



# RAISING THE BAR

## *Recent Awards*

- Firm named “Highly Recommended Firm” by Benchmark Litigation. Eleven attorneys individually recognized
- Ranked in 2018 “Best Law Firms” by Best Lawyers® in America
- Best Lawyers® in America named 10 GableGotwals attorneys to the 2018 “Lawyer of the Year” list
- Fifty-seven GableGotwals attorneys named to 2018 Best Lawyers in America® List
- GableGotwals featured as one of 17 law firms with the Strongest Client Relationships in the Energy Industry
- Firm named 2017 Best Law Firm by Oklahoma Magazine



## **Robert McCampbell and Jay Walters Successfully challenge constitutionality of Cigarette Tax**

Robert McCampbell and Jay Walters obtained a favorable opinion from the Oklahoma Supreme Court finding a tax on tobacco products to be unconstitutional. The court rejected the State’s argument that the legislation was not subject to constitutional provisions governing the imposition of new taxes because it imposed a “fee” instead of a “tax”. *Naifeh v. State ex rel. Oklahoma Tax Commission*, 2017 OK 63.

## **Class certification reversed**

Jay Walters and Dean Luthey represented Continental Resources in litigation involving class certification. On appeal, the requisites for a class action were determined to have not been met, the trial courts decision was reversed and the case remanded to the trial court.

## **Motion for class certification denied**

Judge Miles LaGrange, USDC – Western District, denied a motion for class certification and sustained the objection for our client Globe Life and Accident Insurance Company. Plaintiff sought to certify a nationwide class action of life insurance policy holders who purchased term life policies between 1951 and 2016. GableGotwals lawyers involved were John Russell, Tammy Barrett and Steve Adams with special assistance provided by Katherine McDonald and Lauren Oldham

## *Recent Awards*

- *Forty-nine of the firm's attorneys named 2017 Oklahoma Super Lawyers and Oklahoma Super Lawyers Rising Stars and four of the Firm's shareholders ranked top of the list in the 50 top attorneys for the state of Oklahoma*
- *Recognized by Chambers USA as a Leading Firm in the areas of Energy and Natural Resources, General Commercial Litigation and Corporate/ Commercial and was added this year as an "Other Noted Firm" in the area of Native American Law*
- *Sixteen GableGotwals attorneys have also been named as "Leaders in their Field" in the 2016 Chambers USA rankings*
- *Steven Heinen received the Volunteer of the Year award from The Tulsa Lawyers for Children*



### **Motion for summary judgment sustained**

After a non-jury trial, District Judge James Bland directed a verdict for our client, Davis Operating Co. and the Joe Davis Trust. The defendants took new oil and gas leases in 2000 after a lease expired due to failure of a well to produce in paying quantities. Plaintiff claimed the lease was held by production and sought damages for 17 years of unpaid mineral royalties and an unpaid overriding royalty interest.

Before trial commenced, Judge Bland made a significant ruling and sustained our clients' motion for summary judgment and held royalty damages under the Production Revenue Standards Act (PRSA) are limited by a 5-year statute of limitations. The case was tried by Ryan Pittman.

### **Summary judgment granted**

John Russell and Rob Carlson obtained an order granting summary adjudication to our client, a health care provider, finding there was no basis for the Oklahoma Health Care Authority to invalidate claims submitted by the client. The client was charged with five counts of filing false tax returns for not reporting more than \$1.3 million in income. Faced with a guideline sentence of 18 to 24 months' imprisonment, the Court sentenced the client to three months' home detention and five years' probation.

### **\$51 million summary judgment for GG client**

In Texas, David Bryant obtained a \$51 million summary judgment for our client, a large energy company, on breach of contract claims against another energy company.

In another case, David Bryant obtained summary judgment dismissing all claims against our client, a large energy company, in a federal multi-district antitrust case.



