Vol 1 Newsletter · 2017

GABLE GOTWALS
COUNSEL

RAISING THE BAR

Recent Awards

- *Firm named 8th in Top Places to Work in Oklahoma*
- *Lloyd Landreth was inducted into the American College of Environmental Lawyers*
- *Jeff Curran has been inducted into the The Federation of Defense and Corporate Counsel*
- *Brandon Watson was featured in the 2017 Oklahoma Magazine 40 Under 40*
- *GableGotwals was recognized by M&A Advisor during the 11th Annual Turnaround Awards for the Energy Deal of the Year ($10MM to $100MM) award. Gable was on the buy-side in the sale of Juniper GTL LLC.*

GG GOOD NEWS

Unanimous defense verdict

Jeff Curran and Jake Krattiger obtained a unanimous defense verdict after a four-day jury trial in Oklahoma County. He represented the Defendant, J&J Building, in a case where Plaintiffs were claiming bad wiring caused a house fire and the loss of all the home's contents.

Victory in putative class action

Dave Keglovits and Barbara Moschovidis won a major victory for a client in a putative Oklahoma class action filed in Rogers County. The plaintiff claimed our client violated the Uniform Consumer Credit Code via the alleged collection of a convenience fee when the client's customers used open-end credit or debit cards. The Court granted our client's motion to dismiss on subject matter jurisdiction grounds and based on the application of available exclusions to the Code.

Wind farm financing successful

The GG team of John Dale, Jordan Edwards, Bob Getchell and James Scears served as local counsel for an approximate $630MM financing of an Oklahoma wind energy project. For this project, the GG team assisted with Oklahoma tax and regulatory issues, provided updates concerning state legislative activities, and rendered several third-party opinions, including a regulatory opinion.

GableGotwals welcomes four new Intellectual Property attorneys

Intellectual property law attorneys Scott R. Zingerman, David G. Woodral, James F. Lea, III, and Todd A. Nelson, have joined GableGotwals' Tulsa office as Shareholders. They will be joining the firm's IP practice group that includes Paul E. Rossler, Frank J. Catalano and Alicia Edwards.

A former mechanical engineer at Texaco, **James Lea** holds a bachelor of science in Mechanical Engineering from the University of Oklahoma, where he also earned his law degree. As a patent attorney, James' experience includes intellectual property matters, foreign and domestic patents in over 25 countries, trademarks and copyrights. He has worked with an array of technologies including submersible pumps, drilling equipment, extrusion equipment, medical implants, business methods, software applications, microchips and sporting goods.

Todd Nelson's legal practice spans both litigation and transactions in the areas of intellectual property and related business matters. This includes trademark procurement and patent, trademark, copyright and trade secret litigation, as well as opposition and cancellation proceedings before the Trademark Trial & Appeal Board. He is a former president of the Oklahoma Bar Association's Intellectual Property Law Section and has been recognized by Chambers (USA), Oklahoma Super Lawyers and Best Lawyers in America, and was named Best Lawyers' 2017 Tulsa Patent Litigation "Lawyer of the Year".

David Woodral is experienced in all phases of patent procurement and portfolio management in both the U.S. and overseas. His clients have ranged from innovative startup companies to Fortune 500 companies. His background in software engineering provides particular expertise in computer implemented systems, electronic devices, networking, and telecommunications. He also has substantial experience in the mechanical arts including hydraulics, oil and gas, and consumer goods. David is a 2003 graduate of the Washington University School of Law in St. Louis. He received his undergraduate degree in computer engineering from the University of Oklahoma in 2000.

A registered patent attorney, **Scott Zingerman** advises clients on issues surrounding intellectual property rights including patent, trademark, licensing, litigation, trade secret and copyright. Not only is Scott experienced with U.S. law regarding the acquisition and licensing of patent rights, but he is well versed in international patent rights as well. Scott is also actively involved in trademark procurement and litigation. He frequently represents clients before the U.S. Patent and Trademark Office's Trademark Trial and Appeal Board. Scott has a bachelor of science degree in chemistry and was a former president of the Intellectual Property Law Section of the Oklahoma Bar Association.

