

JACKSON WALKER L.L.P.

PRESENTS

EXECUTIVE SUMMARIES LUNCHEON

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“UNEMPLOYMENT CLAIMS – TIPS FROM
AN INSIDE SOURCE”

TUESDAY, SEPTEMBER 27, 2005
AUSTIN, TEXAS

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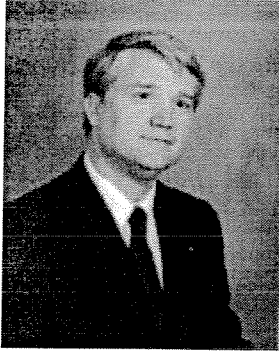
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SPEAKER



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BIOGRAPHY

As a private-sector employment law attorney, Tommy Simmons practiced employment law on the side of management, serving small, medium, and large employers in private industry and government. He was also the owner of the Employment Law Advisory Network, a World Wide Web-based information service offering employment law software, articles, and sample policies and forms designed for owners and managers of businesses. Prior to moving to the private sector in 1998, Mr. Simmons was legal counsel for Commissioner Ron Lehman, the employer representative on the Texas Workforce Commission, and served in the same capacity for the prior employer representatives on the Texas Employment Commission and the Texas Workforce Commission, Commissioners Mary Scott Nabers and James J. Kaster and Chairman Bill Hammond, from 1987 through 1998. He returned to that position in April, 2004. From 1984 until early 1987, Mr. Simmons served on the legal staff of the Office of Commission Appeals in TEC.

Tommy Simmons received a Bachelor of Arts degree in history and German from Texas Tech University, a Master of Arts degree in German from Texas Tech University, a Bachelor of Business Administration degree in International Business from the University of Texas at Austin, and a Doctor of Jurisprudence degree from the University of Texas School of Law in Austin. He is a member of the state and county bar associations and has spoken before hundreds of employer groups on issues arising under state and federal labor and employment laws. He has authored dozens of employment law articles published in business and trade journals. Mr. Simmons also designed, wrote, and programmed the first employment law software programs designed specifically for Texas employers: *Unemployment Insurance: A Survival Guide for Employers*, *Wage and Hour Law Guide*, *Family and Medical Leave Act Guide*, *Employment Law Basics for Employers*, *The Texas Payday Law*, and *Alternative Staffing: Basics for Employers*. He is the co-editor of the *Employment Law Handbook* of the Texas Association of Business and also the creator of the software edition of that book. He wrote the *Especially for Texas Employers* book of the Texas Workforce Commission and created the online edition of that book as well.

PRESENTATION

Texas Workforce Commission Update
*Significant New Legislation, Case
Trends, and Policies*

presented for the
Jackson Walker Employer Luncheon
Austin, Texas
September 27, 2005

TWC on the Internet

- www.texasworkforce.org or www.twc.state.tx.us
- Main employer page:
www.texasworkforce.org/customers/bemp/bemp.html
- Main employee page:
www.texasworkforce.org/customers/jsemp/jsemp.html

Unemployment Tax Legislation

- HB 2421 - eff. 061805 - Enterprise and Training Investment Assessment - diverts 0.1% from the state UI tax, but will not cause the UI Trust Fund floor to go below the level that would cause a deficit tax
- HB 3250 - eff. 090105 - "SUTA Dumping" - result of federal mandate - prohibits creative shifting of employees from one account to another to reduce UI tax - civil and criminal penalties possible on both ERs *and* their tax advisors (*gulp!!!*)

Unemployment Benefits Bills

- HB 481 - eff. 061705 - partial UI benefits for disabled claimants who, due to disability, are unable to work full-time - applies only to SS disability insurance recipients who are seeking work consistent with their disabilities - provides chargeback protection for employers
- HB 1745 - eff. 090105 - three-day waiting period for temporary employees from staffing firms - such firms have up to three days to find a new assignment for a temp before the temp can file a UI claim - claims filed before that time will be voided

