



# RAISING THE BAR

## Recent Awards

- GableGotwals has been recognized by Chambers USA as a 2015 **Leading Firm** in the areas of Energy and Natural Resources (Band 2), General Commercial Litigation (Band 2) and Corporate/Commercial (Band 3).
- Fourteen GableGotwals attorneys have also been named as “Leaders in their Field” in the 2015 Chambers USA rankings including Steven Adams, Steven Barghols, David Bryant, Dale Cottingham, Sidney Dunagan, Robert Glass, Oliver Howard, Paul Johnson (Senior Statesman), Dean Luthey, Richard Noulles, Terry Ragsdale, Rob Robertson, Stephen Schuller and James Sturdivant.
- GableGotwals has been named **Best for Business Litigation - Oklahoma** in the 2015 M&A Awards.
- Dean Luthey has been awarded the Business Litigation **Lawyer of the Year - Oklahoma** in the 2015 M&A Awards.
- Susan Jordan has been selected to the 2015 list as a member of the Nation’s Top One Percent by the National Association of Distinguished Counsel.
- GableGotwals has been selected as one of the winners in the 2015 Dispute Resolution Awards and awarded the title “Best for Bet-the-Company Litigation - USA”.

## GableGotwals Represents Cypress Energy Partners in \$11.2 Million Acquisition

Tulsa-based Cypress Energy Partners, L.P. (“Cypress”) has announced the acquisition of a 51% controlling interest in Brown Integrity, LLC (“Brown”), which owns Pipeline Services International LLC. Brown is an industry leader in the hydrostatic testing business. The accretive all cash \$11.2 million acquisition (subject to working capital and other customary adjustments) includes a multi-year earn out and provides Cypress the right to acquire the remaining 49% interest in the future. GableGotwals transactional attorneys, including Steve Heinen, Brandon Watson, Tim Thompson and Josh Merrill, represented Cypress in the acquisition.

## The Exempt vs. Non-Exempt Dilemma: How the Rules are Changing Webinar

The Wage and Hour Division of the United States Department of Labor recently issued a notice of proposed rulemaking that, if adopted, will radically affect an employer’s ability to classify certain employees as exempt employees for wage and hour purposes, including overtime compensation.

In addition to discussing how the proposed rule changes are intended to affect 21.4 million of the United States 43.0 million white collar workers wages, the one hour seminar will offer practical advice to employers on how to begin preparing for the implementation of the new rules so as to be in compliance once the new regulations become effective. Finally, the seminar will briefly discuss the negative consequences for failing to prepare to implement the changes as well as why common “alternative” arrangements should not be considered.

GableGotwals is hosting this complimentary webinar to help employers prepare for the impending changes that could occur early 2016. Presenters include employment attorneys Leslie Lynch and Michael Lambert.

**Friday, August 14, 2015 · 1:00 pm – 2:00 pm**

Please register your attendance at  
<https://attendee.gotowebinar.com/register/7494623466842533633>

Approval pending for CLE credit by the Oklahoma Bar Association and HRCL credit for HR professionals.



# TULSA WORLD

## Fracking truth may be a different truth

Business Viewpoint by Tammy Barrett and Terry Ragsdale



*Tammy Barrett*



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Whether scorned by those who view it as an environmental threat, or touted as the savior of the domestic energy industry, fracking is in the news. But, can you believe all you read? Is it true that fracking has resulted in homeowners lighting tap water on fire? Is fracking the cause of recent earthquakes or drought?

Fracking is not a new phenomenon, but traces back to at least 1947 when a well was hydraulically fracked in Kansas. Another truth: fracking has the potential to end U.S. dependence on foreign oil, with some experts pinpointing U.S. independence as achievable sometime in the 2020s.

Fracking has also fostered a boon to the American economy resulting in an increase in jobs and less expensive energy. Although most of us enjoy lower gasoline prices, historically low prices are a potential double-edged sword because low prices could render continued exploration unprofitable, and an end to the shale revolution might return us to OPEC dependence.

