



RAISING THE BAR

Recent Awards

- Fifty GableGotwals lawyers have been named to the 2017 Edition of *The Best Lawyers in America*. Three attorneys have been named to the list for the first time including Sara Barry, Alicia Edwards and Deborah Shallcross.
- Benchmark Litigation has named Amy Stipe of GableGotwals among the Top 250 Women in Litigation in the United States. Amy is one of only two female attorneys included for the state of Oklahoma.
- Stacy Brklacich was selected for Leadership Tulsa Class 56. Stacy is the 10th GableGotwals person selected to participate in Leadership Tulsa.
- Gable Gotwals was voted Best of the Best for Oklahoma Law Firms by Oklahoma Magazine readers.



Gable Lawyers Win Two Oil and Gas Cases Before Oklahoma Supreme Court

Brad Welsh, Rick Noulles, Terry Ragsdale, Dean Luthey and Tammy Barrett have prevailed in two significant cases recently decided on appeal by the Oklahoma Supreme Court. In *Krug v. Helmerich & Payne, Inc.*, 2015 OK 74, the Court sided with Rick Noulles, Brad Welsh and Tammy Barrett in rejecting a claim by a royalty owner class for approximately \$50 million interest under Oklahoma's Production Revenue Standards Act, after the jury found that the defendant had allowed gas to be drained from the class wells. The Court also denied interest under Oklahoma's general prejudgment interest statute. In *American Natural Resources, LLC v. Eagle Rock Energy Partners, L.P.*, 2016 OK 67, Brad Welsh, Terry Ragsdale, Dean Luthey and Tammy Barrett prevailed in their argument that Oklahoma's Rule Against Perpetuities prevented the plaintiff from participating in 17 oil and gas wells drilled by the defendant.

Court of Civil Appeals Affirms Ruling

Adam Doverspike successfully obtained a unanimous ruling in the Court of Civil Appeals affirming the district court's decision in favor of our banking client, Deutsche Bank National Trust Company. At the center of the dispute was a local court rule that conflicted with a state statute. As a result, the plaintiff appealed an order denying her motion to vacate judgment. The Court held the local county rule did not trump the state statute, and the foreclosure judgment was neither an abuse of discretion nor contrary to law.



New addition to GableGotwals

Craig Marshall Regens is a new Associate in the Firm's Oklahoma City office. Craig's primary practice will focus on litigation and business reorganizations, workouts and bankruptcy. Craig is a former term and career law clerk for the Honorable Sarah A. Hall, Chief Judge of the U.S. Bankruptcy Court for the Western District of Oklahoma, and a former Oklahoma Assistant Attorney General. A graduate of the University of Iowa College of Law, Craig earned his master's degree from the London School of Economics and his undergraduate degree from the University of Oklahoma.



Religious Discrimination Charges Dismissed

Two former contractors of a rural Oklahoma healthcare client filed charges of religious discrimination with the Equal Employment Opportunity Commission (EEOC). They alleged our healthcare client failed to accommodate their Buddhist religious beliefs and terminated them because of their religion. While the EEOC recently announced the launch of litigation against another healthcare provider for alleged religious discrimination, Chris Thrutchley succeeded in swiftly persuading the EEOC to issue a prompt dismissal of the charge against our client. Shortly after receiving GableGotwals' response to the charge, the EEOC issued the dismissal with a finding of "no cause" to believe discrimination occurred.

Bankruptcy Case Best Outcome

In a business bankruptcy case, G. Blaine Schwabe and Elizabeth Cooper succeeded by confirming a chapter 11 reorganization plan in channeling a \$16 million+ tort judgment claim to effectively make the judgment only collectible from recoveries by a litigation trust. The trust assets included wrongful failure to settle within policy limits any professional malpractice claims. The business and assets of the client were protected from the tort judgment creditor and possibly others with similar claims, with the client to benefit to the extent trust recoveries exceeded the tort claim(s) and litigation expenses. Dean Luthey then got the tort judgment largely reduced on appeal.



