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LIMITED LIABILITY COMPANIES AT 20

An Introduction

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Viewing the title of this Symposium and, in particular, its cadre of famous authors, one is inclined to ask: what is special about the twenty-year-old limited liability company business form to draw such talent to Boston and Suffolk University Law School? The simple answer is that it has been twenty years since the limited liability company went from obscurity to being the business organization of choice for small United States businesses.

Until the release of the Revenue Ruling 88-76, some twenty years ago in August 1988, only two states adopted limited liability company legislation: Wyoming in 1977 and Florida in 1982. The decade leading up to Revenue Ruling 88-76 was troubling for limited liability companies. The intrigue began in 1980 when a private letter ruling classified a Wyoming limited liability company as a partnership rather than a corporation for federal tax purposes. Under then-existing corporate resemblance regulatory classification standards, a Wyoming limited liability company was classified as a partnership because it lacked continuity of life and free transferability of interests. While it also possessed the limited liability and centralized management corporate resemblance factors, the regulations awarded ties in favor of partnership classification.

But the Wyoming limited liability company classification victory was short lived. Nearly immediately, proposed regulations were released that regarded limited liability as a super factor trumping all others and expressly holding that a Wyoming limited liability company would be classified as a corporation. Eventually, that vision fell to public criticism and the limited liability company as a partnership rose from the ashes of its defeat. The result was the release of Revenue Ruling 88-76 that once again classified a Wyoming limited liability

company as a partnership and not as a corporation, and this is where the story really begins. In the years following the adoption of Revenue Ruling 88-76, every state adopted limited liability company legislation and the National Conference of Commissioners on Uniform State Laws promulgated a Uniform Limited Liability Company Act. Soon, every state wanted the umbrella of a protective public ruling. That crushing burden finally forced the release of the 1997 “check-the-box” regulations that abandoned the corporate regulatory resemblance test in favor of a default elective classifications system for all unincorporated entities. A domestic limited liability company with two or more members is now classified as a partnership and one with only a single member is disregarded as an entity separate from its owner. Under the regulations, a limited liability company can elect to be classified as a corporation and can further elect to be taxed as an S corporation, thereby giving limited liability companies flexibility for tax purposes that matches the flexibility it has under state law. Now, after another decade of evolution, the limited liability company is a protean legal entity that has become the organization of choice in many contexts.

This Symposium chronicles the old and the new and includes the following articles:

- *Through the Looking Glass: Status Liability and the Single Member and Series LLC Perspective* by Professor Carter G. Bishop,
- *Contractarianism and Its Discontents: Reflections on Unincorporated Business Organization Law Reform* by J. William Callison & Professor Allan W. Vestal,
- *A Single Theory of Limited Liability Companies: An Evolutionary Analysis* by Professor Thomas Earl Geu,
- *LLCs and Nonprofit Organizations—For-Profits, Nonprofits, and Hybrids* by Robert R. Keatinge,
- *The Plight of the Bare Naked Assignee* by Professor Daniel S. Kleinberger,
- *Are the Courts Developing a Unique Theory of Limited Liability Companies or Simply Borrowing from Other Forms?* by Professor Elizabeth S. Miller, and
- *External Entities and Internal Aggregates: A Deconstructionist Conundrum* by Thomas E. Rutledge

Professor Bishop examines the exploding facets for the single member limited liability company as well as explores the emerging concept of a series limited liability company. William Callison and Professor Vestal discuss the meaning of the contractual nature of a limited liability company. Professor Geu, quite literally, surveys the evolutionary history and ecological landscape of the limited liability company in order to identify its core characteristics and

conundrums (many of which are more closely analyzed in the other articles of this Symposia). The article is styled as an analytic search for “a single unifying theory” of the limited liability company form and concludes by suggesting an alternative future of continued evolution, speciation, and extinction. Robert Keatinge discusses the expansion of limited liability companies into not-for-profit and partially-for-profit ventures. Freed from the shackles of the for-profit limitation imposed on both business corporations and partnerships, the limited liability company may be and is used for nearly any useful purpose. This flexibility brings with it new opportunities, such as the L3C and the B Corp, and raises new issues that will need to be resolved as non-profit and hybrid LLCs proliferate. Professor Kleinberger explores the untenable position of a transferee of a membership interest, argues that courts will not accept the novel construct of a right devoid of any remedy, and suggests an approach by which courts can protect assignees against oppression without ceding a management role to persons who by statute lack any management rights. Professor Miller explores whether courts view the limited liability company as something borrowed from other entity offerings or something new. Thomas Rutledge, borrowing from Julius Caesar, chronicles the limited liability as the death of form and the birth of infinite flexibility.

There is something for everyone in this Symposium. We thank our authors and the legions of other lawyers and professionals who helped make the limited liability company the dominant business form in America today. And this is where the story really begins.