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STRONG • POINTS • NEWSLETTER

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The Strong Firm in the News

September 6, 2011 – Joe Griffin named as Chairman of the Montgomery County Hispanic Chamber – Strong Firm’s D. Joe Griffin, was elected as the Chairman of the Board of the Montgomery County Hispanic Chamber for 2012.

October 31, 2011 – Bret Strong Admitted to The United States Supreme Court – Shareholder of the firm, Bret Strong, was sworn in by the nine justices of The United States Supreme Court in Washington D.C., with Bruce Tough, the Chairman of the Board of The Woodlands Township making the motion for admittance.

November 2011 – The Strong Firm Represents Client in Multimillion Dollar Tool Company Acquisition – The Strong Firm, P.C. successfully represented an international company in the multimillion dollar acquisition of a Houston-based oil and gas compression tool company.

November 15, 2011 – The Strong Firm is Presenting Sponsor of Ice Rink Preview Party – The Strong Firm, P.C. is proud to serve as a Presenting Sponsor of the 2011 Ice Rink Preview Party at The Ice Rick at The Woodlands Town Center.

The Holidays and The Blessing of Freedom

By: Bret L. Strong

There is no better time than the holidays to reflect on the blessing bestowed upon us and our families, as Americans and Texans, in this great land (and area) in which we live. It is only natural at this time of the year, that we take time to reflect on blessings of family, life, liberty and freedom. I focus on freedom in this article partially because on October 31, 2011, I was granted the wonderful honor of being admitted to practice of law before The United States Supreme Court. I was nominated for admission by the Chairman of The Woodlands Township, Mr. Bruce Tough (an admitted member of the Bar of The United States Supreme Court) and sworn in open court at the Supreme Court Building in Washington D.C. before the nine Supreme Court Justices serving our freedom in those hallowed halls. There is no more sacred a place for those who study, practice and live the law of this great country. The history and power of the Supreme Court invokes reflection on the protection of freedom with which the Court is challenged.



BRET L. STRONG
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The founder and managing shareholder of The Strong Firm P.C.

This particular holiday season will most likely include much media coverage related to the upcoming Presidential and national elections and the debate brought with the campaign and election process. The elections bring to the forefront much analysis and commentary on Constitutional matters and freedoms bestowed upon us (or alternatively limited by law). As the United States Supreme Court rolls through the 2011-2012 judicial session, the cases to be heard will be a direct reflection of legal Constitutional challenges of a free society in modern times. The most publicized and obvious case to likely be heard before The Supreme Court will be the challenges to the Constitutionality of the 2010 health care overhaul law. This debate and the rulings related to this case will have a significant impact on the direction of federal government involvement in social programs for many years to come. Although not as publicized as the health care overhaul case, the Court will also decide many cases dealing with Constitutional issues in an ever changing society. For example, the Court will rule on cases related to whether the police need a warrant to use advanced technology (GPS) to track suspects, whether jails may strip-search people arrested for even the most minor offenses, whether defendants have a right to competent lawyers to help them decide whether to plead guilty, the use of eyewitness evidence at trial, and what should happen when prosecutors withhold evidence.

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“Waiving” Hello to the Holiday Season The Validity of Waivers of Rights

By: **D. Joe Griffin**



D. JOE GRIFFIN

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Joe became an Associate Attorney in 2010 after graduating from the University of Houston Law Center. His areas of practice include: business law and contracts; corporations, LLCs and partnerships; business and investor immigration; real estate; trademarks; and estate planning and probate.

Having lived in Argentina, as well as in Mexico City D.F., Joe is fluent in Spanish and conversational in Portuguese.

Some of you may have heard of the restaurant in the UK which actually required patrons to sign a waiver prior to being served the traditional Christmas pudding a couple of years ago. A traditional Christmas or “plum” pudding often contains coins or other tokens as symbols of wealth, prosperity, and luck for individuals who receive a serving with one of these hidden items contained therein.

Waivers like this one are becoming increasingly more common than simple common sense. They are now included in almost anything we do involving risk and litigious motives of the would-be consumer often necessitate their use.

The holiday season brings with it special events, displays, parades and productions usually with a maze of waivers and releases underlying the contractual relationships between producers, sponsors, hosts, vendors, owners, independent contractors, and even participants. These waivers, as with the Christmas pudding, provide a certain level of comfort to the parties involved as a well drafted waiver discusses specific risks which are inherent in the subject activity and this language will strongly suggest what common sense should say, that the signer knew the risks and voluntarily chose to assume them.

