



SettlePou's new home is located on the 8th floor of the 3333 Lee Parkway high rise in the prestigious Turtle Creek area.

SettlePou announces relocation to Turtle Creek high rise

Expansion signals continued commitment to client services

SettlePou recently announced the relocation of its headquarters at Fitzhugh and Central to the eighth floor of the prestigious 3333 Lee Parkway high rise in the Turtle Creek area. Finish out of the new space has been underway for several weeks and the firm expects to move

move,” added John D. “Jay” Settle, co-founder of the firm and chairman of its facilities committee. “SettlePou has experienced substantial growth over the years and we added another four lawyers this past summer. The move to Lee Parkway signals our steadfast commitment to serve the legal needs of our clients for many years to come, and reflects the continued growth and success of the firm.”

Before deciding on the Lee Parkway facility, SettlePou conducted an exhaustive study of available lease space in the area.

The selection of Lee Parkway was based, in large part, on the firm’s desire to be convenient and accessible to its broad base of local business clients. “We wanted a location that would not only ensure that our surroundings were reflective of the quality of our services,” said

Settle, “but also be attractive to our existing and future clients. Although we provide legal services to businesses across the nation, we wanted to maintain a physical presence close to our roots -- the Dallas-Fort Worth business community.” ■

into the new space effective October 25th.

“Our firm currently occupies the entire tenth floor and the majority of the ninth floor of the Fitzhugh/Central office building,” commented Robert Pou, co-founder of SettlePou. “The larger floorplate of the new building will allow us to have all of our attorneys and staff on the same floor and still provide enough space for our anticipated further growth over the next several years. Our staff is energized and we are eager to move into the new space.”

“We are all extremely excited about the

“The move to Lee Parkway . . . reflects the continued growth and success of the firm.”

ATTORNEYS

- Sayuri Beltran
 - Matt Bethancourt
 - Michael S. Byrd
 - Scott Conrad
 - Marsha L. Dekan
 - J. Garth Fennegan
 - Don Gwin
 - Barry D. Johnson
 - Katherine L. Killingsworth*
 - Norman H. Kinzy
 - Bradley E. McClain
 - Michael P. Menton*
 - Carl W. Morgan
 - Jeff Mosteller
 - David M. O’Dens
 - Jeffrey J. Porter
 - Robert L. Pou III
 - Sharon Reuler
 - John D. “Jay” Settle
 - Nancy Ann Shaw
 - J. Allen Smith
 - James M. Stanford
 - Clay M. Taylor
 - Steven M. Thomas
 - Daniel P. Tobin*
 - Cliff A. Wade
 - Jason A. West
 - C. Russell Woody
- *License pending

Sharon Reuler tapped by prestigious American College of Real Estate Lawyers

Sharon Reuler, a member of SettlePou’s real estate practice area, has accepted a coveted invitation to join the American College of Real Estate Lawyers, making her one of only 45 Texas real estate lawyers in this prestigious 850-member organization. Nomination to ACREL are based on an outstanding professional reputation and demonstrated ability in the field of real estate law. ACREL membership requires at least 10 years of substantial experience in real estate law and substantial contributions to the improvement of real estate law and

practice, and creating a more informed bar and public in these matters, through writing, teaching, bar or legislative activities or other public service. Sharon is attending her first ACREL conference this month in Denver.

For more information on this subject, contact Sharon Reuler at (214) 520-3300 or at sreuler@settlepou.com. ■



Sharon Reuler

SETTLEPOU
ATTORNEYS • COUNSELORS

3333 Lee Parkway
Suite 8000
Dallas, Texas 75219
Tel: (214) 520-3300
Fax: (214) 526-4145
www.SettlePou.com



Texas Supreme Court Opinion Leverages Government's Position in Condemnation

Section 21.012(a) of the Texas Property Code requires a government to show that it is "unable to agree" with the landowner on the amount of damages before it can initiate condemnation litigation. This protects the landowner by forcing the government to negotiate and make offers to the landowner pre-litigation, because once litigation ensues, the law heavily favors a condemning government. But in July, the Supreme Court issued two holdings in Hubenak v. San Jacinto Gas Transmission Co. that severally diminish, if not eliminate, this protection and reduce pre-litigation offers from a condemnor to nothing more than a meaningless formality.

The Supreme Court first holds that if a condemnor does not satisfy the "unable to agree" requirement before it files for condemnation, the suit is suspended for a reasonable time to allow the condemnor to satisfy the requirement. The practical effect of this holding is that the condemnor goes virtually unpunished for not trying to settle with a landowner before litigation. Rather than dismiss the condemnor's suit for such a failure, the Supreme Court's holding affords a condemnor a second chance. Now, the condemnor risks nothing by disregarding its duty to negotiate with a landowner pre-suit, dragging the landowner into litigation, and forcing the landowner to object.