## Andrew R. Polly joins Tulsa office as an Associate Attorney

Before joining GableGotwals full-time, Andrew Polly served as a Judicial Extern for the Honorable Gregory K. Frizzell, Chief Judge in the United States District Court for the Northern District of Oklahoma. Andrew's primary practice will focus on commercial law. He obtained his Juris Doctorate with highest honors from the University of Tulsa College of Law, where he was a member of the Order of the Curule Chair and Order of the Barristers. While in law school, Andrew served as Supervising Editor with the Tulsa Law Review and earned numerous honors, including the CALI Award for Excellence in Property, Civil Procedure II, Health Law, and Advanced Torts. Prior to his final year of law school, Andrew was chosen as the recipient of the William W. Means Professionalism Endowed Scholarship Award.

*Andrew can be reached at 918.595.4970 or [apolly@gablelaw.com](mailto:apolly@gablelaw.com).*

## Oklahoma City Retirement Facility successfully reorganized along with reversal of adverse judgment

Dean Luthey obtained the reversal of a judgment against an Oklahoma City retirement facility of \$10 million for intentional infliction of emotional distress and \$500,000 of attorney fees, and the \$3.5 million reduction of a punitive damages award based on gross negligence. Mr. Luthey, who did not represent the client at trial, managed the appeal and wrote the appellate briefs. The erroneous decision of the district court, later reversed on appeal, caused the facility to file for chapter 11 reorganization under the Bankruptcy Code. GableGotwals Bankruptcy attorneys, Blaine Schwabe, Sid Swinson, Mark Sanders and Elizabeth Cooper, along with Dean Luthey, led the client through a successful reorganization which will result in all trade creditors and bond holders being paid in full and has caused the adverse judgment to be discharged.

## GableGotwals obtains significant victory for Seneca-Cayuga Nation in Court of Indian Appeals

The Court of Indian Appeals has vindicated tribal leaders represented by GableGotwals in election litigation. After an unlawful coup overthrowing the elected government of the Seneca-Cayuga Nation, Dean Luthey obtained an injunction at trial from the Court of Indian Offenses reinstating the elected tribal leader clients. That injunction was recently affirmed by the Court of Indian Appeals in an appeal handled by Mr. Luthey. The appellate court at Luthey's urging also vacated, on due process grounds, the takeover by the trial court of the subsequent tribal election and determined the court orders setting and controlling the election unlawful and in violation of due process. The appellate court noted that the control of elections should be with tribal governmental officials represented by GableGotwals.



## Oklahoma City office welcomes Ashley E. Quinn

Ashley Quinn is a new associate whose primary practice will focus on litigation. Prior to joining the Firm, she served as a Legal Intern for the Honorable Robert E. Bacharach at the United States Court of Appeals for the Tenth Circuit. Ashley graduated from the University of Oklahoma College of Law and earned her bachelor's degree summa cum laude from the University of Oklahoma. While in law school, Ashley served as an Articles Editor of the Oklahoma Law Review and earned numerous honors, including Order of the Coif, the American Jurisprudence Awards in Constitutional Law and Civil Procedure and was a Comfort Scholar and Dean's Leadership Fellow. She also served on the law school's Board of Governors and was a Research Assistant for Professor Liesa Richter.

*Ashley can be reached at 405.568.3314 or [aquinn@gablelaw.com](mailto:aquinn@gablelaw.com).*

## Successful chapter 11 reorganization

In 2017, GableGotwals' bankruptcy practice group completed the successful chapter 11 reorganization of a large, locally owned and operated wholesale and retail nursery operation. The case involved difficult issues that threatened the company's continued existence. The confirmation of its chapter 11 plan, together with operational changes made during the pendency of the case, paved the way for the company's continued success.

## Gable Gotwals' Employment Law team obtains stream of dismissals in cases

Chris Thrutchley successfully obtained the dismissal of two charges of religious discrimination and retaliation filed by two certified nurse anesthetists against a rural Oklahoma healthcare provider with the Oklahoma City area office of the EEOC.

The Employment Law team obtained dismissal of numerous charges of race discrimination, sex discrimination, and retaliation filed with the State of Maryland, Howard County, and the EEOC's Baltimore office by multiple former employees of businesses owned and operated by an Indian tribe.

