



# RAISING THE BAR

## Recent Awards

- *GableGotwals has been ranked in the 2016 U.S. News — Best Lawyers® “Best Law Firms” list regionally in 63 practice areas.*
- *Thirteen GableGotwals attorneys and the Firm have been recognized by Benchmark Litigation for 2016. Overall, GableGotwals has been named a Highly Recommended Firm. Honorees include Jeff Curran, David Bryant, Dale Cottingham, Sid Dunagan, Oliver Howard, Dave Kegllovi, Dean Luthey, Jim Sturdivant, Rob Robertson and Scott Rowland. Also included as “Future Stars” are Erin Dailey, Amy Stipe, and Brad Welsh.*
- *Chambers USA Recognized 14 Attorneys and the Firm Overall in the areas of Corporate/Commercial, Energy & Natural Resources, Litigation — General Commercial law. Attorneys recognized are Steve Adams, David Bryant, Dale Cottingham, Sid Dunagan, Robert Glass, Oliver Howard, Lloyd Landreth, Dean Luthey, Rick Noulles, Terry Ragsdale, Rob Robertson, Steve Schuller and Jim Sturdivant (Senior Statesman).*



## Major Federal Court Win

**Rob Robertson** and **Jake Krattiger**, in the firm’s Oklahoma City office, obtained a judgment in the USDC for the Western District of Oklahoma, dismissing with prejudice a four-year, \$10 million plus lawsuit filed against the firm’s clients. In addition to throwing out the case, the judge sanctioned the plaintiffs for discovery misconduct and required the plaintiffs to pay for all the fees and costs incurred by the client during the discovery dispute. In addition, they are required to pay the costs for defending an initial lawsuit which was dismissed in a failed attempt to avoid an earlier discovery dispute.

## Half A Million Dollars Recovered for Client

**Chris Thrutchley** and **Erin Dailey**, in the Tulsa Employment Practice Group, successfully secured a prompt settlement recovering nearly half a million dollars for a client in a lawsuit involving a breach of a nondisclosure agreement, unfair competition, and misappropriation of confidential client data by the client’s former director of sales. The former employee entered into a nondisclosure agreement promising not to use or disclose the client’s confidential client information for any purpose other than for the benefit of the employer. However, the employee secretly set up a competing business, stole confidential client data by downloading and copying it to a USB device, resigned without notice, and then used the stolen data to immediately steal a large number of clients and the related commission-based revenue stream.

### *Recent Awards*

- *Renee DeMoss received the Neil E. Bogan Professionalism Award from the Oklahoma Bar Association.*
- *Sid Dunagan awarded the Outstanding Senior Alumni Award by the University of Tulsa Law School.*
- *Jeff Curran Named President of the Children's Rehabilitation Hospital Board of Directors.*
- *Oklahoma Magazine named GableGotwals attorney Adam Doverspike amongst the 2016 honorees for the 40 under 40 class. Adam was picked for 2016 Tulsa Legal and Business News 40 Under 40.*
- *Meagen Burrows selected for Leadership Tulsa Class 55. Past LT alumni include Adam Doverspike (Class 54), Wes Pebsworth (Class 53), Tom Hutchison (Class 51), Lori Sears (Class 36), Robert Glass (Class 23), Jeff Hassell (Class 20), Melissa Bogle (Class 18), Renee DeMoss (Class 17) and Dean Luthey (Class 13).*



### **Unanimous Verdict for the Defense**

**Jeff Curran**, in the Oklahoma City office, recently worked with Leighton Oshima and Darlene Itomura of Oshima, Itomura and Fujimoto in Honolulu to obtain a unanimous defense verdict for a national retailer in Hawaii Circuit Court. *Gail Ireland, et al., v. Blockbuster L.L.C.*, Case No. 13-1-2349-08 (ECN). Plaintiff claimed that her pre-existing spondylolisthesis was asymptomatic before an accident at Blockbuster where she was rammed into from behind by an unattended child. Afterwards, plaintiff saw several specialists, one of whom ultimately performed extensive surgery. Plaintiff claimed the store was negligent in failing to control the child and allowing a dangerous condition to exist on its premises. Defendant denied the existence of the dangerous condition, and further claimed that while the surgery may have been necessary for her pre-existing condition, it was not causally related to the accident. After a week-long trial in Honolulu and about an hour's deliberation, the jury returned a unanimous defense verdict.