The second holding is that once a

condemnor makes any offer that is rejected or ignored, regardless of merit, the "unable to agree requirement" is met and the condemnor satisfies its duty to negotiate and make pre-suit offers. The practical effect of this holding is that pre-suit offers from the condemnor become a meaningless formality because the merits of those offers are bound by no standards and are not subject to review. The Supreme Court holds the offers do not have to be made in good faith, nor do they have to bona fide, and "the dollar amount of the offer generally should not be scrutinized."

This decision is a departure from Texas case opinions in recent years

enhancing the protections to the private property owner in eminent domain cases. Thus, the inequities that still exist in Texas condemnation law in favor of the government against the private property owner still need to be further reformed. Therefore, it is incumbent on any private property owner in Texas to consult with an attorney as soon as possible once the private property owner discovers their property may be subject to an eminent domain proceeding.

If you have any questions or comments concerning this development in eminent domain law, please feel free to contact Allen Smith of SettlePou at (214) 520-3300 and at asmith@settlepou.com. ■

SettlePou Co-Sponsors 10th Annual Mid-America Lenders' Conference

SettlePou was one of the sponsors of the 10th annual Mid-America Lenders' Conference, which was held in Fort Worth, Texas from August 18th through the 20th. The firm's government lending division of the Commercial Lending section is led by three former in-house SBA counsel, and is well known for having one of the most experienced legal teams in the country for handling SBA and USDA lending transactions. SettlePou provides a broad range of legal services to its lender clients at all phases of the lending process, from loan origination to servicing and collection. Representing SettlePou at the Mid-America Lenders' Conference were Don Gwin, Steve Thomas, and Robert Pou. ■

— Meet your lawyers: *Jim Stanford* —

Age: 32

Family: Wife: Melissa

Hometown: Parker, Colorado

College: University of Denver

Law School: Southern Methodist University

Personal Favorites:

Food: Seafood

Drink: Cuba Libre or Cabernet Sauvignon

Hobby: Hunting

TV Show: Scrubs

Old Movie: African Queen

Recent Movie: The Bourne Identity

Book(s): From Beirut to Jerusalem by Tho-

mas L. Friedman

Music: Jazz

Vacation: Africa

Sport: Football

Sports Team: Denver Broncos

What do you consider as the most important qualities of a good lawyer?: *Striving to ensure that the needs of my clients are met, and treating each client as if he/she is my only client.*



Jim Stanford is a member of SettlePou's Real Estate Transactions practice. His main practice areas are Business Entities, Acquisitions and Divestitures, and Financial Institutions.



Avoidable Preferences

Bankruptcy Pitfalls for Creditors

Avoidable preferences are a very complicated and often seemingly unfair aspect of bankruptcy as it relates to creditors. However, with an awareness of the financial consequences, coupled with competent legal advice, creditors can reduce the negative effects of avoidable preferences.

What is an Avoidable Preference?

A “preference” is a transfer of money or interest in property held by a debtor to a creditor, or for the benefit of a creditor, within 90 days of the debtor’s filing for bankruptcy. If such a “preference” is made, the bankruptcy trustee may “avoid” the preference causing the money or property transferred to be returned to the bankrupt estate. Allowing a trustee to avoid these transfers serves to reinforce the primary goal of bankruptcy law, which is the orderly and equal distribution of the debtor’s estate. A debtor in bankruptcy is likely to owe money to a long list of creditors. These creditors rightfully

want and deserve payments in satisfaction of their debt. However, the insolvent debtor may begin to pick and choose (“prefer”) which creditors to pay, as well as the amount to pay them. This selective payment schedule by the debtor will leave many creditors out in the cold. Therefore, as a means of preserving the estate and protecting all creditors, the bankruptcy trustee can and will avoid pre-bankruptcy transfers to any preferred creditors and “redistribute” the transferred funds equally among all creditors.

Why 90 Days?

Bankruptcy law considers a debtor insolvent within 90 days of the debtor’s filing for bankruptcy. So, even though a debtor has not yet filed for bankruptcy and may not actually be insolvent, a bankruptcy court will presume that the debtor is insolvent, and any money or property received by a creditor within 90 days of the bankruptcy filing must be returned to the estate for equal distribu-

tion. A creditor may attempt to show that the debtor was not actually insolvent, but this can be a very difficult hurdle to overcome and is rarely successful.