Chris Thrutchley and Lauren Oldham successfully obtained dismissal of a charge of age discrimination filed against the Houston, Texas office of a multi-state client with the Houston area office of the EEOC. They investigated the allegations, prepared a response asking for dismissal due to lack of merit, and succeeded.

The Employment Law team won dismissal of numerous unfair labor practice charges filed with the Baltimore regional office of the National Labor Relations Board by former employees of businesses owned and operated by an Indian tribe.

Chris Thrutchley and Lauren Oldham also successfully secured dismissal of a charge of race discrimination and retaliation filed against an Oklahoma healthcare provider with the Oklahoma City area office of the EEOC. They investigated the allegations, prepared a response asking for dismissal due to lack of merit, and succeeded.

The Employment Law team won dismissal of two separate charges filed by an Oklahoma hospital alleging race discrimination in one case and disability discrimination in the other.

Finally, the Employment Law team won dismissal of two separate charges filed by two former employees of a city-county agency alleging sex discrimination, sexual harassment, disability discrimination, and retaliation.

## GableGotwals welcomes Jeff Haughey to the Tulsa office



Jeff Haughey joins the GableGotwals–Tulsa office as a transactional attorney focused on mergers and acquisitions, securities, and corporate matters. Jeff has represented issuers in both public and private offerings of equity and debt of nearly \$16 billion (including more than 10 IPOs). He has represented clients in mergers and acquisitions on both the buy and sell side that have had a combined valued at nearly \$3.5 billion. He has considerable experience with crisis management issues resulting from Chapter 11 reorganizations, financial distress due to changed market conditions and restatements of financial statements from accounting irregularities. Jeff is knowledgeable about compliance with the Sarbanes-Oxley Act of 2002, Dodd-Frank and the JOBS Act. In addition, Jeff has negotiated credit agreements, financing agreements and supply agreements, and has designed, drafted and registered equity compensation plans.

*Jeff can be reached at 918-595-4837 or  
[jhaughey@gablelaw.com](mailto:jhaughey@gablelaw.com).*

## Steve Lake returns as a Shareholder in the Tulsa office



Steve Lake has over 26 years of legal experience in the energy industry, both in a law firm setting and as General Counsel of publicly traded companies. Most recently, Steve served as Senior Vice President and General Counsel for ONEOK, Inc. (NYSE: OKE), a Fortune 500 energy company, and for ONEOK Partners, which was a publicly traded master limited partnership (MLP). ONEOK is one of the largest energy midstream service providers in the U.S.

Prior to that, he served as Executive Vice President and General Counsel for McJunkin Red Man Corporation (NYSE: MRC), a distributor for the energy industry. Initially, Steve spent 17 years at GableGotwals focusing on mergers and acquisitions, securities law and corporate finance, primarily in the oil and gas industry.

Steve has provided legal counsel during his career on various business and transactional matters, including numerous mergers and acquisitions, divestiture transactions, corporate governance, joint venture transactions, corporate and securities matters and public securities offerings.

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# Gavel to Gavel: Preventing pregnancy, maternity, paternity discrimination in workplace

By Ellen Adams and Paula Williams

The Equal Employment Opportunity Commission continues to prioritize “accommodating pregnancy-related limitations under the Americans with Disability Act Amendments Act and the Pregnancy Discrimination Act,” according to its Strategic Enforcement Plan for 2017-2021.

This means employers must be diligent in taking steps to adequately educate their leaders about the legal obligations under the ADAAA, PDA and Family Medical Leave Act in managing expectant and new parents to avoid claims of discrimination, harassment and interference with FMLA rights.

The intersection between these laws can quickly become complicated. For example, pregnancy alone is not a disability under the ADAAA, but certain pregnancy-related medical conditions may constitute an ADAAA disability. Further, an employer may have a duty to accommodate a pregnancy-related restriction under the PDA. Plus, an employer must consider its potential obligations to a pregnant employee or to the spouse of a pregnant employee under the FMLA.