New Transactional Attorney in Tulsa

Michael Scoggins' background as senior counsel with an oil and gas exploration and production firm provides him with first-hand insight into the myriad of legal issues rooted in the operation of an energy company. Michael is versed in all aspects of energy law, including contracts, commodity sales, conveyances, mineral leasing, asset acquisition and divestments, leaseholder rights and operations. Michael also has experience managing complex civil litigation in both state and federal courts.

Michael can be reached at 918.595.4830 or mscoggins@gablelaw.com.

Robert McCampbell and Travis Jett join OKC office

A former United States Attorney, **Robert G. McCampbell** brings more than 30 years of diverse experience to his practice at GableGotwals. Alternating between private and government practice, Robert has been an active force in the Oklahoma City legal community. Robert's primary practice will focus on litigation, white collar criminal defense, administrative and regulatory law and appellate law.

Robert is a graduate of Yale Law School. He earned his undergraduate degree from Vanderbilt University. Among his many honors, Robert is a Fellow with the American College of Trial Lawyers. He has received seven Lawyer of the Year Awards from Best Lawyers in the areas of white collar, criminal defense, government relations and administrative law.

Robert can be reached at 405.235.5567 or rmccampbell@gablelaw.com.

Travis Jett's practice ranges from representing clients in appellate matters to conducting internal investigations. He has appeared before various administrative agencies and has expertise in election and campaign finance law. Travis will focus his practice on both civil and criminal litigation.

Travis is a graduate of Georgetown University Law Center in Washington, D.C., where he served as editor-in-chief of the Georgetown Journal of Law and Public Policy. He also worked as a law clerk for the Senate Judiciary Committee during his third year of law school. Travis received his undergraduate degree from Oklahoma State University in Agribusiness and served as the National FFA President.

Travis can be reached at 405.235.5519 or tjett@gablelaw.com.

THE JOURNAL RECORD

Shifting water courses may affect property rights

By Lewis LeNaire

As anyone who has spent significant time near a western Oklahoma river is likely aware, our water courses tend to be shallow, with beds composed of loose, sandy soil. These characteristics make western Oklahoma rivers especially susceptible to significant shifts in course over time, which can have important consequences for riparian landowners or owners of underlying minerals.

Under Oklahoma law, when a property's boundaries are defined by a water course, the property line itself may shift under certain circumstances along with changes to the stream, depending on the nature of the movement. If the shift occurs suddenly and perceptibly – such as when flood waters quickly erode a bank or cut a new course in a matter of hours – the movement is known as "avulsion." Avulsive shifts in a river's course have no impact on property lines; the boundary will remain where it was prior to the change.

However, if the shift occurs gradually over time by imperceptible degrees and natural causes, resulting in new lands forming on one side of the river, the movement is known as "accretion." Accretive changes to a water course correspondingly alter property lines, resulting in ownership of more or less land, depending on which side of the river a landowner is on. Oklahoma law presumes that river movement occurs by accretion, but this presumption can be rebutted by a preponderance of evidence indicating that movement occurred by avulsion.

Owners of mineral interests underlying riparian lands do not escape these effects simply because this phenomenon occurs on the surface. Most mineral interests in Oklahoma have been severed from the surface estate. For owners of severed mineral rights, if the ownership tract is bordered on any side by a water course, that mineral estate also is subject to reduction or enlargement as a result of accretive movement of the river, just as with the surface estate.

Property disputes arise frequently as a result of river movement, and are expensive to litigate due, in part, to the need for experts such as surveyors and hydrologists. For riparian property owners, a more economical solution can often be achieved by negotiating with neighboring surface or mineral owners to reach an agreed boundary line defined by survey rather than by a natural water course.