Unemployment Benefits - 2

- HB 1939 - eff. 090105 - disqualification of staff leasing employee only if notice of need to contact the s-l firm was given to employee at the end of the completed assignment
- HB 2273 - eff. 090105 - change in benefit rounding from "always up to nearest dollar" to down to nearest dollar for 1 - 49 cents and up to nearest dollar for 50 - 99 cents
- SB 1342 - eff. 050905 - no partial disqualification for spouses of military service members who quit to move with their military spouses (exception to general "quit to move with spouse" rule) - chargeback protection for employers

Texas Payday Law - Legislation

- SB 1408 - eff. 090105 - creates a second level of appeal within TWC - an unfavorable decision by a hearing officer may be appealed to the three-member Commission - thereafter, motion for rehearing, or else a court appeal

New TWC Precedent Cases

- Work search can be done online, as well as in-person or by mail
- Home health care industry - employee who refuses reassignment due to having to ride the bus to the client's location is disqualified due to voluntary work separation for personal reasons
- Failing to pass a required examination for a job amounts to disqualifying misconduct, as long as the requirement to pass the test is clear and known to the employee
- Failing to maintain a required license for a job is disqualifying misconduct

Problems Inherent in the Law

- UI and Payday Law are both remedial statutes – construed liberally for employees
- ERs have burden of proving misconduct
 - Firsthand testimony is needed to overcome a clmt's sworn denial of misconduct
- Ambiguous work separations, policies, and agreements are resolved against ERs

Past Frustrations

- Knife-wielding worker won benefits, simply b/c his opponent was given lesser discipline; coworker had not struck a blow, like clmt did, and did not wield a knife, like clmt did
- Drunken employee won benefits, due to not being fired upon being discovered intoxicated; majority ignored danger a drunk and angry ex-employee would have posed in driving home drunk

Past Frustrations - 2

- Network manager who took naked pictures of a young female employee and e-mailed porn images using company computers won benefits; majority ruled he was not in technical violation of ER's sexual harassment policy
- Commercial chauffeur pleaded guilty to sexually assaulting an eight-year old child, but won benefits because ER's policy required reporting only of convictions, not deferred adjudication

Newer Frustrating Cases

- Drug testing - hypertechnical adherence to evidentiary standards is essential
 - It's not good enough that the documentation shows full compliance with DOT guidelines
 - It's not good enough that scientific evidence shows that a urine sample was adulterated
 - It's not good enough that cl. admits to all-night attendance at a marijuana party
 - Lesson: perfect documentation is needed
- Alternative strategy: if claimant was witnessed in an obviously impaired condition, or if clmt admitted to recent alcohol or drug use, have firsthand witnesses testify to that effect

Newer Frustrating Cases - 2

- Deferred adjudication continues to be a problem: if ER doesn't ask about it, it's irrelevant, according to the majority
 - Car sales manager failed to report deferred adjudication for aggravated sexual assault of a child to ER - ER's policy asked only about "convictions" - ER lost
 - Nursing home employee concealed deferred adjudication guilty plea in case of aggravated sexual assault of a child - ER lost

Newer Frustrating Cases - 3

- Clmt asked ER to lay him off - ER "fired" him in response - ER lost
- Clmt gave a coworker at a medical clinic a receipt for services paid, then erased the transaction from her computer, enabling the coworker to commit insurance fraud - ER lost
- Clmt, a food server, failed to count the money left by a customer and thought he had not paid for a meal - she chased him outside and made him return to the table - only then did she count the money - majority ruled in favor of clmt due to lack of evidence that a specific policy was violated by clmt's conduct - uhh ... ever hear of "goodwill"?

