, Case No. 109,886 (Okla. App. Jan. 17, 2013).



GableGotwals' Indian Law Practice Thrives



GableGotwals' Indian law practice has been particularly active and enjoyed significant success in the last few months. Dean Luthey, general counsel of the Oklahoma Indian Gaming Association, led the Association's legal efforts to obtain revisions to the Federal National Indian Gaming Commission's federal regulations that will result in a savings of over \$50 million for the Association's members. Jeff Hassell, Tom Hutchison and Dean Luthey have had three major engagements for banks concerning loans to tribes. Additionally, the firm recently advised a major tribe in a credit consolidation transaction with a larger debtor. Dean Luthey represented a gaming vendor in obtaining dismissal of a \$3.3 million fine by a tribal gaming commission.

In the courts, GableGotwals has been particularly active. Dave Keglovits and Amy Fogleman are representing Cherokee Nation Entertainment in a major federal court case against the Department of the Interior concerning the DOI's decision to allow the United Keetoowah Band to have land located within the confines of the historical Cherokee treaty land taken into trust. Dean Luthey received affirmance by the U.S. Tenth Circuit Court of Appeals of a judgment that he obtained in the Western District of Oklahoma dismissing on sovereign immunity grounds Title VII and ADLA claims against a Cherokee Nation-owned business. Dave Keglovits and Drew Edmondson recently established the right of a Cherokee-owned business to seek a declaratory judgment in the Cherokee Nation District Court against a contract counterparty. Dean Luthey recently obtained a preliminary injunction after trial from the Delaware Nation District Court reinstating the Chief who had been unlawfully removed by the tribe's executive committee. The firm continues to advise the Gaming Commissioner of a major tribe concerning an NLRB action to allow unionization of tribal casino gaming employees.

About Us

GableGotwals is a full-service law firm of over 70 attorneys representing a diversified client base across the nation. Though Oklahoma-based, our connections and reach are global. Fortune 500 corporations, entrepreneurs, privately owned companies, foundations and individuals entrust us every day with the stewardship and strategic management of their legal challenges. GableGotwals is well known for its high quality legal services provided by a highly experienced group of litigators and transactional attorneys who have been recognized by Chambers USA, Best Lawyers In America, Oklahoma Super Lawyers and a number of federal, state and county bar associations.

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