***Lewis LeNaire** is an attorney with GableGotwals, where he practices in the area of energy, oil and gas law. He can be reached at 405.568.3303 or llenaire@gablelaw.com.*

THE OKLAHOMAN

Daily Q&A with Ellen Adams

Retail Industry Responds to "On-Call Scheduling" Complaints

Last year, a coalition of nine attorneys general issued a joint letter to several major retailers requesting documents and answers about employee scheduling, specifically "on-call scheduling." The states joining in the effort included New York, Massachusetts, California, Connecticut, Illinois, Maryland, Minnesota, Rhode Island, and the District of Columbia. In response to the coalition's effort, six major retailers, such as Disney and Aeropostale, announced that they would no longer utilize on-call scheduling. Given the attention the effort received, it is anticipated that more retailers will modify how they schedule employees in the months to come.

What is "on-call scheduling?"

On-call scheduling typically requires employees to contact their employer within hours of a scheduled shift to learn whether they are still needed for work. If the employer determines the employee is not needed, then the employee is not paid. Conversely, if the employer determines the employee is needed, then the employee must show up for work.

Why would attorneys general be interested in this type of scheduling?

From employees' perspective, this type of last-minute scheduling impacts their ability to have supplemental employment, pursue educational opportunities and effectively manage family obligations, such as finding reliable childcare and elder-care. From the employer's perspective, this type of just-in-time scheduling reduces labor costs while ensuring that stores are staffed according to when customers are most likely to peak.

Is this type of scheduling reserved for the retail industry?

While it's a feature of the retail and fast food industry, many other industries use similar methods categorized broadly as "just-in-time scheduling" to manage the demands of certain positions without substantially increasing wage costs. For instance, in safety sensitive industries, there is often a need for someone to be "on call" just in case there is an emergency. In these positions, the shifts are not designed around customer demand but based on what may be unforeseen events.

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New Tulsa Shareholder

Adam C. Doverspike focuses his practice on complex civil litigation, appellate matters, ratemaking, and local government affairs. Adam has represented a wide variety of clients, including pharmaceutical manufacturers, government entities, universities and energy corporations. Adam's energy work includes preparing comments on EPA rulemaking concerning proposed hydraulic fracturing regulations and assisting a natural gas utility through the state ratemaking process at the Oklahoma Corporation Commission. He has counseled energy clients regarding environmental issues, eminent domain policies, data security and privacy issues, and the use of unmanned aerial vehicles.

Adam can be reached at 918.595.4813 or adoverspike@gablelaw.com.

New Tulsa Shareholder

Robert J. Getchell has practiced Real Estate Law for over three decades in Oklahoma and Arkansas. His broad-ranging experience includes residential, commercial and investment-related real estate transactions. Having spent almost 20 years as staff attorney and general counsel for abstract and title companies, Bob has extensive experience in every area of transactional real estate including title examination, title insurance underwriting, sales and refinance transactions, contracts, conveyance instruments, encroachment agreements and easements. Bob is also an experienced litigator having represented various individual, investment and corporate clients, including some of the country's largest banks, in mortgage foreclosure litigation and other adversarial matters covering a wide range of real estate matters.

Robert can be reached at 918.595.4822 or bgetchell@gablelaw.com.

Q&A with Ellen Adams (cont.)

What are the applicable laws for on-call scheduling?

Under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., (the "FLSA"), and various state's laws and regulations, employers must be cautious about the use of on-call shifts. The FLSA requires employers to pay non-exempt employees for all hours actually worked but not for "waiting time." The Code of Federal Regulations advises that whether waiting time is compensable under the FLSA depends upon particular circumstances involving "scrutiny and construction of the agreements between particular parties, appraisal of their practical construction of the working agreement by conduct, consideration of the nature of the service, and its relation to waiting time, and all of the circumstances." 29 C.F.R. § 785.14 (emphasis added). In other words, it is a very factually specific inquiry.

Are there clear examples of what is and isn't waiting time?