Frustrating in General

- Signatures on documents seem to mean nothing if clmt denies understanding what he or she signed
 - Truck driver admitted reading policy and signing acknowledgement form, but later claimed not to have understood what he signed
 - He ignored a policy requiring a drug test after an accident
 - Commission majority ruled in clmt's favor, even though he admitted knowing of a further specific memo informing employees they'd be subject to drug testing if they hit a bridge with their truck

Weakness on Fraud

- Unwillingness to confront obvious fraud
 - clmt claimed all along that he didn't keep detailed information on his work search, as required by rules
 - once he found out that caused a disqualification, he came up with a detailed work search log just in time for the appeal hearing
 - the hearing officer and the Commission majority both fell for clmt's tactic, not even attempting to verify any of the suddenly "discovered" job contacts
 - on top of that, clmt expected TWC to believe that it legitimately took him, a skilled worker in an active job market, 22 weeks to find new work

Overpayment Waivers

- Commission majority waives overpayments if they resulted from TWC error, based upon a couple of 1978 court rulings
- This stance ignores a change in the law that went into effect shortly after the cases arose
- No other agency allows those it serves to keep erroneously-paid taxpayer funds

Drug Testing Cases

- Commission now ruling against ERs if there is any gap in the chain of custody – all signatures need to be present
- Use only reputable labs
- Attorney for clmt may go over test documentation with a fine-tooth comb – Chair's office is becoming hyper-technical on proof issues – not good for ERs

Drug Testing Evidence

- Appeal No. 97-003744-10-040997. To establish that a claimant's positive drug test result constitutes misconduct, an employer must present:
 - A policy prohibiting a positive drug test result, receipt of which has been acknowledged by the claimant;
 - Evidence to establish that the claimant has consented to drug testing under the policy;
 - Documentation to establish that the chain of custody of the claimant's sample was maintained;
 - Documentation from a drug testing laboratory to establish that an initial test was confirmed by the Gas Chromatography/Mass Spectrometry method; and
 - Documentation of the test expressed in terms of a positive result above a stated test threshold.
- Evidence of these five elements is sufficient to overcome a claimant's sworn denial of drug use.

Poor Performance Cases

- Biggest contributor to losses on ER's side
- Inability and incompetence are not misconduct
- Failing to do one's best *is* misconduct
- Best argument for clmt: "I tried my best – it just wasn't good enough."
- For ER: documentation, FH testimony, past satisfactory performance, clmt passed up training opportunities, work was too simple to mess up (dishwashing precedent)

Poor Performance Cases 2

- ER has to show how the poor performance was within the clmt's power to control
- Too many breaks / breaks too long
- Excessive visiting and other time-wasting with coworkers
- Excessive personal phone calls
- Too much Internet surfing
- Failing to double-check the work for negligent or avoidable mistakes
- Not enough time devoted to job because of avoidable absences or tardiness

Advanced Claim Strategies

- Downplay evidence of a lack of warnings, lack of training, broken promises, inconsistent treatment, failure to address grievances, and so on
- Emphasize whatever warnings were given, specific bad actions on the clmt's part, and how a reasonable employee would have known they could be fired for such a reason

Advanced Claim Strategies 2

Watch out if claimants allege:

- Not properly paid
- Never shown a policy HB
- Others given more favorable treatment
- ER's technical violation of any relevant statute or regulation

Advanced Claim Strategies 3

Important for employers to remember:

- Avoid shotgun approach
- Be consistent in statements
- Be brief and organized in claim response
- Make firsthand witnesses available
- Offer to make all documentation available
- Avoid confrontational response when talking with claim examiner

Advanced Claim Strategies 4

More on advising employers:

- Request copies of clmt's statements to claim examiner and point out inconsistencies
- Respond to potentially troublesome allegations from clmt
- Keep focused on relevant information

Advanced AT Strategies

- Be perfectly organized
- Send additional documentation in advance
- Registered mail w/ return receipt – even better: personal courier with receipt describing delivery attempts
- Refer to documentation packet at start of hearing – ensure the hearing officer received it – offer to fax immediately if not

