

BUILD

BUILDHOUSTONONLINE.COM

HOUSTON

OCTOBER / NOVEMBER 2018

ALSO IN THIS ISSUE

KEEPING THE BUSINESS RUNNING WHILE PROVIDING FAMILY AND MEDICAL LEAVE

REWARDING WORKERS AND FUNDING RETIREMENT WITH A CASH BALANCE PLAN

SERIES LLCs IN THE CONSTRUCTION INDUSTRY



SPECIALTIES, LP

Vision. Faith. Value. Service. Partnership. Results...Trust

WE ARE TEXANS!

HOW FAST TRACK SPECIALTIES TRIUMPHED FROM HURRICANE HARVEY



Greater Houston Chapter

THE WORKFORCE ISSUE: HOW THE INDUSTRY IS WORKING TOGETHER TO SOLVE THE WORKFORCE SHORTAGE



Limiting company's liability.

pay over \$ _____, in c

weight, for a

unless

Series LLCs in the Construction Industry: Increasingly Popular Fortresses to Protect Contractor's Assets

BY J P VOGEL AND CATHERINE CHLEBOWSKI

The business of construction is a day to day adventure fraught with peril and liabilities dangerous enough to put many construction firms out of business. Given that reality, it is imperative that contractors properly structure the legal entities that provide the fortresses to protect their assets. While most are familiar with the limited liability company (LLC) and limited partnership (LP) set ups, many have no familiarity with series limited liability companies (Series LLC).

A special kind of LLC, a Series LLC can be thought of as an umbrella under which lie separate, independently-owned and operated LLCs, each of which is called a series.

To designate an LLC as a Series LLC in Texas, the Texas Business Organizations Code (TBOC) requires the following language to be included in the certificate of formation and company agreement: (1) the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and shall not be enforceable against the assets of the limited liability company generally or any other series; and (2) none of the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series shall be enforceable against the assets of a particular series.

BENEFITS & DRAWBACKS FOR CONTRACTORS

Explained further under the TBOC, each individual series is solely responsible for its own assets and liabilities, can have its own type of ownership and membership interest, can sue and be sued, can have its own separate business purpose, can enter into contracts, and can grant security interests. Thus, the liabilities, obligations, and debts of one series in the Series LLC structure do not affect the other series or the umbrella LLC.

1. Contractors who engage in different types of construction projects or operations can potentially benefit from the use of Series LLCs. For example, through the use of a Series LLC, a construction firm could effectively isolate the differing liabilities of engaging in commercial, industrial, municipal, civil or intuitional work. Contract and tort liability associated with each contract or type of project will be quarantined from the other Series LLCs and overall umbrella, thus protecting important assets including equipment, real property, money, and so much more.
2. Series LLCs allow for great savings in cost and time, especially relating to formation documents and filing fees. In Texas, the statutory filing fee to create a Series LLC is \$300, no matter how many series are created under the umbrella. Without implementing the Series LLC structure, a business owner would have to file this \$300 fee for each LLC.

3. Series LLCs allow for flexibility in the management operation of the series. Each series under the Series LLC structure can have its own managers, members, membership interests, assets, and even business purpose. This allows each series to function essentially as an individual and separate entity.

The only current drawbacks are (1) this type of entity has not been adopted nationwide and is comparatively new and (2) the TBOC strictly requires the books and records of each series must be separately maintained as among the other series in the Series LLC. The insulation from liability between each series may be lost if the books and records are not maintained according to the strict parameters of the TBOC.

In sum, there are many factors to consider in deciding to utilize the increasingly popular Series LLC structure in Texas. For clarification or for guidance, it's best to work with an experienced attorney. ♦



J.P. Vogel – Partner, Gray Reed & McGraw – Dallas
Clients throughout Texas, the U.S. and abroad rely on J.P. to guide them through every phase of sophisticated, time-sensitive commercial construction projects and resolve disputes when they don't go as planned. J.P. focuses on brainstorming new ways for clients to seize opportunities and overcome challenges – whether he's helping an international company manage the chaotic construction of a Gulf Coast industrial facility, negotiating the high-leverage construction contracts for an office building project or defending clients stuck in the midst of complex construction defect litigation. His clients are major players across the industry, including owners, general contractors, specialty subcontractors, suppliers and manufacturers. (jpvogel@grayreed.com)



Catherine Chlebowski – Associate, Gray Reed & McGraw – Houston
Catherine Chlebowski focuses her practice on corporate law and is a member of the firm's construction industry team. She graduated from the University of Texas, with highest honors, with a B.A. in Government. She earned her J.D., cum laude, from Southern Methodist University Dedman School of Law where she served as staff editor and case note and comment editor for the SMU International Law Review Association. (cchlebowski@grayreed.com)

Frontline Supervisor Training **TRESTLES** **TLMS® -Trestles Labor Management System**

Best Practices...Simplified

Empower your crews!



- ✓ Planning & Scheduling
- ✓ Labor Management
- ✓ Continuous Improvement
- ✓ Effective Leadership

Register Today!

WWW.ABCHOUSTON.ORG

(713) 523-6222



Mobile field construction application



- ✓ Work Breakdown Structure
- ✓ Short Interval Scheduling
- ✓ Constraint Removal
- ✓ Productivity and progress reporting
- ✓ Scalable, affordable

Schedule a demo!



TRESTLES CONSTRUCTION SOLUTIONS, LLC
INFO@TRESTLESCS.COM | WWW.TRESTLESCS.COM | (661) 377-2957