But, what about the terrible things caused by fracking? For example:

- Gasland 1 and Gasland 2 showed someone lighting their house tap water on fire because of fracking. This was a neat “trick,” but it was not caused by fracking. Regarding Gasland 2, a judge found that a hose was intentionally connected to a gas vent, not a waterline, with the intent to deceive the public. In Gasland 1, investigators determined that the water well was dug into a naturally-occurring methane pocket unrelated to fracking. These inaccuracies were reported by the Toronto Sun and Washington Examiner.
- Fracking will cause drought. The amount of water used in fracking is relatively small, in many instances comprising less than one tenth of 1 percent of overall consumption. For example, an industry observer noted to KQED that all fracking operations in California in one year used the same amount of water as 650 homes during that same year.

The Wall Street Daily reports that estimates indicate more water is used in one month to water lawns than by the fracking industry in an entire year.

- Fracking causes earthquakes. The United States Geologic Service studies to date conclude that hydraulic fracturing has not caused any seismic-related structural damage. However, the USGS continues to examine whether wastewater injection may have some seismic event causation.

Fracking is also credited with reducing carbon emissions over and above the entire world’s reduction from both wind and solar power, and fracking has allowed the U.S. to overtake Saudi Arabia as the world’s leading producer of petroleum liquids.

The truth is that the truth about fracking may differ from what you have been led to believe.



# Gavel to Gavel: Protect your data

By Tom C. Vincent II · Guest Columnist May 14, 2015

The ever-increasing expense of corrective actions taken by companies after data breaches is often publicized. What's not as apparent, or as publicized, are steps companies can take that may reduce the costs and the likelihood of such breaches:



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- Know what you have and where. At the outset, identify the data that your company holds and any particular legal protections that are afforded that data. Besides proprietary company and employee data, the firm may possess "personal information" of its individual customers as defined by state statutes and/or "protected health information" as defined by the Health Insurance Portability and Accountability Act of 1996. Such information is subject to additional requirements. Inventory the places where that data lives, including any devices on which it may be transported such as servers, mobile devices, laptops, flash drives, and/or the cloud.
- Develop a plan to appropriately protect your data. Assess the risks involved in your current data practices and identify and prioritize any changes needed. Because certain statutes or regulations may mandate stronger protections, including limitations on accessibility for particular data, some changes may be necessary regarding where data is stored or transported and who has access to it.
- Know what to do, and who will do it, before a breach occurs. State statutes often require specific steps to be taken should a breach occur, so correctly identifying a breach is critical. An established plan and point person can ensure consistent and timely action, which may mitigate the impact of a breach. A recent study by the Ponemon Institute indicated that costs resulting from data breaches may be reduced with appropriate process management, including having a plan in place to address such breaches. More importantly, your customers will receive timely and correct information from you, rather than from someone else, about any breach involving their information and steps that are being taken to reduce any harm to them.

While a data breach is not 100 percent preventable, taking a few proactive steps can reduce the risk of a breach occurring, reduce your company's response time should a breach occur and, ultimately, reduce the damage realized by your company and its customers.



# Gavel to Gavel: Follow Crowd with Care

By: Sheppard F. Miers Jr. · April 1, 2015



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For some at the age of this author, a CARE package is known and remembered from when it was first offered and popularized after the end of World War II by Cooperative for Assistance and Relief Everywhere Inc. as an emergency food relief program for people in war-ravaged areas. Fast-forward 70 years and we are discussing crowdfunding, a 21st-century form of charitable activity featuring the same appeal and intended effect, only backed by the power of the Internet.

Crowdfunding is raising larger sums for a charitable purpose by attracting small gifts from a large group of individuals online. Crowdfunding for Charitable Causes, a Better Business Bureau publication, describes the growth of charitable fundraising and online giving, as well as various factors involved in contributing and receiving money through that medium.

A charitable purpose or cause attracting a crowd of generous individuals on the Internet to make monetary donations can, like most money transfers, have tax effects. For example, is an income tax charitable deduction allowed for an individual donation to a crowdfunding project? The answer to that question is maybe yes, and maybe no, depending on who receives the contribution.

In simplest terms, a cash donation to a qualified charitable organization recognized under federal tax law and by the Internal Revenue Service is probably deductible. A cash donation to help a particular individual or family in need due to a disaster, accident, illness or other reason is probably not deductible. Published IRS guidance expressly states you cannot deduct a contribution to a specific individual. The IRS has also published that it knows an evolution has occurred toward more sophisticated means of fundraising, including crowdfunding.