Advanced AT Strategies 2

- Have list of witnesses and contact info
- Tell hearing officer at start of hearing about all witnesses
- “Does she know she’ll be called as a witness?” – answer better be “yes”
- “Who will be representing the ER today?” – “I’ll be the party representative”, says the employer’s attorney – otherwise, the attorney or representative can sit there and earn big bucks for listening helplessly and being unable to help with the company’s case

Advanced AT Strategies 4

- Both claimant’s attorney and employer’s attorney can get good material during the claim and appeal process for impeachment of credibility at later proceedings

Advanced AT Strategies 5

- Be brief
- Be organized and brief
- Be brief and organized
- Hearing officers appreciate organization and brevity!
- Listen for verbal cues indicating when HO is ready to move on
- Be ready to shut your client/witnesses up

Advanced AT Strategies 6

- Agree beforehand on a way to communicate during the testimony – notes, hand gestures, 2x4 across the forehead
- Whatever you do, don't get caught talking or whispering to your client or a witness during the hearing!

Advanced AT Strategies 7

- When given the chance to cross-examine, announce that you "just have a very few brief questions", and keep that promise
- Try to signal your client/witness to stop talking once he or she gives the answer
- Avoid redundancy - note questions from HO and don't ask them yourself

Advanced AT Strategies 9

- If the claimant drops an unanticipated bombshell that would require a response from an unavailable witness, note that fact for the HO and request a continuance
- If continuance is denied, make a brief but clear objection for the record
- That objection may help justify a rehearing at the Commission appeal level

Advanced AT Strategies 10

- Need to get an arcane point of law across w/o irritating the hearing officer? Use direct examination of client/witness to get black-letter legal points into the record and be prepared to cite chapter and verse if the hearing officer asks for a cite.

Advanced CA Strategies

- Be brief and to the point
- Supply Commission with roadmap to decision in your favor
- "The AT decision was wrong for the following reasons" – reasons in bullet points
- Refer to precedent cases if any are on point
- Ask for rehearing if relevant, and give a compelling reason why one is needed
- In really compelling cases, let Commissioner's office know about the case – don't overdo!

Advanced Court Strategies

- Attack validity of potentially confusing TWC procedures and documents
- TWC is unduly afraid of losing well-argued cases based on due process problems resulting from “confusing” agency procedures and may settle
- If other party was not at AT hearing, and your client’s case has basic validity, ask court to remand to Commission, not to AT!

Advanced Payday Law Strategies

- Submit brief along with claim, claim response, or appeal – it will go into the record and be included in the document packet for the hearing – try to refer to important points during testimony and offer it as an exhibit
- Use direct-examination trick just like w/ UI
- TWC wants to see written agreements (wages, benefits, volunteer)
- Go after individual owners/directors – spread liability around if client is an employer
- Handle the Commission appeal just like with UI cases

Important Agency Developments

- Executive director is Larry Temple, originally from Mississippi
- Commissioner representing labor, Ronnie Congleton, a former Teamsters official, has been reappointed and confirmed for a term expiring 020111
- Employer Commissioner Ron Lehman is serving at Governor’s pleasure – no reappointment yet
- New tougher policy on claimant work searches
- Tougher policy on collection of fraud-related benefit overpayments – increased criminal prosecutions
- Still no payday law precedent manual and no Rule 13 decision database initiative

Good News

- Steady drumbeat of TAB and Commissioner Lehman's office resulted in creation of a special unit to measure and combat benefit overpayments
 - New work search rule -- at least three job contacts/week
 - 1500 work search verifications each week
 - Result: \$455 million OP is down to around \$271 million, benefit exhaustion rate went from 51.7% to 43.2% in a year, and average duration of benefits went from 17.0% to 15.8% in the same year
 - "Criminal Corner" on TWC Web site highlights fraud prosecutions
 - GAO will use Texas as an example in a study of how states can get a grip on fraud and OPs
- Cooperation of majority led to work search rule and to telephone and Internet protests for ERs
- Trust fund is projected to be \$537 million above floor of \$796 million, helping to lower UI tax rates for ERs

Thanks for your attendance!