TULSA WORLD

Business Viewpoint with Tom Vincent

Early investments can pay off in protecting company information

By Tom C. Vincent II Business Viewpoint · September 11, 2016

A breach of a company's information security, and the theft or loss of sensitive data, can be very expensive. These costs can often be reduced, however, by making investments in the security of the company's information – and that of its customers – before an incident occurs.

The sixth annual Benchmark Study on Privacy & Security of Health Care Data, published by the Ponemon Institute in May of this year, estimates the average cost of a breach for health care organizations at more than \$2.2 million. Direct costs may result from damages to individuals whose information is compromised, with additional costs coming from ransom paid to free company data. Ransomware – programs that encrypt system files and lock out users until a ransom is paid – is expected to result in payments of over \$1 billion in 2016.

But what about the indirect costs of a breach? As anyone who has experienced a breach of their own personal information can attest, there are often hours of time spent reviewing financial account statements, electronic communications and contract terms to determine what your liability and recourse is – and that doesn't include any affected third parties that must be contacted as well. Compounding the cost is the impact that all of this activity may have on your normal day-to-day schedule – whether resulting in time off from work or delaying other productive activities to get back to normal.

The same can be true for the business that suffers a breach, but on a larger and more costly scale. Pulling employees away from their regular duties to focus on damage control and “what happened when” reduces individual productivity and company profits. Forward-looking efforts may give way to remedial tasks – from building your brand to saving your reputation.

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Tom C. Vincent, II is an Of Counsel attorney with the Firm and a former bank compliance officer.

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Business Viewpoint with Tom Vincent (cont.)



New addition to GableGotwals

Based in the Tulsa office, **Katherine E. McDonald** is an Associate whose primary practice will focus on state and federal litigation. A former GableGotwals Summer Associate, Katherine served as a law clerk for the Honorable Claire V. Eagan at the United States District Court for the Northern District of Oklahoma. She also served as a law clerk for the Honorable Bobby E. Shepherd at the U.S. Court of Appeals for the Eighth Circuit. Katherine graduated first in her class and summa cum laude from the University of Arkansas School of Law and earned her bachelor's degree cum laude from American University.

Just as with your financial assets, your information is valuable – but not all information is valued the same. A first step for any company is to know what the most valuable information in the company is and protect it accordingly. Depending on the information, it may be subject to federal and/or state requirements both before and after a breach. Development and implementation of appropriate technical and personnel safeguards in line with these requirements may reduce the liability of the company, and appropriate contract language may provide recourse to the company via indemnification and limitation of liability provisions.

It's also important to know not only where your information is but where it goes. Your most valuable information should be the least mobile in the company to reduce the risk of loss and/or theft (by an outsider or employee). Structuring your network to reduce access – and providing independent data backup not accessible from the network – can help to limit the effectiveness of ransomware that gains entry into your systems.

Also, tracking information on the movement of this information (for example, through access logs) may speed the determination of a breach and reduce the need to backtrack should a breach occur. Advance development of a plan in the event of a breach can further reduce the time it takes to notify customers (which in turn may reduce any damage to your reputation).

In addition to technical safeguards, your workforce can provide a line of defense when aware of their roles, from the overall corporate policy to each individual position, in protecting the company's data. The more that information security is seen as important to the survival of the company, the more likely it is that employees will see poor information security as detrimental to their individual welfare within the company.

Incorporating information security in job goals and performance reviews – both positive and negative – gives employees a personal stake in the issue that can translate into both awareness and action to support the company's security efforts.

Finally, by educating its customers in appropriate measures for their personal and business information, companies can increase their customers' information security and the safety of communications from those customers, resulting in greater overall security for the company.

By implementing tactical, targeted measures, companies can help to reduce not only the ultimate direct expense of a breach but also the resulting indirect costs. The earlier such measures are put in place, the more easily they may be integrated into regular company processes and the less expensive they may turn out to be.