### **DEA Approval in Two Weeks**

**Stacy Brklacich**, in the Tulsa Health Care Practice Group, obtained new Manufacturer and Distributor of Controlled Substance Licenses from the DEA for a national medical and surgical supply company. Stacy, who has contacts at the DEA field office in Tulsa, was hired after the client, through other attorneys, was unable after five months to get the licenses approved. Stacy obtained the licenses for the client in just two weeks.

### **Client Successfully Defended in Case Seeking \$10 Million**

**Rob Robertson** and **Greg Metcalfe**, OKC office, successfully defended a major energy company in a two-week jury trial in which qui tam plaintiffs sought judgment in excess of \$10 million.



# Four Gable Attorneys Become New Shareholders

## Oklahoma's Only AAA Employment Arbitrator

The American Arbitration Association® (AAA®), the leading provider of conflict management and dispute resolution services, has selected **Chris S. Thrutchley** to be Oklahoma's AAA Employment Arbitrator. The use of arbitration to resolve a wider variety of disputes has grown extensively and has become a significant part of the justice system on which our society relies for a fair determination of legal rights. Arbitrators are chosen for their expertise, integrity, and good judgment and therefore are responsible for making sure cases to which they are assigned deliver the benefits arbitration offers, namely speed, economy and justice.

GableGotwals is pleased to announce the promotion of one associate attorney and three of counsel attorneys to shareholder status. The new shareholders include Sara Barry, Brandon Bickle, and Philip Hixon who are located in Tulsa and Leo Portman who practices in Oklahoma City. The Firm now has offices in Tulsa, Oklahoma City and San Antonio, Texas.



**Sara E. Barry** counsels clients on corporate formations and reorganizations, contract review, mergers and acquisitions, real estate transactions and estate planning.

918.595.4829 · [sbarry@gablelaw.com](mailto:sbarry@gablelaw.com)



**Brandon C. Bickle** regularly advises clients on a variety of business matters, including contract and loan disputes, construction disputes, collections, loan workouts, and bankruptcy matters.

918.595.4817 · [bbickle@gablelaw.com](mailto:bbickle@gablelaw.com)



**Philip D. Hixon** represents the interests of clients in a variety of legal matters including construction, environment, insurance, health care, general litigation and appellate review of the same.

918.595.4831 · [phixon@gablelaw.com](mailto:phixon@gablelaw.com)



**Leo J. Portman** brings over 30 years of experience to GableGotwals in the areas of title examination and oil and gas law. He also practices in the areas of corporate liquidation and wealth management.

405.568.3305 · [lportman@gablelaw.com](mailto:lportman@gablelaw.com)



# Four New Attorneys Join GableGotwals

## *2016 Officers and Directors for GableGotwals*

*David Keglovits  
Chair and CEO*

*Sid Swinson  
President*

*Terry D. Ragsdale  
Vice-President Firm Growth*

*John Dale  
Vice-President Talent Development*

*Amy M. Stipe  
Vice-President Finance*

*Dale E. Cottingham  
Secretary*

*Rob Robertson  
Member*

*Scott Rowland  
Member*



**Chris Thrutchley** joined the Tulsa office as a shareholder. A former human resources director with over two decades of labor and employment law experience, Chris will focus his practice on labor and employment law. He previously served as chief of the attorney general's Office of Civil Rights Enforcement. He also served as human resources director for one of Tulsa's largest employers with responsibility for more than 3,250 union and non-union employees.

918.595.4810 · [cthutchley@gablelaw.com](mailto:cthutchley@gablelaw.com)



The Firm also welcomed **Philip A. Schovanec** as a shareholder in the Oklahoma City office. Schovanec brings two decades of legal experience to his practice at GableGotwals. Philip also handles business planning, contract preparation and review, and organizational and transactional work in the energy and general business sectors. His practice focus will be civil litigation and transactional law, with an emphasis in energy and oil & gas law.