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HANDOUT

QUICK DO'S AND DON'T'S IN UI CLAIMS AND APPEALS

*presented by
William T. Simmons
Attorney at Law*

Before a claim arises:

- If an employee is about to be fired, go through a termination checklist; at the very least, ensure that the employee has been given the benefit of whatever termination procedures are outlined in the company policies and in whatever warnings they may have received.
- If an employee is quitting, do not have the person sign a boilerplate resignation form; have the person do their own letter, in their own handwriting if possible.
- If an employee is quitting, do not let the person quit until and unless you are satisfied that the company has done everything appropriate to address any legitimate grievances they may have.

After a claim arises:

- Respond on time to any claim notice, ruling, or appeal decision.
- Be as specific as possible.
- Be consistent in your responses, appeals, and testimony.
- Avoid name-calling or gratuitous derogatory comments toward the claimant.
- In discharge cases, avoid certain terminology such as "inability", "incompetence", "disloyal", "accumulation of things", "bad attitude", and "mutual agreement".
- In discharge cases, try to show four main things:
 - a specific incident of misconduct close in time to the discharge;
 - that the claimant either knew or should have known that discharge could occur for the reason given;
 - that the employer followed whatever policies it has and whatever warnings were given; and
 - that the claimant was not singled out for discharge, but rather was treated the same as anyone else would have been under those circumstances.
- In voluntary leaving cases, avoid references to how bad the ex-employee might have been, and emphasize that the claimant left while continued work was still available.
- In voluntary leaving cases, avoid comments on how glad the company is that the claimant resigned. Instead, focus on how a reasonable employee otherwise interested in remaining employed would not have left for the reason given.
- In all cases, have all your evidence and firsthand witnesses ready for the hearing.
- Make your testimony brief, factual, and concise. Hearing officers like that!

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OUR EXPERIENCE

LABOR AND EMPLOYMENT

Jackson Walker has extensive experience representing management in a comprehensive range of employment and labor law issues. These include, among others, counseling with management, defending employee claims, workers' compensation issues, and traditional labor relations.

COUNSELING WITH MANAGEMENT

Members of the section routinely provide counsel and assistance to their clients on numerous employment related issues including the following listed below.

- Employment issues relating to employee training, workforce reductions, corporate acquisitions, reorganizations, and relocations
- Appropriate discipline of employees
- Drafting and enforcement of employment contracts, including non-competition agreements
- Preparing and auditing employee handbooks and personnel policies
- Unemployment compensation claims
- Wage-hour obligations
- Workers' compensation claims
- Occupational safety and health issues
- Immigration control procedures
- Affirmative action plans and OFCCP compliance issues

DEFENDING EMPLOYEE CLAIMS

The section members also offer to our clients expertise in mediating, arbitrating, and litigating the defense of individual and class action employee charges and suits involving a wide range of matters and issues.

LABOR AND EMPLOYMENT

- Race and sex discrimination claims
- Sexual harassment claims
- Age discrimination claims
- Disability discrimination claims
- Family and medical leave claims
- Defamation claims
- Wrongful discharge claims
- Workers' compensation retaliation
- Claims asserting violations of various other federal and state employment related and civil rights statutes

WORKERS' COMPENSATION ISSUES

Section members, in conjunction with the firm's employee benefits attorneys, also assist employer subscribers and non-subscribers under the Texas Workers' Compensation Act.

- Review and analysis of employers' existing workers' compensation insurance arrangements
- Evaluation of legal risks associated with becoming a non-subscribing employer
- Rejection of the Texas Workers' Compensation Act
- Evaluation and implementation of employee benefit programs in lieu of workers' compensation, including design and drafting of employee benefit plans; analysis of insurance policies, safety consultants, and medical providers; and coordination with insurance advisors
- Establishment of litigation minimization procedures, such as hiring policies, safety procedures, and claims processing
- Representation of employers in claims disputes

LABOR AND EMPLOYMENT

TRADITIONAL LABOR RELATIONS

Jackson Walker's labor and employment law attorneys also provide substantial experience and expertise in management's dealings with labor unions. Their expertise encompasses such areas as those listed below.