An employee is categorized as either "engaged to wait" (actually working) or "waiting to be engaged" (not working) based on whether the employee has the ability to use the time effectively for his or her own purposes. The federal regulations indicate "a fireman who plays checkers while waiting for alarms" or "a messenger who works a crossword puzzle while awaiting assignments" would be regarded as engaged to wait. If an employee is not required to remain on the employer's premises and is free to use his time as he wishes unless or until his employer calls him to come to work, the employee is on call and would be regarded as "waiting to be engaged."

What are the applicable laws in Oklahoma?

Employers in Oklahoma are subject to the FLSA. Oklahoma employers should consider a variety of factors in determining whether their "on call" employees are "engaged to wait" or "waiting to be engaged" before deciding whether those employees should be paid for "on call" shifts. Additionally, employers should consult with an attorney to conduct a wage and benefits audit to ensure that there are not other laws that may impact the manner in which they schedule and pay employees.

***Ellen Adams** is a Shareholder in Oklahoma City, where she practices employment law. She can be reached at 405.235.5520 or eadams@gablelaw.com.*

THE JOURNAL RECORD

Gavel to Gavel: New law, regulator settlement affect confidential information

By Chris Thrutchley Guest Columnist · October 5, 2016

Two recent developments necessitate that owners of confidential proprietary information take immediate steps to review and update contracts and policies.

The recently enacted Defend Trade Secrets Act of 2016 (DTSA) gives owners of confidential proprietary information important new tools and options for protecting valuable trade secrets.

The DTSA not only allows victims of trade secret theft to recover compensatory damages, royalties, punitive damages, attorney fees and costs, but also empowers victims to obtain injunctive relief limiting what former employees, consultants and contractors can do for new employers to prevent even the threatened misappropriation and disclosure of trade secrets. When injunctive relief would be inadequate, the DTSA provides for very potent ex parte seizure orders, enabling victims to seize stolen secrets. Further, the DTSA authorizes trade secret owners to sue in and remove actions to federal court.

Keep in mind, the law requires notice of whistleblower immunity to be incorporated in contracts and policies governing trade secrets and confidential information in order to recover punitive damages and attorney fees.

To capitalize on the advantages of the DTSA, companies should review and update their trade secret and proprietary information protection strategies. It is also advisable to audit and consider revising forum selection clauses. If company contracts limit venue to state court, consider revising them to allow a federal option.

A second recent development affects how companies protect confidential information.

In August, a building products distributor agreed to pay a $265,000 Securities Exchange Commission (SEC) civil penalty, in part for including language in severance agreements that prohibited employees from disclosing confidential information or trade secrets unless compelled by law to do so and only after first informing the company and securing the company's written consent.

Rules implementing the Dodd-Frank Act's whistleblower protections prohibit impeding a person from reporting suspected wrongdoing to the SEC, and enforcing or threatening to enforce overly broad confidentiality agreements as did the building products distributor. As part of the settlement, the company agreed to amend its severance agreements to remove the overly broad confidentiality provisions.

In light of this recent enforcement case, businesses should take steps to ensure that agreements prohibiting disclosure of confidential information or trade secrets allow communication and cooperation with government agencies and participation in agency proceedings without having to obtain prior approval and without loss of whistleblowing-related relief.

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THE JOURNAL RECORD

Gavel to Gavel: OSHA rule impacts drug, alcohol testing

By Lauren Oldham Guest Columnist · March 29, 2017

An Occupational Safety and Health Administration (OSHA) rule in effect as of December, should prompt employers to re-evaluate their post-accident drug and alcohol testing policies and practices.

The rule allows employers to be cited for retaliation against employees subjected to post-accident drug and alcohol testing when there is no reason to believe impairment contributed to the accident or injury. Issued before President Trump's administration assumed office, the rule may not be as stringently enforced as first envisioned. However, employers are still at risk if engaging in mandatory post-accident testing because employees could bring their own retaliation claims.

The rule stops short of requiring "reasonable suspicion." Rather, it instructs employers to "strike the appropriate balance" and "limit post-incident testing to situations in which employee drug use is likely to have contributed to the incident and for which the drug test can accurately identify impairment caused by drug use." If not, employers face stiff penalties for violations – $12,000 per violation and $120,000 for willful or repeat violations.