405.568.3309 · [pschovanec@gablelaw.com](mailto:pschovanec@gablelaw.com)



**Daniel A. Nickel** joins GableGotwals as an of counsel attorney in the Oklahoma City office. Dan, who worked for GableGotwals from 2004 to 2008 as an associate, rejoins the Firm after spending the last seven years in various in-house counsel roles at one of our state's largest energy companies. He brings extensive experience in energy industry issues, including legal, operational, and regulatory matters.

405.568.3306 · [dnickel@gablelaw.com](mailto:dnickel@gablelaw.com)



**Nick Merkley** joins the Oklahoma City office as a shareholder. Nick's primary focus will be litigation in the areas of energy and products liability. Nick is an honors graduate of the University of Oklahoma College of Law. He received his undergraduate degree with special distinction from the University of Oklahoma.

405.568.3311 · [nmerkley@gablelaw.com](mailto:nmerkley@gablelaw.com)



# *Sabine Oil & Gas Corporation, et al. –* Rejection of Gathering Agreements as Executory Contracts in Bankruptcy

By Sid Swinson and Brandon Bickle



*Sid Swinson is a Shareholder with the firm who practices bankruptcy law and is the Firm's President. Sid can be reached at (918) 595-4847 or [sswinson@gablelaw.com](mailto:sswinson@gablelaw.com).*



*Brandon Bickle is a Shareholder with the firm regularly advises clients on a variety of business matters, including contract and loan disputes, construction disputes, collections, loan workouts, and bankruptcy matters. Brandon can be reached at (918) 595-4817 or [bbickle@gablelaw.com](mailto:bbickle@gablelaw.com).*

In related decisions rendered in March and May of this year, United States Bankruptcy Judge Shelley Chapman of the Southern District of New York held that certain oil and gas midstream gathering and processing agreements are subject to rejection under 11 U.S.C. § 365 by Sabine Oil & Gas Corporation and its affiliates, chapter 11 debtors engaged in the exploration and production of oil and natural gas. Judge Chapman held that certain provisions of the agreements, which the midstream companies argued “run with the land” under applicable Texas law and therefore could not be rejected under § 365, did not “run with the land” despite express language to this effect in the agreements. In essence, Judge Chapman held that despite the language used, the agreements concerned personal property rights, not real property rights, and were therefore subject to § 365 and the debtors’ rights of rejection.

Such provisions are common in agreements of this type. While Judge Chapman’s ruling is limited to the Sabine case and Texas law, it raises serious questions about the enforceability of similar provisions in other midstream contracts in Texas and elsewhere. This ruling — the first of its kind — is controversial and currently on appeal.



# Q&A with Paula Williams

April 14, 2016

**Q: The National Labor Relations Board recently heard a case filed by a former Chipotle Restaurant employee who claims he was fired for a social media post. What did the NLRB rule in this case?**

**A:** The NLRB found Chipotle maintained an unlawful social media policy which was used to improperly punish an employee for “tweets” such as, “nothing is free, only cheap #labor. Crew members only make \$8.50hr how much is that steak bowl really?” The employee also tweeted relating to Chipotle’s attendance policies and comparisons to a Chipotle competitor. The NLRB ruled these social media posts stated facts posted to educate the public and create support for Chipotle’s employees, which qualified as a protected action under the NLRB’s rules and regulations. The NLRB required Chipotle to offer the employee reinstatement, provide back pay, and post a nationwide notice to employees regarding the unlawful social media policy.

**Q: What activities are protected under the National Labor Relations Act as it relates to social media?**

**A:** The Act protects rights of employees to act together to address conditions at work, which includes social media posts relating to wages and working conditions. Employee communications on social media may be protected by the Act even if only one employee is engaged in the communication. An employee’s “mere gripes,” however, are not protected by the Act, when those “gripes” are not related to the protection of a group.