- Union avoidance campaigns
- Union election contests
- Negotiation of collective bargaining agreements
- Arbitration of disputes arising under collective bargaining agreements
- Responding to unfair labor practice charges under the National Labor Relations Act, the Railway Labor Act, and related statutes

EMPLOYEE BENEFITS / EXECUTIVE COMPENSATION

Section members also assist clients in a variety of matters related to ERISA, Employee Benefits and Executive Compensation, including the following:

- counseling regarding plan governance procedures and best practices designed to minimize fiduciary liability risk; and
- assistance in dealing with compliance and administrative considerations related to plans, including matters pertaining to participants and governmental agencies.

BIOGRAPHIES

STACY ALLEN

Stacy Allen is a partner in the Litigation section of Jackson Walker. Mr. Allen concentrates his practice in complex commercial litigation, including intellectual property, unfair trade practices, securities fraud, health care, insurance, product liability/toxic tort and employment discrimination litigation and arbitration. In over twenty years of practice across the nation, Mr. Allen has successfully represented many Fortune 500 companies and other entities in state and federal litigation, including M.D.L. proceedings and class actions. Representative cases include: commercial actions alleging breach of contract, fraud, tortious interference, defamation and unfair trade practices; the prosecution and defense of copyright, trademark and patent infringement claims involving a variety of specialized industries; the defense of major airlines and aircraft manufacturers against claims arising from highly publicized commercial aviation disasters; the defense of an asbestos-containing fireproofing manufacturer against asbestos-in-buildings property damage claims brought by commercial real estate owners and school districts totaling in the tens of millions of dollars; insurance coverage and claims litigation; managed care litigation; insolvency litigation (e.g., fraudulent conveyances, receiverships, bankruptcy-related adversarial proceedings); and the defense of major regional and national employers in employment discrimination suits and administrative proceedings alleging statutory (Title VII, ADEA, ADA) and common law claims. Positive results achieved include defense verdicts, summary judgments and dismissals on behalf of defendant clients, and an arbitration award of cash and stock for a plaintiff client valued at \$49 million. Mr. Allen has also been highly successful at achieving advantageous and cost-effective settlements by aggressively developing favorable evidence as early as possible.

Mr. Allen is admitted to practice before state and federal courts in Texas, Connecticut, New York and California.

EDUCATION

Mr. Allen received his B.A. degree, *summa cum laude*, from the University of Southern California. He received his J.D. degree from Yale Law School, where he was a John Courier Gallagher Prize finalist.



Stacy Allen practices litigation.

B.A., University of Southern California

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MATT DOW

Matt Dow is a partner in the Litigation section of Jackson Walker. Mr. Dow has handled trials and appeals throughout the State of Texas and has argued before the Texas Supreme Court. He specializes in commercial, employment and intellectual property litigation.

He is admitted to practice before the United States District Courts for the Northern, Southern, Eastern, and Western Districts of Texas; and the United States Court of Appeals for the Fifth Circuit.

MEMBERSHIPS

He is a member of the State Bar of Texas, the American Bar Association, the Travis County Bar Association, the Texas Association of Defense Counsel, and the Litigation and Employment Law Sections of the Travis County Bar Association and the American Bar Association. In addition, he is a Fellow of the Texas Bar Foundation.

COMMUNITY INVOLVEMENT

Mr. Dow is member of the Capital Area Food Bank's board of directors, a past board member of the Austin Metropolitan YMCA, and a graduate of Leadership Austin.

PUBLICATIONS / SPEAKING ENGAGEMENTS

Mr. Dow is a frequent author and lecturer on a wide variety of topics including the use of e-mail at trial, employment issues, and document management for companies involved in litigation.