Some examples of unreasonable or questionable testing would be a repetitive strain injury, such as tendinitis or a back injury, or an injury caused by a lack of machine guarding or a machine or tool malfunction. In these cases, there is no reasonable possibility that the injury occurred because the employee was impaired from drugs and/or alcohol.

However, an example of reasonable testing would be a crane accident that injures several employees but not the operator. The employer may not know the cause, but there

is a reasonable possibility it could have been caused by operator error or by mistakes made by other employees responsible for ensuring that the crane was in safe working condition. In this scenario, OSHA considers it reasonable to require all employees whose conduct could have contributed to the accident to take a drug and alcohol test, whether or not they reported an injury or illness.

While OSHA gives some examples like these in the rule, much interpretation is still required. Employers should ensure their policies effectively address the gamut of potential situations and pose no liability to their organizations while maintaining a commitment to workplace safety.

Lauren Oldham *is an associate with GableGotwals where she practices general litigation and employment law. She can be reached at 918.595.4820 or loldham@gablelaw.com.*

THE OKLAHOMAN

Q&A with Paula Williams

Guidelines allow voluntary employer wellness programs

New Tulsa Shareholder

Brandon M. Watson's practice focuses on business transactions, where he advises clients on matters relating to mergers, acquisitions, corporate governance, compliance with federal securities laws (including registered offerings and periodic reporting compliance), commercial and contract issues.

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A federal court recently heard a case involving a corporate wellness program. What was the basis for the Equal Employment Opportunity Commission (EEOC) lawsuit in this case?

Orion Energy Systems implemented a "wellness program," which asked employees to participate in a heath assessment to improve the health of Orion's workforce and, as a result, reduce Orion's health care spending. Participation wasn't mandatory. However, if employees chose not to participate, they had to pay their own monthly health insurance premiums. The EEOC brought this lawsuit claiming Orion's program violated the Americans with Disabilities Act, (ADA), which generally prohibits employers from asking about disabilities or requiring employees to submit to medical examinations. And, because Orion terminated an employee who refused to participate in, and publicly criticized, the wellness program, the EEOC also claimed Orion retaliated in violation of the ADA.

Orion claimed its program was protected under the ADA's safe-harbor provision. What's this provision and did it apply to Orion?

The safe-harbor provision protects employers who self-insure, allowing them to use health information to make decisions about insurability and costs of insurance. This court found that wellness programs like Orion's are generally unrelated to basic underwriting and risk classification. This was a victory for the EEOC, especially since the court's decision departs from other federal cases permitting a broader reading of the safe-harbor provision.

This summer the EEOC issued a final rule on wellness programs and the ADA. What does that rule say about how the ADA applies to wellness programs?

The EEOC's new rule allows employers who implement a voluntary wellness program to conduct some medical examinations, ask health-related questions and offer limited incentives to employees for their participation. The information

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Q&A with Paula Williams (cont.)

collected must remain confidential and only may be sent to employers in an aggregate form — not linked to specific individuals. These programs also must be equally offered to similarly-situated employees, including employees with disabilities who may need a waiver or special accommodation to participate.

Both sides are claiming victory in the case. Why?

Although Orion wasn't protected by the safe-harbor provision, Orion's program was compliant with the ADA because it was voluntary. To be voluntary, an employer may not deny coverage under the health plan or retaliate against an employee who chooses not to participate. This court determined that although Orion's employees must pay a significant premium if they fail to participate, the program still was voluntary because it afforded a choice of whether to participate, even if it was a "hard choice." Orion's wellness program didn't violate the ADA, but the EEOC still can proceed with its claim that the employee was terminated for her criticism of the program, which may constitute retaliation in violation of the ADA.

What lesson should employers take away from the Orion decision?

This court allows employers to attack health care costs by shifting up to 100 percent of monthly health care premiums to employees who decline to participate in a voluntary wellness program without violating the ADA.