If a generous individual donor wants to join the crowd in helping out, and be able to deduct a gift for income tax purposes, care needs to be used before clicking the donate button. Here are some suggestions when preparing a donor's tax planning care package. Take a few minutes to determine who exactly will receive the donation and how that will be documented. Follow IRS Publication 526, "Charitable Contributions," requirements. Check the IRS published list of qualified charitable organizations. Finally, seek the advice of a tax professional.



# Businesses not liable if customers injured on their properties during storms

Q&A with Jeffrey A. Curran



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**Q:** Spring always brings a potential for severe weather in Oklahoma. Can a business be held liable if a customer is injured on its property during a storm?

**A:** The Oklahoma Legislature specifically addressed this issue in 2012. Oklahoma law says an entity or individual “shall not be liable for any civil damages to any person” who may be sheltering at their location during a storm. The statute further says this immunity applies so long as “the entity or individual was acting in good faith and the damage or injury wasn’t caused by the willful or wanton negligence or misconduct of the entity or individual.” The statute doesn’t define “good faith” or “willful or wanton negligence or misconduct.” Frankly, it’s not clear exactly what kind of actions would constitute such classifications of behavior. What is clear is that the Legislature intended that people and businesses who offer shelter in storms be protected in doing so, even if someone who sought shelter there is ultimately hurt after taking shelter in those buildings.

**Q:** What types of places are covered by the statute?

**A:** The law uses the phrase “safe place,” which it defines as “any property, dwelling, shelter or other structure that can be reasonably considered protection from severe weather.” The statute says “severe weather” includes but isn’t limited to “tornadoes, high winds and floods.” Again, the emphasis is on reasonableness here. If, for example, the building in question is a plastic storage shed, then no one likely would reasonably think such a structure could be considered a shelter from a violent tornado. But, keep in mind that the person seeking shelter in such a shed would be held to that same standard of reasonableness, so likely no liability would exist on the part of the shed owner toward someone who sought shelter there.

**Q:** Does this statute apply to only businesses?

**A:** The statute applies to “any entity or individual.” While it doesn’t define these terms, it is reasonable to argue that, for the purposes of this statute, an “entity” could include a business, nonprofit, church or government location. It is also reasonable that a person at his/her private residence would qualify as an “individual.” The broad drafting of the statute seems to have been done on purpose so as to include as many interpretations as possible as to what “entities” are protected.



# Companies may expand on Oklahoma's ban of text-based messaging

Q&A with Jake Krattiger · by Paula Burkes May 11, 2015



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Attorney Jake Krattiger of GableGotwals recommends all companies establish policies that ban use of mobile devices while driving to possibly help protect a business from liability and, more importantly, to prevent accidents from occurring in the first place in Oklahoma.

**Q:** Can a business prevent its employees from using mobile devices like phones, tablets and computers when operating a company vehicle?

**A:** Absolutely. The City of Tulsa has recently implemented such a policy for its employees. Additionally, the Oklahoma Legislature has passed a statewide texting ban prohibiting, with some emergency exceptions, any driver from "manually composing, sending or reading an electronic text message" while the vehicle is in motion. However, there is nothing preventing a business from establishing a policy banning employees from using mobile devices for any purpose while operating company vehicles. This power even extends to policies banning the use of company-issued devices while an employee is operating a private vehicle.

**Q:** What aspects should such a policy include?

**A:** A business could expand on the state's ban of text-based messaging to completely prohibit any handling or physical manipulation of all mobile devices for any purpose, such as dialing a phone number, changing a song or using other "apps." A reasonable accommodation would be to permit the use of hands-free systems to engage with a mobile device, which is common in many company policies and in similar legislation from other states.

**Q:** Does a policy like this protect a business from liability if an employee is in an accident while driving on company business and found to be violating the policy?

**A:** Implementing a texting policy will not immunize a business from a lawsuit involving an auto accident. Oklahoma businesses may be sued based on the actions of employees through the doctrine known as "respondeat superior." Respondeat superior can be a common theme in auto accident lawsuits. To hold a business liable for injury caused to another driver by an employee, the harmful act must have been committed within the "scope of employment," which is determined on a case-by-case basis. For businesses that typically employ drivers, especially those who communicate with mobile devices, the act of driving could be seen as incidentally furthering the purpose of the business even if the employee acted in excess of her authority by improperly using a device. While policies forbidding any use of mobile devices will not completely absolve an employer's potential liability, it is possible that such a policy could serve as helpful evidence that an employee's act was not within the scope of her employment. Such a policy could even help prevent an accident from occurring in the first place, which should be a goal for all Oklahoma businesses.