THE OKLAHOMAN

Q&A with Craig A. Fitzgerald Oklahoma, other states limit flights of unmanned aircraft

by Paula Burkes Published · July 8, 2016

Q: The governor recently signed legislation to regulate unmanned aircraft in some instances. What does the law do?

A: The new act regulates flights of unmanned aircraft over certain facilities, such as refineries, electrical power generation facilities, natural gas facilities, certain manufacturing facilities, dams, wireless communication facilities and more. If these facilities are completely enclosed by a barrier, such as a fence, or are clearly marked with signs prohibiting entry or flight of unmanned aircraft, then unmanned aircraft can't be flown over the facility within 400 feet of the ground. The act has a broad definition of unmanned aircraft. Though there may be room for debate about this definition, it's clearly intended to apply to quadcopters and similar devices sold at numerous stores, as well as the remote control airplanes and helicopters.

Q: The National Telecommunications and Information Administration (NTIA) recently issued a report on drones. What does it say about the operation of unmanned aircraft?

A: The report is titled "Voluntary Best Practices," and that's exactly what it is. It recognizes that unmanned aircraft provide multiple potential benefits, but that they should be used in a responsible and respectful way. The report suggests that all users exercise what I would call common sense. For example, notify those who may be interested before using an unmanned aircraft. Don't interfere with others' privacy. Make reasonable efforts not to fly over private property without the owner's consent. The report also recommends measures to limit and secure data obtained by unmanned aircraft.

Q: Does the NTIA have authority to enforce its findings?

A: No, as the name of the report suggests, compliance is voluntary.

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Craig A. Fitzgerald is a Shareholder who practices in the area of litigation. He can be reached at 918-595-4811 or cfitzgerald@gablelaw.com.

Q&A with Craig A. Fitzgerald (cont.)

Q: Has the Federal Aviation Administration issued formal rules or guidelines for drone operators?

A: Yes, just last week the FAA adopted regulations that will go into effect in August. These regulations only apply to commercial operations. For hobby or recreational use, the FAA has adopted guidelines addressing the safety of manned aircraft. To operate within those guidelines, users should keep their unmanned aircraft below 400 feet, stay more than five miles from an airport unless the airport is notified, and otherwise remain well clear of manned aircraft. Unmanned operators need to understand that pilots can't easily see small unmanned aircraft, and that a collision could cause substantial damage, and possibly loss of life. More information from the FAA is available at faa.gov/uas.

Q: Are drone operators required to have any type of license?

A: The type of aircraft that most of us might fly does not require a license — at least not something comparable to a driver's license or pilot's certificate. However, all unmanned aircraft must be registered with the FAA. If the aircraft is going to be used in some type of business or commercial operation, the operator must obtain what is called a "Section 333 exemption" from the FAA.



New addition to GableGotwals

Justin Lollman joins the Firm as an Associate in the Tulsa office. Justin will focus his practice on state and federal litigation and appellate law. He returns to the firm after working as a Summer Associate in 2012 and 2013. Justin served as a law clerk for the Honorable Gregory K. Frizzell of the U.S. District Court for the Northern District of Oklahoma and the Honorable Kenneth F. Ripple of the U.S. Court of Appeals for the Seventh Circuit. He previously worked as a Summer Associate for Sullivan & Cromwell in New York and as an intern for Legal Aid Services of Oklahoma and the Honorable Claire V. Eagan of the U.S. District Court for the Northern District of Oklahoma. Justin is a graduate of the University of Virginia School of Law where he served as a Notes Editor for the Virginia Law Review. He graduated summa cum laude from Oklahoma State University.