Employers can be vulnerable to a pregnancy, maternity or paternity discrimination claim if they do not ensure the workplace and its policies are compliant with the law. Yet, by taking three straightforward steps, businesses can help ensure their actions align with applicable laws.

First, employers should review and update their leave, accommodation, discrimination and retaliation policies. They should ensure that policies are compliant with the

latest amendments to ADAAA, PDA, FMLA, and any applicable state laws. They should also make sure all employees, including temporary employees in certain circumstances, have received the policies.

Second, employers should regularly train all employees on these policies and implement internal procedures to ensure policies are followed. This is critical training for all staff members, not just managers and supervisors. It is also important to train leaders to look across and carefully evaluate multiple complex issues to determine whether requests for accommodation or leave should be granted.

Finally, businesses should consider consulting with legal counsel who can audit their policies and prevention practices and assist them with training. Legal counsel experienced in fair employment practices can quickly troubleshoot any gaps in policy and training that employers need to address.

Carefully vetted policies and procedures, coupled with regular training, can help any business minimize its risks of costly employment claims.

Ellen Adams and Paula Williams are attorneys with GableGotwals who focus their practices on defending employers against claims of discrimination, harassment, retaliation, wrongful termination and alleged wage-and-hour violations.



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*Paula Williams is an Associate who practices employment law. She can be reached at 405.568.3302 or [pwilliams@gablelaw.com](mailto:pwilliams@gablelaw.com).*

# Gavel to Gavel: What to know about disaster relief statutes



By Craig M. Regens and G. Blaine Schwabe, III

With Oklahoma's storm season approaching, businesses should be aware of the Oklahoma Disaster Relief Materials Price Stabilization Act and the Emergency Price Stabilization Act. When Oklahoma's governor or the president of the United States declares an emergency arising out of a natural or man-made disaster, the provisions of the EPSA become effective within the county or counties included in the declared emergency area.

Under the Act, during and for 30 days after the declaration of an emergency, it is illegal to sell, rent, or lease, or offer to sell, rent, or lease, any goods, services, dwelling units, or storage space in the emergency area at a price that is more than 10 percent above what was charged for the same or similar items immediately prior to the declaration of emergency. This holds true unless the increase in the price is attributable to price increases in applicable regional, national or international petroleum commodity markets or only to factors unrelated to the emergency and does not include any increase in profit to the seller or owner.

Additionally, for 180 days after the declaration of an emergency, it is illegal to rent or lease or offer to rent or lease any dwelling unit or storage space or sell goods for

use within the emergency area to repair, restore, remodel, or construct any dwelling unit for a price of more than 10 percent above the price charged immediately prior to the declaration of emergency. The same exceptions apply during this period.

Sellers must act with caution because the attorney general actively encourages consumers to report complaints. Private parties may also file suit at any time within one year of the alleged violation. A violation of the act is a violation of Oklahoma's Consumer Protection Act, which subjects the violator to awards of costs and assessments of penalties.

The Oklahoma Disaster Relief Materials Price Stabilization Act contains the same price control measures and permits private enforcement actions, but is limited to disaster relief materials, such as lumber and roofing products. The ODRMPSA prohibits businesses from selling at a loss to build market share, but excludes sales at a loss and donations to charitable organizations, government agencies and certain other sales from its scope.



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# Fixed-fee packages can minimize legal fees for startups

## What legal issues should new entrepreneurs be aware of when launching a business?

Building a business with a solid foundation is vital to positioning a new business for future success. This includes checking all of your legal boxes from the inception of a business idea or invention. There are numerous types of entities an entrepreneur can establish his or her new business as, and the selection of the most appropriate structure will have an impact on a variety of issues, including ownership rights, management, taxes, and liability.

