

# The Metropolitan Corporate Counsel®

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Volume 20, No. 10

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October 2012

## Texas – Land Of Opportunity

*The Editor interviews Christine B. LaFollette, Partner-in-Charge of Akin Gump's Houston office and a Member of the firm's Management Committee and the Houston office's Diversity Committee, and J. Kenneth Menges, Jr., Co-Head of Akin Gump's Corporate Practice and Partner-in-Charge of the Dallas office and also a Member of the firm's Management Committee and the Dallas office's Diversity Committee.*

**Editor:** As partners-in-charge of the Houston and Dallas offices respectively, would you each describe your practice as well as the practices that each of your offices specializes in?

**Menges:** Our practice in Dallas is a diverse general business practice that serves a variety of industries. We are closely tied to a number of North American corporate headquarters of U.S. and international companies that populate north Texas, although our practice also extends beyond corporate headquarters to a broad middle-market focus among principal industries, such as hospitality and entertainment, oil and gas, technology and aviation. We also have good penetration into the retail industry, one of the industry drivers in the Dallas/Fort Worth area.

**LaFollette:** Our practice is very much driven by the area's economy, with energy being the provider of over half the jobs in Houston, known as the energy capital of the world. Energy drives much of our intellectual property work, as well as litigation and our corporate practice – our largest practice area – which includes everything from general corporate work to mergers and acquisitions to financings and capital markets as well as international projects. This office is highly integrated with the firm's other offices, representing companies that operate in 90 different countries. Houston also has the largest medical complex worldwide, with which some of my colleagues are



**Christine B.  
LaFollette**



**J. Kenneth  
Menges, Jr.**

involved. The third-biggest driver in the economy is NASA.

**Editor:** What is the state of private equity and M&A in Texas? Does it depend heavily on the oil and gas industry? How much of M&A work is still involved in buying of distressed situations?

**Menges:** Private equity is a huge driver of M&A in Texas, as are transactions by strategic buyers. Private equity has a broader focus than the strategic sector, which, from my perspective, tends to be quite focused on the oil and gas industry. Private equity in general is looking at the so-called bottom of the trough in terms of valuations and is starting to look beyond just pure distress plays to actual opportunistic situations where it appears an enterprise can be relatively quickly made into a much more valuable asset. We have seen an increase in the amount of private equity interest in transactions, but not a corresponding increase in transactions that are announced to be ready to close. There's still a fair amount of care, if not hesitation, being applied by financial buyers as they confront the global economic uncertainties dealing with everything from Greece and the Euro to the stability of the Asian markets.

**LaFollette:** In our area, the strategic buyer is viewing the oil and gas industry as ripe for investment. Private equity companies have joined in as partners in providing the sizeable amount of capital to further develop these exploration and production

businesses. Not only is much capital needed, but, at the same time, there is great upside potential. We see private equity working with these companies over a long period until the company becomes public or their interest is sold. We've seen extensive activity on the part of well-known names – this year, private equity firms Apollo, Riverstone and other investors acquired El Paso's oil and gas business that Kinder Morgan divested. In addition, there are many international investments in the energy business not only to gain access to these resources but also to gain the opportunity to joint venture with these knowledgeable companies to learn some of the development techniques that have changed the way oil and gas is developed and produced.

**Editor:** Please discuss the oil and gas and petrochemical industry and the extent to which these industries are important to the economy.

**LaFollette:** Houston is the mother ship for thousands of energy-related companies, but the activity itself is statewide. Geographically, this industry covers a wide arc of the state starting in South Texas with the explosive area of the shale belt in the Eagle Ford to the Barnett Shale area in the Fort Worth area and into the Permian Basin in West Texas. These resources provide jobs locally, statewide and internationally with the large amount of related industry such as oil field service, engineering and petrochemicals. The many ramifications of this industry mean great job growth and opportunity.

**Editor:** How much has fracking factored into the development of the hydrocarbon industry in Texas? Have there been industry standards developed for exploration in shale? Does the Texas Railroad Commission have any authority over this area?

**LaFollette:** Yes to all of the above. Hydraulic fracking has been a tremendous

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boon to the industry, with a shift to more gas recovery. For almost 100 years, the Texas Railroad Commission has regulated the industry. While operators had been self-reporting the chemicals used in the fracking process, this February the Commission did come out with a comprehensive disclosure rule, which basically stipulates that, for any well permitted since February, the information relating to chemical products, water ingredients and volumes used must be uploaded to a public website that can be accessed by anyone. This presents an opportunity for any viewer to gain a better understanding of this common industry process.