Cybersecurity Training for Clients

Technological advances have allowed companies and individuals to produce, collect and analyze tremendous amounts of data. More than ever, it is essential that data be secured and protected. The GableGotwals Cybersecurity and Data Privacy Group has assisted clients in safeguarding and protecting sensitive data based on best practices. We provide internal prevention training, work with clients should an incident occur and help identify how company processes can be improved.

With increasing expectations for data privacy and security, companies are faced with more and more requirements before and after security breaches occur. Let us train your staff on how to be your first line of defense.

Contact Tom C. Vincent II at 918-495-4857 or tvincent@gablelaw.com.



Gavel to Gavel: Retail Protection Act to affect internet sales

By Sheppard F. Miers Jr. · August 24, 2016

Internet sales to Oklahomans are going to be subject to new sales tax rules starting November 1.

The new Oklahoma Retail Protection Act of 2016 (The Act) is to provide a sales tax level playing field between brick-and-mortar businesses that have been required to collect sales tax on their sales from locations in Oklahoma and many out-of-state businesses selling only via the internet that have not been collecting sales tax from their Oklahoma customers. The Act is also focused on reducing the estimated significant fiscal impact being experienced by Oklahoma state and local government due to inability to collect sales and use tax.

Many out-of-state vendors selling to Oklahoma customers only via the internet probably do not collect sales tax due to a 1992 U.S. Supreme Court case, *Quill Corp. v. North Dakota*. It held that an out-of-state vendor is not required to collect and pay sales tax if it does not have an office or store giving it a physical presence “nexus” in the state.

If sales tax is not collected, state and local use tax generally is required to be paid by a retail consumer on the items purchased from the out-of-state vendor via the internet. But requiring compliance and payment of use tax by individual consumers has reportedly been ineffective under existing law.

The Act will try to shift and increase the burden of sales and use tax compliance. In effect, it will treat some out-of-state vendors selling only via the internet as though they are selling from within Oklahoma. A taxable “nexus” in Oklahoma will be attributed to them, requiring them to collect sales tax if they are involved with specified activities or people within the state, such as having in-state affiliates or service providers.

Out-of-state vendors will also be required to send an annual statement to internet customers in Oklahoma that use tax should be paid if due. The Act may be challenged by out-of-state vendors as being in violation of the Commerce Clause of the U.S. Constitution and inconsistent with the test for imposing tax liability under the *Quill* case.

The potential effects of the Act should be considered by businesses and individuals involved in out-of-state vendor internet sales to Oklahoma customers.



Sheppard F. Miers Jr. is a Shareholder with GableGotwals, where he practices in the areas of federal and state taxation. Mike can be reached at 918-595-4834 or smiers@gablelaw.com



Gavel to Gavel: Add a box to your termination checklist

By Chris Thrutchley Guest Columnist · July 13, 2016



Chris Thrutchley is a Shareholder with GableGotwals, where he practices in the areas of labor and employment. Chris can be reached at 918.595.4810 or cthutchley@gablelaw.com

A recent decision from the Oklahoma Supreme Court adds new considerations to the list of items employers should examine before terminating an employee.

In *Moore v. Warr Acres Nursing Center*, the court significantly expanded the reach of the *Burk* public policy wrongful discharge tort claim. Under *Burk v. K-Mart Corp.*, employers were required to ensure the discharge doesn't violate public policy expressed in the Oklahoma Constitution or an Oklahoma statute. Now, under *Moore*, employers must also make sure the termination doesn't violate public policy expressed in an Oklahoma or federal regulation.

What is the takeaway for employers? *Moore* substantially increases their risk of being sued for violating public policy.

The issue in *Moore* was whether firing a nurse for missing work due to the flu violates Oklahoma public policy and constitutes wrongful discharge, because state and federal health regulations prohibit a nurse from working with the flu.

The facts of this case are these. *Moore*, the plaintiff, worked as nurse at a nursing center. The director of nursing heard *Moore* vomiting, said he must have a virus or the flu, and sent him home. *Moore*'s physician took him off work for three days. *Moore* called in to report his status per company policy. Days later, the nursing home fired him. *Moore* sued, alleging he was fired for not working with the flu in violation of public policy.