Defenses

There are various defenses available to creditors that can limit the trustee’s power to avoid certain transfers. The success of these defenses depends heavily on the particular facts and circumstances of each case and thus requires sound legal analysis of the specific nature of the debt, payment schedules, and nature of the transfers. Creditors should be mindful of avoidable preference issues in the context of their individual dealings with debtors. To that end, it is wise to keep a close eye on “slow-paying” debtors and be alert to any indications of financial peril or possible bankruptcy.

If you have any questions or comments, please feel free to contact David O’Dens of SettlePou at (214) 520-3300 and at odens@settlepou.com. ■

— Meet your lawyers: *Marsha Dekan* —

Hometown: Massillon, Ohio

College: Southern Methodist University

Law School: University of Texas

Personal Favorites:

Food: Lobster and scallops

Drink: *Veuve Clicquot LaGrande Dame Champagne*

Hobby: *Singing with the Dallas Symphony Orchestra and Chorus / Entertaining foreign visitors*

TV Show: *Law and Order, Vicar of Dibley, and Chef!*

Old Movie: *Citizen Kane / North By Northwest*

Recent Movie: *Children of Heaven / Moonstruck*

Book(s): *The Fountainhead, by Ayn Rand and Look Homeward / Angel, by Thomas Wolfe*

Music: *Classical, jazz, and international*

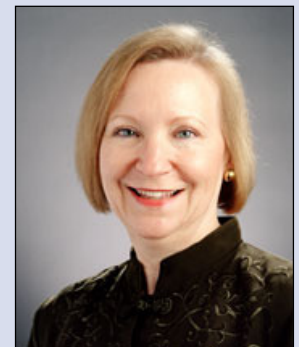
Vacation: *Tuscany*

Sport: *High school football*

Sports Team: *The Massillon Tigers*

What do you consider as the most important qualities of a good lawyer?:

The ability to apply practical legal solutions to practical legal issues, and creative legal solutions to esoteric legal issues, with the wisdom to distinguish between the two -- and the ability to value thy client as thyself!



Marsha Dekan has twenty-five years of experience representing banks and lending institutions, commercial entities and individuals. Ms. Dekan's representation includes loan documentation to default and workout law and other business matters.



Michael S. Byrd

Business Risks of a Medical Practice

by Michael S. Byrd, Esq.

In addition to the well published malpractice risks associated with medical practices, each medical practice faces business risks similar to those found in any business. First, like any employer, a physician has to understand the risks of liability for employee discrimination and other employment related claims. To fully comprehend the potential risk, a physician should specifically be aware of increased risk with a practice that employs more than 15 employees. As a general rule, a medical practice with this number of employees may be subject to the American With Disabilities Act ("ADA"). The ADA sets forth strong protection for employees and ADA cases can be devastating to a medical practice.

Another risk associated with

medical practices are risks relating to the relationship of the physician partners. Physicians often join together to start a practice without addressing difficult questions. What happens if the doctors can no longer work together? If one of the doctors dies or becomes disabled? Or one of the doctors retires or otherwise prematurely leaves the practice? Because it is extremely difficult to come to an understanding on these sensitive issues once one of these unplanned events occur, this, too, can cripple a practice.

Since a physician practice is exposed not only to malpractice risks, but also to traditional non-medical business risks, business planning is imperative for each practice. In order to effectively protect against or reduce such loss, each medical practice should create a busi-

ness model, based on the specific circumstances of the particular practice. This model should (1) protect assets; (2) reduce liability exposure for those assets that cannot be protected; (3) reduce federal income tax liabilities; and (4) contain an exit strategy for physicians leaving the practice for any circumstances. Additionally, it is imperative that each physician develop a personal asset plan that ensures protection of personal assets from liabilities.

Michael S. Byrd advises and serves as outside counsel for medical practices throughout Texas. He may be reached at (214) 520-5300 or at mbyrd@settlepou.com. ■

Changes in Texas Home Equity Lending Law

by Barry D. Johnson, Esq.

The Texas legislature recently passed Senate Joint Resolution 42 "proposing a constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans."

The Amendment was passed on September 13, 2003, and became law on January 1, 2004. The following is a brief synopsis of the three primary provisions of the Amendment.

(1) The Amendment gives regulatory authority to the Texas Finance Commissioner to issue legally binding interpretations of the Amendment. The Commission has always maintained

regulations and issued "guidance" regarding the subject matter, but until now such interpretations were considered merely "advisory." The Amendment mandates that these regulations are now official and interpretive authority to be relied upon by courts in home equity cases.