EDUCATION

Mr. Dow received his B.A. degree from Baylor University and his J.D. degree from St. Mary's University. While in law school he was an articles editor for the Law Journal, an instructor for legal research and writing, and a member of Phi Delta Phi legal fraternity.



Matt Dow practices litigation and appellate law.

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ALICIA R. DULEBA

Alicia Duleba is a partner in the Labor and Litigation sections of Jackson Walker. Her practice focuses on employment law, general litigation in addition to counseling employers on employment and human resource issues.

Ms. Duleba has experience representing employers in a full range of employment law matters such as defending employee claims in state and federal court; representing clients before administrative agencies such as the Equal Employment Opportunity Commission, Texas Workforce Commission - Civil Rights Division, and Occupational Safety and Health Administration; preparing and auditing employee handbooks and personnel policies; counseling and formulating preventative strategies; handling mediations and settlement negotiations; and drafting and interpreting employment contracts, including non-competition agreements, and unemployment compensation claims.

Ms. Duleba's general litigation experience includes defending clients in products liability, healthcare, personal injury, and commercial litigation lawsuits.

Ms. Duleba is admitted to practice law before all Texas state courts and the United States District Courts for the Western, Northern, and Southern Districts of Texas.

MEMBERSHIPS

Ms. Duleba is a member of the State Bar of Texas, the Labor and Employment section of the Travis County Bar Association, and the Labor and Employment section of the Texas State Bar Association.

EDUCATION

Ms. Duleba received her B.B.A. degree from Texas A&M University, and her J.D. degree from University of Texas.



Alicia Duleba practices employment law and general litigation in the Austin office.

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THOMAS M. LIPOVSKI

Thomas M. Lipovski is a partner in the Labor and Employment section of Jackson Walker. His practice includes the representation of clients in litigation and in proceedings involving the Equal Employment Opportunity Commission and the Texas Workforce Commission Civil Rights Division.

Mr. Lipovski has experience in counseling clients with respect to various personnel issues. He has represented clients in mediations and other settlement negotiations, arbitration proceedings, lawsuits in state and federal courts, and in appellate proceedings in the United States Fifth Circuit Court of Appeals.

Mr. Lipovski is admitted to the State Bar of Texas and is admitted to practice in the United States District Courts for the Northern, Southern, Eastern, and Western Districts of Texas. He is also admitted to practice before the Fifth Circuit Court of Appeals.

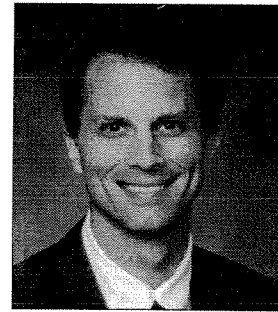
MEMBERSHIPS

Mr. Lipovski is a member of the Travis County Bar Association and the Austin Association of Young Lawyers. He is also a member of the Employment Law Sections of both the State Bar of Texas and the American Bar Association.

PUBLICATIONS AND PRESENTATIONS

Mr. Lipovski has served as an associate editor and contributing author of a chapter of the Fair Labor Standards Act for the *Texas Employment Law Handbook, A Guide For Employers*, published by the Texas Association of Business and Chambers of Commerce (1996 ed., 1997 ed.) and has had an article published in the *Austin Business Journal* entitled Keep Hiring, Firing Decisions out of Court Rooms.

Mr. Lipovski has given presentations to clients regarding the hiring, counseling, and termination of employees and has given presentations at a number of employment seminars including ones sponsored by Jackson Walker L.L.P., the Texas and Southwestern Cattle Raisers Association, and the International Society of Certified Employee Benefits Specialists.



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THOMAS M. LIPOVSKI

COMMUNITY INVOLVEMENT

Mr. Lipovski serves on the YMCA of Austin Metropolitan Board of Directors and has coached youth football at the West Austin Youth Association.

AWARDS

Mr. Lipovski was named as a "Rising Star" in 2004 and 2005 in the *Texas Monthly* magazine. Mr. Lipovski was also named a "Rising Star" in 2004 by the *Austin Business Journal*.