## What are the most important legal decisions a startup must make?

New business owners need to concern themselves with a variety of issues including legal formation and financing, intellectual property protection, data privacy, contracts and employment agreements. Other important tasks include reservation of a business name, preparing and filing certificates of incorporation or formation and the preparation of standard bylaws and operating agreements. Also, a startup will want to be certain its structure and operations comply with the local, state and federal rules and regulations that govern its particular industry. In addition to any agreements a new business owner must negotiate with its business partners, such as an operating agreement or partnership agreement, new business owners will likely also need to negotiate numerous contracts with third parties in order to lease office space, secure financing, or purchase insurance coverage.

## How can early legal costs be minimized for a lean, startup budget?

While most startups need hands-on guidance with various legal matters, many also have limited budgets since they are, after all, a startup organization. Working with an attorney on an hourly basis can be costly and probably is not the most cost-effective approach for a new business. Instead, entrepreneurs can look to work with a law firm or individual attorney that offers a fixed-fee or package approach to performing necessary initial legal work. This fixed-fee approach is not typical but can certainly be an economical way for a new business to ensure the new business stands on solid legal ground at its launch.

## What elements should be included in a fixed-fee startup package?

First, look for a firm/attorney that is experienced at providing sound, experienced counsel to startup ventures and also has the capacity to advise and support your business on a variety of issues. Seek out a fixed-fee package that meets all the standard legal needs of any new business but also offers customized services based on your startup's specific industry standards and needs. Additionally, look for a legal adviser who will include within the package a prescribed number of hours for ongoing advice concerning issues that may arise around employment matters, cybersecurity, intellectual property protection, operational support and data privacy.



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# Gavel to Gavel: Protecting the workplace from harassment



By Chris Thrutchley

No employer wants to subject a business to liability for workplace harassment. Not only can a harassment judgment prove costly to the business's bottom line, workplace harassment can cost businesses plenty in the areas of lost productivity and employee turnover, as well.

Two Supreme Court decisions, *Burlington Industries v. Ellerth* and *Faragher v. City of Boca Raton*, as well as recent decisions such as *Pullen v. Caddo Parish School Board* (5th Cir. 2016) make clear the steps employers must take to protect employees from harassment in the workplace as well as help the business avoid liability for a supervisor's harassment.

The key is to develop and implement antidiscrimination policies and practices that prove a business is exercising reasonable care to prevent and promptly correct any harassing behavior.

The first step is to review and update harassment, discrimination and retaliation prevention policies. Moreover, it is not enough to just formulate policies; employers need to be able to prove that all of their employees, including temporary workers, have received the policies.

The next step is to have a training program that includes all employees, not just managers and supervisors. All employees should be educated on what constitutes harassment and the company's policy against harassment in the workplace. The courts have consistently found that training only specific employees significantly weakens an employer's defense of a harassment claim. Additionally, the Equal Employment Opportunity Commission recently issued new guidance that emphasizes its expectation that all employees be trained regularly. It's a good idea to document employee participation and maintain those records.

The third step is making sure that every employee knows in writing – policies – and during training what the actual procedures are for reporting harassment, as well as understands how it will be investigated. Employers need to make sure that employees know exactly to whom they should report harassment and have knowledge of what actions that individual will take when he or she receives a harassment report. Posting a notice in the break room isn't enough.



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# Hixon: Medical records and privacy

By Philip D. Hixon

Many people mistakenly believe that their medical files maintained by their physicians are 100 percent private. However, there are legal scenarios in which those files are under subpoena and that require physicians to comply and provide a prompt legal response, including disclosure or medical information.

Subpoenas are legal commands to appear at a certain time to give testimony on a certain matter and to produce information, such as documents or records. Physicians can receive a variety of subpoenas, given the scope of their work. They receive subpoenas in state and federal court litigation, from state agencies, such as the Oklahoma State Department of Health, from licensure boards and from grand juries. Depending on the type of subpoena, there are different rules that apply for how a physician can and should respond given state and federal privacy and confidentiality laws.