(2) The Amendment clarifies a lender's rights to cure loans that otherwise fail to comply with the amendment, by specifying the actions a lender must take and the time in which the lender must act to cure loans that do not comply with the Amendment. Basically, the lender has 60 days from the date of written notice of non-compliance to act in one of six ways to cure as set

forth in the Amendment.

(3) The Amendment creates a new type of Texas loan that is a limited type of home equity line of credit. This line of credit is subject to certain material restrictions, including a minimum advance amount of \$4,000.00; a prohibition against fees and charges other than interest; and a limit on the line of credit of 80% of the current fair market value of the property.

For more information on this subject, contact Barry Johnson at (214) 520-3300 or at bjohnson@settlepou.com. ■



Barry D. Johnson



Texas Attorney General Issues Opinion on Nonconforming Billboard Property Rights in Texas

The Attorney General of Texas issued an Opinion dated May 20, 2004, regarding the validity of a local sign ordinance that allows nonconforming outdoor advertising signs to be replaced with new nonconforming signs. The Opinion addressed two basic questions.

The first question was whether a municipal ordinance would be invalid under state and federal law if such ordinance allowed the replacement of a nonconforming sign with a new nonconforming sign. Essentially, the Attorney General found that such an ordinance would conflict with the federal and state highway beautification acts and, therefore, as to interstate or primary highway systems controlled by such acts, such local municipal ordinance would be superseded. The Opinion went

on to say that a municipality could apply different regulations to signs on streets within their municipality that are not part of the interstate or highway systems and not be in conflict with the state and federal highway beautification acts.

The second question was whether the landowner or the sign owner owned the right to the nonconforming use associated with a sign. The Attorney General that the sign owner controls the nonconforming use, subject to limits found in statutes, regulations and contracts with the owner of the site where the sign is located. The Attorney General Opinion went on to state that such a question of control is difficult to answer in the abstract, as each individual instance may differ depending on the applicable contractual agreement

between the landowner and sign owner and the statutes or rules which may limit the presumption of the nonconforming rights controlled by the sign owner.

No express finding was made in the Opinion that nonconforming rights run with the land. To the contrary, a presumption was found that such nonconforming rights are controlled by the sign owner unless other limits exist. This ruling by the Attorney General carries the weight and force of law until modified or overruled by statutes, judicial decisions or a subsequent Opinion.

If you have any questions or comments concerning the Attorney General Opinion, please feel free to contact Allen Smith of SettlePou at (214) 520-3300 or at asmith@settlepou.com. ■

SettlePou Newsbriefs

[Allen Smith provides expertise at Florida Appraisal Conference:](#) Allen Smith shares expertise at the American Society of Appraisers International Appraisal Conference held in Tampa. Mr. Smith was a presenter at the 5 hour panel presentation with 5 other panelists on the topic of Outdoor Advertising Appraising. Check our website to review Allen's article from the Tampa, Florida Conference.

[David M. O'Dens wins appeal in the Dallas Court of Appeals:](#) David M. O'Dens recently won an appeal in the Dallas Court of Appeals involving an underlying partnership dispute and an alleged oral modification or waiver of a written partnership agreement. After securing a defense verdict in a four-day jury trial in the 86th Judicial District Court

of Kaufman County, Mr. O'Dens successfully defended the verdict on appeal. Check our website to review to view a copy of the Dallas Court of Appeals' Opinion.

[Sharon Reuler honored at 2004 Advanced Real Estate Law Course:](#) At the July 2004 Advanced Real Estate Law Course, sponsored by the State Bar of Texas, Sharon Reuler received the Weatherbie Workhorse Award for consistent service to the continuing legal education of Texas real estate attorneys. The award is named for Dallas attorney David Weatherbie who has been the Texas real estate law case reporter for many years. At this year's Course, Sharon moderated the afternoon session devoted to Planned Communities and Property Owners Associa-

tions, for which she organized the faculty and topics.

[Allen Smith makes presentation at 2004 Advanced Real Estate Law Course:](#) Allen Smith recently served on the faculty of the 2004 Advanced Real Estate Law Course sponsored by The State Bar of Texas. Mr. Smith presented the topic "Billboards-Property Interests Pertaining to Outdoor Advertising Signs," which was the first article of its kind in the State Bar's extensive on-line library. Considered to be the premier annual seminar for Texas real estate attorneys, the 2004 Advanced Real Estate Law Course was held this year in San Antonio on July 10-12. Mr. Smith's presentation is available to Texas attorneys in both video and paper formats.

Important Notice:

The articles in this newsletter have been prepared by SettlePou for informational purposes only and are not legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Readers should not act upon this information without seeking professional counsel.