The law prior to the *Moore* decision was much more narrow and employers faced much less risk of being sued for wrongful discharge claims based on an alleged violation of Oklahoma public policy. That has now changed.

Before firing an at-will employee, companies should evaluate whether any facts create an inference that a significant factor motivating the decision was the employee's action required by a regulation or the employee's refusal to do something a regulation prohibits. It's important for employers to be knowledgeable of the types of state and federal regulations that could apply to their employees and create the most risk.

As the dissenting justices in *Moore* warned, "an employer must (now) consult (state and federal) rules and regulations before exercising the decision to terminate an employee." Thus, employers should add another step to their termination review checklist before finalizing the decision to discharge an at-will employee.



THE OKLAHOMAN

Q&A with Ellen Adams

Attorney mom of special needs child chooses law, motherhood

by Paula Burkes Published · August 14, 2016



New addition to GableGotwals

Lauren Oldham is a new Associate in the Firm's Tulsa office. Lauren's practice will focus on state and federal litigation. Lauren, who is also licensed to practice in Texas, returns to the firm after working as a Summer Associate in the Tulsa office in 2015. She worked as a Judicial Extern for Magistrate Judge Shon T. Erwin at the U.S. District Court for the Western District of Oklahoma, a Judicial Intern for Presiding Judge Eric V. Moyé at the 14th Judicial District Court of Texas, as well as a Legal Extern with University of Oklahoma Athletics Compliance. A graduate of the University of Oklahoma College of Law, Lauren also earned a Master of Business Administration and her undergraduate degree from the University of Oklahoma.



GableGotwals attorney Ellen Adams put her firm's family-friendly policies to the test eight years ago when she delivered a child with special needs. Adams was given all the time and flexibility she needed to balance her family's and the firm's commitments.

Today, Adams, with a Tulsa colleague, co-chairs the firm's Women's Initiative Committee to retain and recruit the best talent possible.

The committee's members are both female and male; shareholders and associates, Adams said. "We see this as a firm, not a female, goal, so we included both genders at every level," she said.

More women are graduating law school, Adams said, but law firms overall struggle to retain women — and men — who may leave for corporate in-house counsel jobs or to take positions elsewhere.

Her firm, which employs 91 attorneys, 17 of them women, offers many family-friendly policies, including 12 weeks paid maternity leave for new mothers and two weeks paid paternity leave for new fathers.

From her 15th floor offices in the north tower of downtown's Leadership Square, Adams, 35, sat down with *The Oklahoman* on Tuesday to talk about her life and career. This is an edited transcript:

Q: Tell us about your roots.

A: I was born in New York, but my dad soon after was transferred here with his job. He worked in food distribution and management, primarily produce. My mom was a homemaker. Before she had my brother and me, she worked as an educator in an institutional setting for children with special needs.

Today, my parents are both retired. My brother works as a petroleum engineer for Devon and is the father of two boys, a third is on the way. We all live within 15 minutes of one another.

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Q&A with Ellen Adams (cont.)

Q: What was your thing growing up?

A: From first grade on, I competed in dance including ballet, jazz and tap. Dancing gave me a competitive spirit, and I learned that hard work pays off. I remember professional dance teachers, in from L.A., really pushing us. If they caught you yawning, they'd say, "No one cares if you're tired." When I was in high school, I had the opportunity to teach dance to little kids, and receive a discount on my own dance lessons.

Q: How did you meet your husband?

A: We met in high school. I was a junior at OCS (Oklahoma Christian School in Edmond) and he was a senior at Santa Fe High School. One of my dance friends introduced us. We both went to OU, though Chad finished at the University of Wyoming where he'd always dreamed of going.