**Q: What does this mean for companies who want to monitor employee social media activity?**

**A:** Part of the problem in this case was that several regional Chipotle stores utilized an outdated social media policy. Accordingly, employers should ensure that only current policies are distributed and enforced. These current policies must be clearly drafted, accessible to the employee, and should guide the employer’s monitoring of social media posts.

**Q: Chipotle had a social media policy but still lost the case. What elements should a good social media policy include?**

**A:** An employer’s social media policy may violate the Act even if it only “chills” but does not explicitly prohibit protected activity. An employer may not prohibit mere false or misleading statements, which are protected unless the employee posted them with a “malicious motive.” Additionally, the use of the word “confidential” in Chipotle’s policy was found to be ambiguous, and thus, construed against Chipotle in the employee’s favor. When drafting a social media policy, employers should use examples to clarify key terms and, when in doubt, be very specific in the policy. Finally, although worthy of inclusion in a policy, a disclaimer stating that the policy “does not restrict any activity protected by the National Labor Relations Act” will not cure otherwise unlawful provisions in the policy



*Paula Williams is an Associate with the firm who practices litigation law and has a special interest in employment law. Paula can be reached at (405) 568-3302 or [pwilliams@gablelaw.com](mailto:pwilliams@gablelaw.com).*



# Tax-refund Fraud – A Growing Problem

By James M. Scears, Guest Columnist

As tax season is now upon us, taxpayers should know that tax-refund fraud is increasingly occurring.

This kind of fraud happens when someone uses a stolen Social Security number to file a fraudulent tax return and obtain a refund in the name of the person whose number was stolen. Often, legitimate taxpayers do not learn of this type of fraud until they attempt to file their tax returns and are informed that returns have already been filed in their names.

Tax-refund fraud is not a small problem — the Internal Revenue Service has reportedly paid out billions of dollars in fraudulent refunds over the past few years. The good news is that both the IRS and the Oklahoma Tax Commission are aware of the problem and are trying to combat it. The bad news is that tax-refund fraud is expected to soar to higher levels this year than ever before.

The IRS is working with state tax administrators and tax preparation firms to fix the flaws in the current filing system, which make it fairly easy for imaginative thieves to commit tax-refund fraud.

Practically speaking, taxpayers may notice enhanced password requirements, security questions, and lockout features on their tax preparation software this year. And at the state level, the OTC recently announced that in an effort to discourage fraud, it will request driver's license or state-issued card information from taxpayers when they electronically file their state tax returns this year.

Taxpayers should not only know about this growing problem, but also should exercise care to protect their personal data. This includes using security software on computers, such as a firewall and virus protection, along with learning to recognize and avoid phishing emails and threatening communications from thieves posing as legitimate institutions such as banks, credit card companies, and the IRS, all of which are designed to extract personal data. As an example, taxpayers should be aware that the IRS will never initiate contact by email, text messages, or through social media, to request personal or financial information.

Even the most vigilant person can be a victim of tax-refund fraud, and if you suspect this has happened to you, an attorney can help resolve the situation.



*James M. Scears is an attorney with the Firm and practices tax law and estate and trust planning. James can be reached at (918) 595-4879 or [jscears@gablelaw.com](mailto:jscears@gablelaw.com).*



# Gavel to Gavel: Anticipating Breach of Contract

By Jake Krattiger, Guest Columnist · April 20, 2016



*Jake Krattiger is an attorney with the Firm and practices energy, oil and gas litigation. Jake can be reached at (405) 568-3301 or [jkrattiger@gablelaw.com](mailto:jkrattiger@gablelaw.com).*

During our state's current economic downturn, it is even more important than usual that businesses across all industries use foresight to avoid contractual breaches by their dealers, customers, and partners. Consider the following:

After a missed deadline, a merchant emails her customer asking if she can expect payment before expiration of a 15-day grace period. The customer informs the merchant he is suffering from cash flow problems, and first has to make rent and pay other past-due invoices. The merchant demands assurance that payment will be made within 15 days, but the customer ignores that request. Under the terms of their agreement, the customer is not in default until expiration of the grace period.

In circumstances such as these, what can a business owner do to avoid uncertainty about payment, or worse, delaying the inevitable? A good option for many business owners is evaluating whether they have a claim for "anticipatory repudiation."