# Federal courts have little leeway to review EEOC dispute resolution process, Oklahoma City attorney says

Q&A with Michael Lambert



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Michael Lambert, an attorney with the Oklahoma City law firm of GableGotwals, discusses Supreme Court ruling in *Mach Mining v. Equal Employment Opportunity Commission*.

**Q:** What was the issue before the Supreme Court in *Mach Mining v. Equal Employment Opportunity Comm'n*?

**A:** Whether federal courts have authority to review the Equal Employment Opportunity Commission's (EEOC) conciliation efforts in discrimination cases, and if so, to what extent may federal courts review those efforts. Federal law authorizes the EEOC to investigate claims of workplace discrimination and, in some instances, to sue an employer to rectify allegedly on-going discriminatory conduct. Before the EEOC may sue an employer an employee must file a charge with the EEOC; the EEOC must find reasonable cause for the charge; and the EEOC must attempt informal conciliation with the employer to eliminate the unlawful discrimination. The EEOC may sue an employer only if a conciliation agreement suitable to the EEOC cannot be reached.

**Q:** What exactly is conciliation and how does it play into this case?

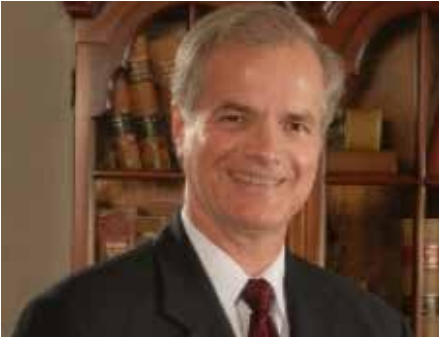
**A:** Conciliation in this context refers to an informal dispute resolution process to end the alleged discriminatory practice. In *Mach Mining*, a female employee filed a claim with the EEOC alleging sex-based discrimination. The EEOC found reasonable cause for the claim and sent *Mach Mining* a letter inviting both the employer and employee to participate in informal dispute resolution. What happened next is not clear, but about one year later, the EEOC sent a second letter to *Mach Mining* stating that further conciliation efforts would be futile. The EEOC then sued. *Mach Mining* believed the EEOC failed to conciliate in good faith and asked a federal court to pass judgment on the reasonableness of the EEOC's conciliation efforts.

**Q:** How did the Supreme Court rule?

**A:** According to the Supreme Court, federal courts have little leeway to review the EEOC's conciliation efforts. Indeed, the only review a federal court may conduct is to ensure the EEOC communicated with the employer about the unlawful discrimination, and that the EEOC contacted the employer to give it an opportunity to remedy the discriminatory practice. Outside of this barebones review, the EEOC has expansive discretion to decide how to conduct conciliation efforts and when to end them.

**Q:** What does this mean for employers?

**A:** Employers should be receptive to the requests and demands of the EEOC during the administrative (pre-litigation) process. But during this administrative process, employers should also insist that the EEOC comply with its obligations of giving notice and an opportunity to address the allegedly discriminatory conduct because the employer's ability to raise the issue later is severely diminished.



# Oklahoma attorney says Power Of Attorney law changes may pose risks to guardians

Q&A with David McKinney · by Paula Burkes

## What are the primary amendments in this legislation?

First, the legislation says that a Durable Power of Attorney continues to be effective after a guardian is appointed. The guardian, however, may amend or revoke the Power of Attorney.

Second, if a Durable Power of Attorney is recorded in the land records, buyers and title insurers may rely on the recorded instrument until a revocation or amendment is recorded.

## What does this legislation mean for estate planning purposes?

Many people use Powers Of Attorney to name an agent to act for them. Usually the agent is honest and provides a valuable service.

Sometimes, the agent turns out to be dishonest or ineffective. The legislation makes you work harder to fire an agent.

The legislation helps agents sell real estate, but there is a downside. If you need to fire your agent, you need to file a notice in the counties where you own property.