EDUCATION

Mr. Lipovski received his B.B.A. and J.D. degrees from the University of Texas.

MARILYN M. MONTANO

Marilyn M. Montano is an associate in the Litigation section of Jackson Walker.

Before joining Jackson Walker, Ms. Montano served as a Briefing Attorney on the Fourteenth Court of Appeals (2004–2005), and worked in the chambers of Justice Wanda McKee Fowler.

MEMBERSHIPS

Ms. Montano is a member of the State Bar of Texas, the American Bar Association, the Austin Bar Association, the Austin Young Lawyers Association, and the Association of Trial Lawyers of America.

PUBLICATIONS & SPEAKING ENGAGEMENTS

Ms. Montano authored “The Single Business Enterprise Theory in Texas: A Singularly Bad Idea?” This article was published in the *Baylor Law Review*, vol. 55, no. 3 (2003).

EDUCATION

Ms. Montano received her B.A. degree in Government from the University of Texas at Austin in 2001. In 2004, Ms. Montano received her J.D. degree from Baylor Law School, graduating magna cum laude. At Baylor, she served as an Executive Editor on the *Baylor Law Review*, was a member of the Order of Barristers, and also participated in mock trial and moot court competitions across the country.

GARY A. THORNTON

Gary A. Thornton is a partner in the Litigation and Labor sections of Jackson Walker. Mr. Thornton leads the Labor group in the Jackson Walker Austin office. Before becoming an attorney, he was a radio/television news broadcaster and college professor. His legal practice focuses in the area of non-subscriber tort litigation and malpractice defense for health care providers. He wrote the foundation article for the *Texas Bar Journal* on non-subscriber litigation. Since that time, he has represented corporations all over Texas in their employee injury matters and has organized an Austin team expanding into all areas of employment law defense.

Prior to joining the firm, Mr. Thornton was a briefing attorney for Chief Justice Jack Pope of the Texas Supreme Court.

MEMBERSHIPS

Mr. Thornton is presently a member of the State Bar of Texas, the Travis County Bar Association, the American Bar Association and the Christian Legal Society. He has served as president of the Travis County Bar Association, a member of the MCLE Texas State Bar Committee and one of the chairmen of Committees for the Litigation Section of the American Bar Association. Mr. Thornton was recently paid the honor of being appointed to the Board of Directors for the Texas Association of Business.

COMMUNITY INVOLVEMENT

Mr. Thornton serves as an Elder at the University Avenue Church near the University of Texas, previously he served as chairman of the board for a local homeless organization. He recently served on the Board of Directors for the Greater Austin Chamber of Commerce and the Austin Graduate School of Theology. He also serves as a member of the Board of Trustees for Abilene Christian University and the Board of Visitors at Pepperdine School of Law.



Gary Thornton practices litigation.

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GARY A. THORNTON

PUBLICATIONS / SPEAKING ENGAGEMENTS

He is a frequent author and speaker. Among the articles he has authored are “Landowners Should Know Rights in Condemnation Cases,” *The Cattleman* (January 1986); “Additions to and Realignment of Travis County Courts to Help With Heavy Criminal Docket and Condemnation Explosion,” *Austin Lawyers Journal* (November 1987); “Litigation Involving Non-Subscribers to Workers Compensation Insurance,” *Texas Bar Journal* (April 1991); “Jury Selection Study,” *Austin Lawyers Journal* (November 1991) and *The County and District Clerk* (November 1991); and “Litigation Involving High Power Electrical Transmission Line Cases” *Condemnation Law Trends* (Spring 1992) and *Current Condemnation Law* (American Bar Association 1994).

Additionally, Mr. Thornton is often asked to speak at seminars on various employment matters and has advised boards of directors throughout the state regarding the options available to them concerning workers compensation.

EDUCATION

Mr. Thornton earned his B.A. degree, and Master’s degree in mass communications, from Abilene Christian University and his J.D. degree from Pepperdine University.

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