Anticipatory repudiation of a contract is permitted when one party has not yet breached a contract, but unconditionally rejects its responsibility to perform in the future. The other party may then treat the contract as breached and immediately pursue a legal remedy, rather than waiting for the technical breach to occur. Rejection of a future performance obligation does not have to be verbal. If it is clear through a party's actions or conduct (such as non-payment of other invoices) that he will not fulfill a future promise, a repudiation claim may still be asserted.

A business owner has other options in addition to immediately filing a lawsuit. She may await performance for a commercially reasonable time, which depends upon the specific circumstances of every deal. Or, if the contract requires future performance of the business owner, her performance may be suspended until the breach is cured.

Of course, it is not always easy to predict when someone plans to breach a contract in the future. Because of the inherently short time period during which repudiation claims may be asserted, it is important to maintain good business records and document all communications in writing. Not only will good business practices minimize costs when it becomes necessary to speak with an attorney, but their time can be more efficiently spent determining whether you have a claim that can be filed on short notice.

Tulsa World Business Viewpoint:

# How to weather the perfect storm of sex, politics and religion

By Chris Thrutchley · March 10, 2016

Sex, politics, and religion have been dominating headlines. From the sexist storm unleashed by a male candidate's condescending remarks about Carly Fiorina's face, to a female candidate's silence about her husband's long list of infamous sexual infidelities, to the cultural conflict raging between segments of the religious community and the LGBT community, volatile watercooler conversations and the workplace waves they can create form the perfect legal storm at work.

If not approached with discretion and genuine respect for coworkers who may hold differing views, these tinderbox topics can easily explode into costly claims of harassment or discrimination. The Oklahoma Anti-Discrimination Act holds all employers liable for sexual and religious harassment and discrimination. And the Oklahoma Supreme Court has said employers can be held liable for same sex harassment.

Additionally, a growing body of federal legal authority holds that unlawful sex discrimination includes disparate treatment based on sexual orientation and gender identity. These types of work-related legal claims can cost employers tens and even hundreds of thousands of dollars to defend. To minimize risk, employers should take proactive precautions.

First, adopt an up-to-date policy prohibiting behaviors that lead to harassment or discrimination claims. In a recent gender identity harassment case, a manager repeatedly referred to a male subordinate in masculine terms, knowing he preferred to be recognized in female terms. While a good policy can't stop people from doing unwise things, it is proof you're trying to do the right thing.

Second, clearly communicate your policy to all employees. It's vital to ensure your expectations regarding acceptable and unacceptable behavior are clear. It's equally important that employees know the various ways they can report problems in confidence and to whom they should go to get the prompt help they need.

Third, hold leaders accountable for basing all employment decisions — from hiring to firing — on relevant business and job-related reasons without regard for illegal factors like race, color, religion, sex (including pregnancy), age, national origin, citizenship, disability, genetic information, veteran status or any other legally protected characteristic. And require leaders to exercise the discipline to diligently document all of the lawful reasons why employment decisions were made.

Fourth, regularly train leaders on best practices for preventing harassment and discrimination.

Don't make the fatal mistake of assuming leaders know what to do, when to do it or how to do it well. In my experience, having a good policy simply isn't enough. Quality, periodic training can make all the difference in minimizing costly risk in an increasingly risky time.

Lastly, it's imperative to follow and enforce your policies as you strive to faithfully model your corporate values. You cannot afford to tolerate managers or employees who fail or refuse to show care and respect for others who may have different beliefs and lifestyles. When you follow and enforce your policies, they can be an effective legal shield. If you don't, they will be used as a sword against you.

## About Us

GableGotwals is a full-service law firm of over 90 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.

[gablelaw.com](http://gablelaw.com)

Connect with us:



Oklahoma City One Leadership Square, 15th Floor · 211 N. Robinson · Oklahoma City, OK 73102 · (405) 235-5500  
Tulsa 1100 ONEOK Plaza · 100 W. Fifth Street · Tulsa, OK 74103 · (918) 595-4800

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