After OU, I was set on going to law school at the University of Texas in Austin. But Chad came back from Wyoming and proposed. I called OU's law school, which had offered me a scholarship, to confirm that the offer still stood — and that I could delay it a year. Then, I worked a year in Laramie, Wyoming, where Chad and I enjoyed the mountains together.

Q: The year you lived in Wyoming, you sold cars for a Toyota dealership. What lessons did you learn?

A: How to layer my clothing to work outside in the cold weather. Ha-ha. No seriously, any time you work with people, it's a learning opportunity. I'm an introvert, so by selling cars I learned to be more of an extrovert, to look at customers' perspectives and make sure I was meeting their needs. Previously, I'd waited tables and sold cosmetics at a Dillard's Estee Lauder counter. So those jobs gave me my initial training in customer service, as well as copious amounts of free cosmetics. As an attorney, I still feel I'm working in the service industry, with a constant eye on client needs.

Q: What kind of law do you practice?

A: When I started in 2007, I focused on oil and gas law, but I since have moved also into the labor and employment arena. Lawyers love learning, and expanding my practice gave me an opportunity to explore different areas of the law.

I also get to work with employers across a broad swath of industries. It's fascinating to learn about their different businesses.

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New addition to GableGotwals

GableGotwals welcomes **Samuel P. Clancy** as an Associate in the Tulsa office. Samuel's primacy focus will be transactional and health care law. A former GableGotwals Summer Associate, Samuel earned his J.D. and his B.A. in Letters from the University of Oklahoma. While in law school, Samuel competed in the National Moot Court Competition and was published by the Oklahoma Law Review, for which he served as Note and Comment Editor. Samuel is active in the community having volunteered with Big Brothers Big Sisters and the Tulsa Day Center for the Homeless.

Q&A with Ellen Adams (cont.)

Q: Your elder daughter has Down syndrome. Did you know she was a special-needs child while you were carrying her?

A: No. I didn't know there was anything wrong until I had a routine ultrasound at 34 weeks. The technologist left the room for a long time and when she returned, she handed me the phone, said my doctor wanted to talk with me, and then left the room and closed the door. My doctor told me my baby had a brain defect and was missing a chamber in her heart. That same day, I had a more advanced ultrasound with a specialist, who recommended I have my baby immediately by emergency cesarean section. When she was born, Emma weighed 3 pounds, 3 ounces. My thumb print was bigger than her footprint on the birth certificate. By the time I was discharged, they'd diagnosed her with Down syndrome. It was really difficult because I was discharged, but Emma stayed in the hospital another six weeks. They immediately put a shunt in her brain because she was born with hydrocephalus. I went back to work two weeks later, delaying my maternity leave for when Emma was released from the hospital.

Emma suffered congestive heart failure and underwent open-heart surgery two weeks after she was discharged, and two months later — the very day I returned to work — she had another emergency, ultimately resulting in a second open-heart surgery a few months later in Dallas, where I worked remotely until she recovered. It was eight months before Emma weighed eight pounds. But today, she's a healthy, exuberant, sometimes mischievous 8-year-old who loves her 3-year-old baby sister.

Q: What does the term “work-life balance” mean to you?

A: With my early stresses with Emma, I valued an opportunity to come to work and have a space I could focus on something I could control. Today, I — after a long day at work — get to go home to two lovely kids, who make me laugh and smile and forget about stress at work. Conversely, a 3 year old and 8 year old create stress in their own ways. My colleagues at GableGotwals are my friends.

And at home, I also have a great support system. My husband is committed to giving me the opportunity to come to work, and picks up where I leave off. Plus, he's a great cook, making homemade Caesar salad dressing and grilling perfect steaks. And more often than not, Emma's grandmothers take her to her weekly physical, speech and occupational therapy sessions.

Being a mom and a full-time attorney is not easy. But for me, there are benefits in doing both.

Ellen Adams is a Shareholder who practices in the area of employment law and litigation. She can be reached at 405-235-5520 or eadams@gablelaw.com.

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

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