## Does this legislation provide added protections for individuals who have executed a Power Of Attorney?

No. Unfortunately, the legislation can be harmful. If an agent is stealing or embezzling an incapacitated person's funds, the agent can continue to misuse his/her Power of Attorney until a guardian learns of the existence of the Power of Attorney, revokes it, and records the revocation in the land records. In some instances, that may be too late; by the time the guardian discovers the power of attorney or the location of land or minerals, the agent could take the property.

The previous statute automatically revoked Powers of Attorney when a guardian was appointed. This gave the guardian – and the Court that oversaw the guardian – the exclusive authority over the elderly person's assets or activities.

## Why is the legislation's notice language important?

If a buyer wants to buy an incompetent person's home, the buyer can accept a deed from the last agent appointed in a Power of Attorney that is recorded in the land records. As long as the deed records do not show a revocation or amendment of the Power of Attorney, and the buyer does not have actual knowledge of a revocation or amendment, the sale should be effective.

The Act helps title companies and home buyers. As indicated above, it creates risks to elderly and incapacitated persons.

## How is a Power Of Attorney different from a guardianship?

A guardian is an agent of the district court. He/she must post a bond against fraud and dishonesty, present regular accountings, and distribute the elderly person's property only as permitted by the court.

The holder of a Power of Attorney is an agent of the person who makes the appointment. Usually, the agent does not post a bond or present accountings. The agent has authority to take many kinds of actions for the person.

Both guardians, and holders of Powers of Attorney, have strict duties to be honest, loyal, and prudent. They are not permitted to take advantage of the elderly person. It is harder, however, to verify that the holder of a Power of Attorney acts appropriately, because the court is not looking over his/her shoulder.

## What should you do before you give someone a Power of Attorney?

It is very important to make sure that you give a Power of Attorney only to a very honest and reputable person or institution. You should consider writing a "limited" Power of Attorney that restricts his/her authority to a few actions.

Beware of new friends, repairmen, cousins, or others, who may want to "help" you and become your agent. They may "help" themselves to your money.

## What should guardians do to protect themselves?

A guardian should consider adopting a rule of thumb: Unless the guardian is very comfortable with the current agent, the guardian should promptly terminate all Powers of Attorney and record the revocation in the land records in every county where his/her ward owns land. If a guardian does not revoke an existing Power of Attorney and the agent acts improperly, the guardian could be liable for the agent's misconduct.

A guardian has the right to appoint agents whom the guardian trusts.

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# Oklahoma voter registration soon will be available online

Attorney Steven Heinen discusses a new Oklahoma law that will allow residents to register to vote electronically. · by Paula Burkes Published: June 16, 2015



## This November, voter registration will be available online

**Q:** How does Senate Bill 313 change the process for registering to vote in Oklahoma?

**A:** The legislation, signed into law April 15 by Gov. Mary Fallin, permits Oklahoma residents to register to vote electronically. An eligible voter will be able to go to the State Election Board website ([www.ok.gov/elections](http://www.ok.gov/elections)), fill out a voter registration form and submit it online. The law becomes effective Nov. 1.

**Q:** What other registration methods are available in Oklahoma?

**A:** Currently, a hard copy of the voter registration form must be submitted to the state or county election board by mail or in person. Voter registration forms can be accessed on the State Election Board website. Paper copies are also available at post offices, public libraries, tag agencies, county election boards and certain other government agencies.

**Q:** What are the requirements for registering to vote electronically? Are they different than registering through a traditional method?

**A:** The current requirements for registering to vote remain the same: one must be a U.S. citizen, a resident of Oklahoma and 18 or older. The only additional requirements for registering electronically are that one must have a valid Oklahoma driver's license or ID card and must register at the same address shown on the license or ID card.

**Q:** How does the new legislation address the signature requirement for voter registration forms?

**A:** By submitting a voter registration form electronically, applicants consent to the use of their driver's license or ID card signatures for voter registration purposes.

**Q:** What does the new legislation mean when it stipulates that a person must be a "qualified elector" to become a registered voter?

**A:** Under the Oklahoma Constitution, any person who is a U.S. citizen, 18 or older and a bona fide resident of Oklahoma is a "qualified elector."

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## 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)

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