**Editor: What is the status of alternative energy in Texas in terms of its development? Please describe the growth of wind farms and use of solar.**

**Menges:** As with the status of alternative energy in each of its manifestations around the U.S., the last year and a half to two years have not been rosy for that niche industry. The combination of the expiration of certain tax credits, the increased competition from Asian manufacturers and the decline of Europe's economy – the birthplace of this industry and leader in its development and encouragement – have all led to a lower level of activity in this industry. That being said, Texas remains the largest producer of wind energy in the country, which it has been for the past several years, surpassing even California, and home to seven of the top 10 largest wind farms in the U.S., including all of the top five. We have several substantial manufacturers associated with the wind energy business. As the overall environment for alternative energy rebounds, which we do expect it to do, I think that will be a vital part of the statewide energy offerings.

**LaFollette:** I agree. Alternative energy is a natural complement to the energy industry and part of our goal to wean ourselves off foreign dependence. It will happen – it will just take more time. We need to invest not only financially but in a change of our mindset in terms of seeking access to alternative fuels.

**Editor: Would you also attribute the reduction in gas prices as playing a role in undermining enthusiasm for alternative fuels?**

**Menges:** No question. The economics of alternative energy are a lot more problematic, with natural gas prices being where they are and where they've been for the last

12-18 months as opposed to the previous two or three years. The whole role of government subsidies and tax incentives, etc., is a big question mark in that industry as well. There's an election coming up in a little under two months that will determine in large part whether the federal government has any appetite whatsoever for playing a significant role in alternative energy.

**Editor: What are some aspects of the judicial system in Texas that make it an attractive place to conduct business?**

**Menges:** The judicial system in Texas is part of the reason that companies find Texas a good place for conducting business. The incidence of troublesome plaintiffs' litigation has rapidly diminished over the past 10 years owing to several factors. First, Texas is not a heavily unionized state, which removes from the equation a whole variety of disputed areas. Second, the workers' compensation system in Texas has been streamlined over the past 10 to 20 years and does not result in some of the abusive practices that are publicized from time to time in other states. Third, there is a pro-business attitude in that there is lacking the presumption that if there is an individual party and a corporate entity party to a lawsuit, the individual is always right and the corporate entity is always wrong.

**Editor: How has tort reform in Texas improved the quality of matters brought to the courts? Has the new rule regarding "loser pays" made a difference?**

**Menges:** It is hard to attach much statistical significance to the loser pays issue. What is absolutely clear is there has been no increase in the volume of general commercial litigation and a significant decrease in certain types of personal litigation, including medical malpractice and some other personal injury and insurance-related litigation. To be fair, this is counterbalanced by an increase in the amount of intellectual property litigation, which is a nationwide phenomenon. IP litigation consistently ranks as one of the biggest worries of corporations and their internal counsel, and the Eastern District of Texas is one of the national centers and a forum of choice for a variety of players in intellectual property litigation. It has an expertise and a docket management system that is attractive to plaintiffs as well as defendants. Overall tort reform viewed over 20 to 30 years has played a huge role in making Texas less of a magnet for certain types of plaintiff litigation.

**Editor: Do you think the new IP law will make a difference in the number of IP**

**cases that are seen in Texas and nationwide?**

**Menges:** As yet, we are not of one mind, although we're obviously watching it very carefully. Another fact appears to be just becoming a universal truism: in the 21st century, the intellectual property associated with any venture, any company, or any idea is the heart and soul of that venture or idea, and, therefore, there's probably going to be continued disputes over intellectual property. We see it in areas we are hired to help companies defend and, in some cases, prosecute. There's a different mindset on the part of companies when it comes to assessing the importance of intellectual property litigation, which is generally higher on their radar than general commercial litigation.

**Editor: The Texas economy far outstrips the rest of the nation as noted by its lower unemployment rate of 6.2 percent reported this April. What attractions continue to improve employment in Texas and draw more residents from other areas?**

**LaFollette:** We have jobs! With so much different activity, we are in need of a robust workforce. We offer a diverse culture that is very receptive to bringing in new residents. Additional incentives are the absence of a state income tax along with the benefit of being a right-to-work state. The energy business has been a great boon to the economy. We've recovered from the downturn 100 percent and need an influx of people with professional and technical skills to work at the various oil and gas work sites. With lower housing costs and a lower cost of living, Texas offers a great lifestyle and much opportunity.

**Menges:** That's a great summary. Besides offering jobs, Texas is a national logistics hub and increasingly an international logistics hub as more and more commerce moves from cross-country through Texas. With its infrastructure of multi-modal centers, a variety of different forms of transit come together. At the time the national economy went into a tailspin, Texas actually gained market share as being a logistics hub because investment was being made toward the ultimate recovery. In addition to the job opportunities, we have the people who are skilled in the various sectors of our economy for the employers who are moving here. So whether it be call centers or hi-tech companies or manufacturing or oil and gas, there is a workforce in huge pockets all over the state, so a company doesn't have to worry about a lack of adequate skilled workers on-site.