The general requirements of a valid waiver require that, in most instances, it (i) be in writing and signed voluntarily, (ii) be conspicuous (bold face type and font size of 10 point or great), (iii) and contain clear and unambiguous language with respect to the rights which are being relinquished. This last requirement is perhaps the most important as a poorly written waiver can have disastrous consequences. Importantly, depending on the circumstances and what is being waived, specific language requirements may exist in order for the waiver to be enforceable in Texas. This is true in the context of minors, a non-signatory spouse, as well as liability transfers related negligence or gross negligence contained in the waiver. Additionally, what has not been stated in the waiver can often be just as important as what has been.

These liability waivers should be used in conjunction with other risk management tools such as proper insurance, applicable disclaimers, and in many cases indemnification provisions and covenants not to sue. Whether we are signing a waiver or drafting and reviewing a waiver this Holiday season, each of us is likely to encounter one of these documents during this time of year. It is important to understand what this document actually accomplishes from a legal

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The Importance of Title Review for Commercial Properties

By: **Mariana Grijalva**



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Mariana became an Associate Attorney in 2011 after graduating from South Texas College of Law.

Her areas of practice include: international business investment and transactions, business law and contracts; corporations, LLCs and partnerships; and real estate.

She holds a BBA in International Studies and Business Administration from The University of St. Thomas. She is fluent in Spanish and conversational in French.

From the location, to the financing terms, to the closing date, there are numerous factors that need to be addressed by a buyer in the purchase of commercial real estate. One of these factors, and a very important one, is the “title review” of the property.

As experienced commercial real estate buyers would agree, title review is a crucial step in the process of purchasing a piece of commercial property. A “title review” is a lengthy process that involves several elements. First, it requires an initial careful review of the preliminary agreement for a title insurance company to provide title insurance (called a “Title Commitment”) to identify any title “exceptions” or other potential title issues related to the property. The Title Commitment will typically list several “exceptions” which the title company will not cover as a part of their title insurance. These exceptions could include items such as easements affecting the property; covenants

and restrictions imposing limitations on the use of the property; and/or oil or mineral rights that may affect not only the minerals located under the property, but also the use of the surface of the property itself. Depending on their location in relation to the subject property, and the terms of the original documents creating these items, all of these items could affect and hinder the buyer’s intended use and development of the property. This is why, as a part of the title review, it is important to review a current on the ground survey of the property in conjunction with the Title Commitment to be able to identify the precise location of any and all easements, building setback lines or similar encumbrances noted on the title commitment to ensure that they will not negatively interfere with the buyer’s development of the property. Additionally, a thorough title review will include a careful analysis of the title documents creating such items to fully understand the manner in which these items may affect the property.

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Choosing the Right Entity to Shield You from Liability: Limited Liability Companies

By: Eric R. Thiergood, Sr.

First Installment of a Series "Choosing the Right Entity to Shield You from Liability"

One of the most important questions posed when forming a new company is "How can I make sure that I am protected from liability to the maximum extent possible." This critical question should be asked when considering any new business endeavor. The simplest and most common method of limiting one's liability in a new business venture is achieved by forming a legal entity that not only will be the responsible party in any business contract but will also serve to operate the business. In Texas, the three most common entities used to accomplish this goal are 1) limited liability companies, 2) for-profit corporations, and 3) limited partnerships. Over the next three newsletters, we will be providing a "bird's eye view" of these three entity types in an attempt to help business owners determine which of these common entities types may be best for you. This article will focus on the most common for all entity types in Texas, the limited liability company.

Overview of an LLC and similarities to Corporations and Partnerships

A limited liability company (LLC) is a flexible legal entity available in Texas that typically combines elements of a partnership and corporation structures. If properly formed, an LLC can provide limited liability to its owners (which are called members in an LLC). LLCs are often improperly called a "limited liability corporation" (instead of company), as it is often a hybrid business entity with certain characteristics of both a corporation and a partnership (or sole proprietorship in the case of a single owner). The principal and most critical characteristic an LLC shares with a corporation is the ability to limit certain liabilities faced by the owners or members. The primary characteristic an LLC shares with a partnership is the availability of pass-through federal income taxation savings. Typically an LLC is more flexible than a corporation regarding

ownership and operation, and it is well-suited for companies with a single owner. The management of an LLC can be conducted by the members themselves and does not require the formation of a board of directors and officers as is the case with a corporation.