***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.*

New Oklahoma City Shareholder

E. Talitha Ebrite's practice focuses on business litigation (state and federal). Talitha has worked closely with large and small oil and gas companies, major retailers, and a number of other business entities to accomplish their goals in matters relating to class actions, revenue accounting, environmental claims, employment discrimination, and a broad assortment of other commercial disputes. A significant portion of Talitha's practice is also devoted to drafting oil and gas drilling division orders, and acquisition title opinions.

Talitha can be reached at 405.235.5500 or tebrite@gablelaw.com.

THE JOURNAL RECORD

Gavel to Gavel: First steps in buying or selling a business

By Steven G. Heinen Guest Columnist · January 4, 2017

Acquiring or divesting an existing business is a complex endeavor that requires considerable planning and analysis by both the seller and the buyer to protect their respective interests.

When considering this type of transaction, the buyer and seller typically take three important preliminary steps before executing a definitive purchase and sale agreement: negotiating and executing a non-disclosure agreement, or NDA, negotiating and executing a non-binding letter of intent, or LOI, and conducting due diligence.

An NDA is an agreement in which one or both sides agree to keep sensitive information provided by the other party confidential. The NDA should, at a minimum, define what constitutes confidential information, permit the receiving party to use such information only for purposes of considering and evaluating the proposed transaction, provide for the return of such information if the proposed transaction is not completed and address remedies for a breach of a party's obligations under the NDA.

An LOI (also commonly referred to as a term sheet) outlines the main business points and expected timeline for a proposed transaction. An LOI usually will expire if the proposed transaction is not completed by a specific date and may provide for payment of earnest money to demonstrate the buyer's commitment to pursuing the transaction.

LOIs are typically non-binding as to the proposed transaction, but often include binding provisions relating to exclusivity (the seller will not entertain offers from other potential buyers), non-solicitation (one or both parties agree not to solicit the other party's employers and/or customers) and due diligence.

Due diligence simply means to conduct an adequate investigation. For the sale or purchase of a business, due diligence entails giving the buyer access to the seller's premises, files and personnel in order to properly evaluate the business. The extent of access will depend upon how much information is publicly available, the sensitivity of the information, the degree of commitment of the parties (did the seller grant exclusivity to the buyer or did the buyer pay earnest money?) and whether the parties are competitors.

Buying or selling a business is an important and often complicated process, so it's important that both parties consider the risks and desired timeline, and involve their counsel, as soon as possible. Proper planning at the beginning of the process will facilitate completion of the transaction while protecting the parties' interests.

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Business & Legal News

GableGotwals attorney now chamber counsel

By Ralph Schaefer TB&LN Correspondent

David E. Keglovits is wearing another hat as the new year gets underway.

The GableGotwals president has been selected as the Tulsa Regional Chamber's general counsel, a volunteer role. He succeeds Mike Cooke with the Hall Estill law firm, who served in the position for years.

"Mike has been the chamber's general counsel and provided a great service for them," Keglovits said. "In the spirit of shared sacrifice, it was GableGotwals' time to provide that same service to the chamber. It (the chamber) is a great group, and we want to do whatever we can to support them."

The responsibilities of the chamber's general counsel are similar to what they would be at any company. This person reviews what should and should not be in contracts and agreements the chamber enters. Chamber bylaws outline what the organization can do, and the general counsel's responsibility is to make certain these are followed.

Keglovits admits he is on a learning curve in his new role, but he is no stranger to the regional organization. He plans to call on the law firm's lawyers when there are questions he cannot answer.

It is an easy step because GableGotwals has been part of the chamber for more than a quarter of a century both in the volunteer capacity and financially.

"My service as general counsel is just another step in that support," he said. "It is with a mix of honor and excitement that I have been asked to serve in this capacity. It is exciting to be part of the work the chamber is doing in a very active way. They are on the forefront of economic development for the region and on statewide matters like education. If I can help push that plow forward a little bit, I am delighted to do it."