Subpoenas can ask physicians for a patient's protected health information, or PHI, such a diagnostic or billing records. However, PHI is subject to federal HIPAA laws. HIPAA permits disclosure of PHI for public health activities that could fall under a government agency subpoena, for health oversight activities that could fall under a licensing board subpoena, and for judicial and administrative proceedings, which could be related to state

or federal civil or criminal matters or something like a workers' compensation subpoena.

It is important to note that in matters related to state or federal civil or criminal litigation, HIPAA contains certain safeguards that must be satisfied before disclosure of PHI. For example, before a physician discloses PHI in response to a subpoena, the requesting party is required to provide the physician with satisfactory assurances required by HIPAA. These satisfactory assurances may take the form of notice of the subpoena to the patient about the litigation and time for the patient to object to disclosure of a PHI through the appropriate legal channels.

A physician who either does not respond to or comply with a subpoena is in contempt of legal process. In such cases, a judge may order the physician to comply with the subpoena or, alternatively, issue a bench (arrest) warrant or impose sanctions on the physician. That is not to say that if a physician or records are under subpoena, it is a foregone conclusion the testimony will occur and the medical information will be disclosed. It does mean, however, that physicians who object to a subpoena need to respond to the party requesting the PHI, which may require filing a motion to quash with aid of legal counsel and proceed as the court ultimately determines.



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Daily Q&A with Jake Krattiger

# Corporate board members, directors face potential personal liability

Tom C. Vincent, II, and Meagen Burrows promoted to shareholder status.

**Tom C. Vincent, II, CRCM, CIPP/US**, has been Of Counsel with the Firm since 2014. With extensive experience in regulatory compliance, his background includes serving as chief compliance officer for different financial institutions, responsible for ensuring compliance with a myriad of requirements including customer protection, privacy, information security, and corporate governance. Tom assists his clients with issues involving data security and privacy, including the establishment of cybersecurity programs, negotiation of appropriate protections for client information, breach identification and required reporting

**Meagen Burrows** has been an associate with GableGotwals since 2013. She has a general business transactional practice, with particular emphasis placed on providing legal support for employers and healthcare enterprises. Meagan's recent experience includes employment contracting (and related employment issues), healthcare services contracting, business formation, business and practice acquisitions and sales, joint venture transactions, and transactional matters relating to other types of partnerships or affiliations.

## Does joining a corporate board impose any personal liability on board members?

Joining a board doesn't impose any personal liability on an individual per se, but improper actions taken while serving on a board can certainly subject an individual to personal liability. Even if a board member is ultimately exonerated, the monetary and reputational costs of merely being sued for corporate misconduct can be substantial. It's critical for individuals serving on a board to understand their legal duties and to avoid any actions that would justify a suit against them in their individual capacity.

## What is the standard for finding directors and officers liable for mismanagement?

Directors of corporations are subject to three duties, each of which is derived from a director's general fiduciary duty to her company. The duty of care requires a director to act with the care a person in a similar position would reasonably believe to be appropriate under similar circumstances. The duty of loyalty requires a director to act in good faith and in a manner the director reasonably believes to be in the organization's best interests, always exercising independent judgment. Finally, the duty of obedience requires directors to perform their responsibilities in accordance with applicable laws and the terms of the entity's charter or articles of incorporation. Failure to fulfill any of these duties potentially could result in a director being held personally liable for his or her actions, especially if the director knew or intended for his or her conduct to be wrongful.

## How can board members protect themselves from corporate wrongdoing and litigation costs?

Demonstrating compliance with the elements of the "business judgment rule" is the best defense to any allegation of director misconduct. This rule protects a director from personal liability to a corporation and its shareholders for even erroneous or harmful actions if the director acted in good faith, on an informed basis, and with the rational, honest belief that he or she acted in the entity's best interests. However, this rule doesn't provide impenetrable cover for all forms of misconduct. Examples of how a director can breach his duties include: failing to become informed of all material information before making decisions, failing to monitor the entity's affairs, and failing to exercise prudent stewardship of the entity's resources. Under any of these examples, personal liability may follow.

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## Q&A with Jake Krattiger (cont.)

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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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