Guaranties and Piercing the Corporate Veil of an LLC

It is critical, however, to understand that the limited liability offered by an LLC does not imply that members are always fully protected from personal liabilities. It is common that loans and contracts entered into by an LLC, especially a newly formed LLC; require that one or more of the members guaranty the payment or performance of such loan or contract. In this case, any such guarantying member would be exposed to potential personal liability in the event that the LLC does not pay or perform as required under the loan or the contract. Courts can also hold a member of an LLC personally liable by what is called "piercing the corporate veil of an LLC" in cases where a member has committed fraud, made intentional misrepresentations, or when the loan or contract (though in the name of the LLC) was actually solely for personal benefit of a member and not the company. Attorneys of opposing parties have also attempted to "pierce the corporate veil" by proving that the company was actually never properly formed and was simply a sham company formed for the purpose of shielding the alleged wrong doing member from liability that he or she should rightfully face.

Conclusion

For these reason, it is critical that one considering entering into a new business venture utilize the skill and expertise of an experienced Texas law firm to ensure that he or she is protected to the maximum extent available under the law. The Strong Firm helped thousands of clients in choosing and forming the right entity for their new business venture. We would be happy to assist you in such endeavors.

The Holidays and The Blessing of Freedom

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The court will also hear many First Amendment cases, including ruling on whether the government may ban swearing and nudity on broadcast television, and whether there is a "ministerial exception" to employment laws that allows religious institutions to discriminate in ways others employers cannot. The Supreme Court has also agreed to hear cases related to whether or not sentencing juveniles to die in prison violates the Eighth Amendment's ban on cruel and unusual punishment.

As you enjoy friends, family and good cheer this holiday season, I challenge each of you to do so with a mind toward appreciation (and preservation) of the freedom that is so precious and allows us to celebrate in the manner we so choose. Best wishes for a wonderful holiday season!



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Eric joined the Strong Firm P.C. in 2005 after graduating from South Texas College of Law. He is licensed to practice law in the State of Texas and in the United States Federal District and Bankruptcy Court for the Southern District of Texas. Having lived in Asturias, Oropesa Del Mar and Madrid, Spain, Eric is completely fluent in Spanish and uses these skills in his work with some of the firm's international Spanish-speaking clients.



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To retain our services, please contact us and we will send you a written engagement letter for your consideration and execution in order to hire our firm and create the attorney-client relationship. Please do not send confidential information to us until such an attorney-client relationship has been established.

The Strong Firm



From left: **Laura Junek**, paralegal; **Melanie Edleston**, office manager; **Mariana Grijalva**, attorney; **Matthew Larkin**, law clerk; **Bret L. Strong**, attorney, founder, and managing shareholder; **Eric R. Thiergood, Sr.**, associate attorney; **D. Joe Griffin**, associate attorney.

We provide legal services in the all of the following areas:

- Business Law and Contracts
- Financing, Trademarks, and General Corporate
- Corporations, Partnerships, and LLCs
- Real Estate
- Business Disputes
- Wills, Probate, Trusts, and Estates
- Mergers, Sales and Acquisitions of Businesses
- Oil, Gas and Energy
- International Business Investment



Employees Updates

Laura Junek joined The Strong Firm in June as a Legal Assistant and was promoted to a Paralegal in September. Laura holds a Bachelors of Science degree in Criminal Justice from Sam Houston State University, with a minor in General Business, and holds a paralegal certificate. Laura provides paralegal support for all areas of our transactional practice.

“Waiving” Hello to the Holiday Season

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perspective and whether your transactional intent is contained within the document. You should not hesitate to have an experienced attorney review these documents to provide you with needed guidance in this legal area and to address any deficiencies in your current agreements. At The Strong Firm P.C. we have the knowledge and experience to help you craft waivers specific to your business or to any special event and to make sure that as we “waive” hello to the Holiday season, we do so in a way which protects our business and our families from the unsuspecting coin in the plum pudding.

The Importance of Title Review for Commercial Properties

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After performing this review, a title objection letter is drafted by a qualified attorney outlining all potential issues related to the property and requesting that seller take the necessary action to cure these issues prior to closing.

Because of the potential complexity of some of the documents and issues related to a title review, it is always advisable to obtain the aid of an experienced attorney to assist this process, to ensure that all issues and concerns will be raised and properly addressed and resolved by seller before the closing takes place.

At The Strong Firm, PC our attorneys perform such reviews on a daily basis, and all of our attorneys have significant experience in the process of reviewing title documents associated with commercial real estate transactions. Investing the time and cost of having a professional review the title history of your property is a worthwhile investment as it will provide you with the peace of mind of knowing that the property being purchased has a clean title and is free of any encumbrances of similar issues that may limit your development on the tract.