Keglovits, while learning the job, doesn't feel there will be great challenges other than those that business clients encounter. It is important for a business to manage risks so things can be accomplished without being distracted from the big picture, he said. It also is important to be ready to take advantage of opportunities allowed by law.

Keglovits has tried to be active as a chamber member by attending events, following agendas and serving on panels to provide advice to the chamber as a business, not necessarily as a lawyer, but as someone employing more than 100 people.

John Gaberino Jr., who served as the 2001 chamber chairman, is a practicing member at the law firm, Keglovits said.

"The chamber is a great group," he said. "We have a big commitment to community service at GableGotwals, and it is fortunate when you can align your efforts and support the community with an organization you have a strong belief in."

David can be reached at 918.595.4827 or dkeglovits@gablelaw.com.

Business & Legal News

Patents harder to obtain now, attorneys say

By Ralph Schaefer TB&LN Correspondent

GableGotwals attorneys face multiple challenges as they seek patent protection for clients. They are, from left, Todd A. Nelson, Scott R. Zingerman, James F. Lea III, and David G. Woodral. Ralph Schaefer/For TBLN

Back in 1899, Charles H. Duell, then-commissioner of the U.S. patent office, purportedly said "everything that can be invented has been invented" and the office should be closed.

The quote has been debunked over the years, but the quote is worth a chuckle 118 years later by looking at what has happened as technology has exploded and changed the face of the world. Anyone from that era would get a different perspective from four GableGotwals lawyers who are facing challenges the 19th century commissioner could not have imagined.

Todd A. Nelson, Scott R. Zingerman, James F. Lea III and David G. Woodral are registered patent attorneys.

Patents are still very much intact, said Woodral. There have been changes, and the public perception of patents has changed, but it no longer is easy for a person to find an attorney to file papers for a concept or an idea, start a business and go to market.

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Patents harder to obtain... (cont.)

Now they have to protect that patent they have invested in and worked to develop either in federal court or through the Inner Party Review in the America Invents Act.

Challenges have resulted in a pushback from the U.S. Patent Office that makes it harder to get patents, particularly on software, Woodral said. Many objectors claim the sought-after patent is not prior art, that someone has done it or it is a variation on something done earlier.

One objection is that the idea is too abstract and no patent will be issued because it is not embodied sufficiently in the patent world, he continued. "I have done a lot of patents and tried to convince the patent office they are dealing with the embodiment of an idea, not a concept."

Lea noted the patent office has struggled with various issues and is less liberal in allowing software patents. Some inventions might be purely mechanical, but if they aren't cast in the right light, then it is considered abstract, Woodral said.

It might have been possible 10 years ago to tie abstract methodology to hardware, and perhaps it would have been possible to draft a method claim for software, Lea said. Now a mechanical device is required where action is involved.

A patent attorney plays a critical role by keeping up with the law. If an idea disclosure is sent to a patent attorney and there is no working relationship, the attorney will do the best job possible based on provided information.

Patent infringement is a concern, he said. If it is made overseas or in the inventor's secret lab, it often is difficult to know if there are problems, Woodral said.

If the inventor is asking the patent office for a monopoly, something that generally is frowned upon, the patent office will try to squeeze the product down and give it as tiny a piece of the market as possible. If the patent is narrow, it will protect the client's interest.

Woodral tells clients there are no patent police and typically it is a private action with a client bringing a lawsuit against an alleged infringer.

The four attorneys have their areas of expertise, but if the water "gets too deep" they turn to others, including firm lawyers Paul Rossler and Frank Catalano to fill in the blanks.

That outreach includes partnering with law firms in 25 foreign countries and utilizing their legal communities involving patents, trademarks and other intellectual property law.

"None of us are European attorneys, British barristers or solicitors," Woodral said. "When we have clients in those jurisdictions, as well as Asian countries, we interface with colleagues we respect in those jurisdictions."

There is no worldwide copyright law, he said. A client must use "a rifle approach" when seeking patent, copyright or intellectual property protection on the international market, Woodral said.