

# The Metropolitan Corporate Counsel®

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## Texas – Law Firms

### Texas – Envy Of The Nation

*The Editor interviews J. Kenneth Menges, Jr., Co-head of the corporate practice at Akin Gump Strauss Hauer & Feld LLP.*

**Editor:** Texas seems to have weathered the economic crisis better than other regions of the U.S. with an unemployment rate of 8.2 percent at the end of June as compared with the national average of 9.5 percent. To what do you attribute this improved performance?

**Menges:** Texas has performed relatively better than most of the country due primarily to our state's diversified economy as well as to the general pro-business attitude of our state and local governments. Our economy is not tied primarily to energy or manufacturing or agriculture or technology – to pick four large sectors in Texas – but we are strong in all of those areas. So, as commodity prices move in one direction or another, we see a benefit in either the energy sector and/or the agriculture sector. We have also seen very steady performance in our manufacturing base. At the same time, the pro-business environment in Texas should not be overlooked. We have a relatively low tax rate on businesses and no personal income tax. Texas is a “right to work” state, meaning that we have relatively fewer unionized employees than some other states. Both low taxes and an affordable workforce are very attractive to businesses, particularly as they consolidate nationally. Texas has been a beneficiary as certain companies have pulled back from other parts of the country.

**Editor:** Are you seeing an uptick in M&A deals and lending generally?

**Menges:** We're certainly seeing an increase in acquisitions, but these are primarily consolidation plays by strategic buyers; we are seeing fewer deals from financial buyers, especially compared to the private equity wave that we all were riding three to five years ago. It has also been our experience that the banks are still mainly on the sidelines in terms of financing acquisition transactions. There is some movement there, but by and large the transactions are being financed by the purchasers' own cash or through creative financing moves. That said, I have seen a significant uptick in activity since this time last year, and I expect that to continue for the rest of the year.

**Editor:** I understand that many of the private equity and venture funds are now setting up partnerships to invest in the oil patch. Has this been a source of new business for the firm?

**Menges:** It has, indeed. We are seeing both private equity and venture funds setting up new funds to invest in the energy sector. We've also seen a big increase in the creation of new funds to invest in real estate. The perception is that there is a great investment opportunity in real estate, given the amount of distressed real estate around the country



**J. Kenneth Menges, Jr.**

and the desire on the part of banks and other lenders to liquidate their holdings. I believe we will continue to see activity in both these areas. Just this past week, Blackstone announced a multibillion dollar transaction to acquire Dynegy – a significant move by a major, respected private equity firm to get into the energy sector directly.

**Editor:** What kinds of deals are being done with groups in Asia and Europe? Are you seeing any activity on the part of sovereign wealth funds?

**Menges:** We're certainly seeing activity as Texas becomes a target of investors from both Asia and Europe, but we are not seeing a great deal of activity directly from sovereign wealth funds where they are the sole investor. I suspect that sovereign wealth funds are still very careful about which investment opportunities they select in the U.S. in order to minimize potential political backlash. That being said, one of the largest investors by country of origin in Texas is England, and the number of companies owned or financed by English investors here is really very impressive.

**Editor:** Akin Gump has long had an international presence as well as a strong international trade practice. To what factors or persons in the firm do you attribute this achievement? Please discuss the firm's culture in this regard.

**Menges:** Any discussion about Akin Gump's international presence and inter-

national trade practice has to begin with our patriarch Bob Strauss, who is so important on many levels to the firm, both in terms of our culture and in generating business. As you know, Bob was the international trade representative under President Carter and the ambassador to the Soviet Union (and later Russia) under the first President Bush. His interest in this area and his personal relationships led directly to our strong commitment in the international sector. We are proud of this practice and believe it distinguishes us from other very good peer law firms. We certainly have a global strategy in terms of handling transactions and approaching prospective clients.

One particular international area we are currently focusing on is cyber security, which is a huge concern for governments, businesses and individuals. With so many hackers (generally *not* based in the U.S.) attempting to infiltrate systems worldwide, we have developed a very interesting international, multidisciplinary practice group focused on advising companies with regard to cyber security.

**Editor: Texas ranks as the #1 state in exports. What geographic and other advantages have brought the state this distinction?**

**Menges:** Certainly part of this may be attributable to the diversity of industry sectors that I mentioned earlier. I would add to that the logistical advantages our infrastructure presents. Texas has an excellent system of “planes, trains and automobiles,” with Dallas/Fort Worth Airport being the third-busiest airport in the world in terms of total operations and the seventh-busiest in terms of passenger load.

Texas also boasts a number of multi-modal facilities in our major metropolitan areas, especially in Dallas/Fort Worth. These allow the easy assembly and shipment of a variety of products, which has led directly to an increase in the number of exports.

Furthermore, in addition to being strong in manufacturing and energy in general, we are also very strong in aviation and air-and-space technology, which are increasingly a part of Texas’ strength in exports. We have companies that are very active in the manufacture, assembly and export of aviation equipment, includ-

ing planes and other technology.

**Editor: Texas has long been on the cutting edge of developments in biology and medicine. Has the presence of large amounts of investment capital in venture and private equity funds as well as the presence of world-class medical institutions been responsible for these scientific innovations?**

**Menges:** Yes, but I would respectfully switch the order of those two very important factors. In my opinion our leadership in biotech and medicine starts with having world-class medical institutions staffed with impressive physicians and other science and medical professionals, as well as other institutions of higher learning. I think first of Dr. Kern Wildenthal, who as head of the University of Texas’ Southwestern Medical Center in Dallas was personally responsible for the recruitment of a number of Nobel Prize winners and other globally respected research scientists and physicians. This really put Texas on the map. We also are fortunate to have interested investors with pools of capital available to support these initiatives. Together, these factors have been responsible for our presence in the forefront of biology and medical investment.

**Editor: What components of the Dodd-Frank Wall Street Reform and Consumer Protection Act will have the greatest impact on your practice and on your clients?**

**Menges:** While the Dodd-Frank Act is focused primarily on financial institutions and the myriad regulating agencies that oversee banks and other large similar institutions, corporate America has been directly impacted by a variety of provisions of the Act. First and foremost, companies will have to react immediately to the prospect of asking their shareholders to give an advisory, supposedly non-binding, vote on their executive compensation pay packages. Companies will probably also have to grant large stockholders the ability to directly nominate members of the board of directors in connection with the annual solicitation of proxies. What those developments – only two among many changes enacted by Dodd-Frank – will probably do primarily is to lead to increased pressure by activist

investors in pressing companies to make certain changes. These activist investors range from institutions such as CalPERS, the huge California Pension Fund, to various union pension funds, to other hedge funds whose business model involves targeting supposedly underperforming companies.

**Editor: How do you forecast some of the provisions will affect your hedge fund and private equity clients?**

**Menges:** There are new requirements that certain funds must register with the SEC and others that limit the ability of commercial banks to finance and participate in some of these funds. This will be somewhat of a game changer for the hedge fund business, but I think that many of these provisions were already anticipated, and so there was little surprise when they were enacted.

**Editor: Are there elements in the Texas economy that you believe may foster recovery in the U.S.?**

**Menges:** The availability of a first-class workforce, energy and capital will lead to continued strength in the Texas economy that will help, we hope, pull the U.S. economy forward. As I said earlier, infrastructure is certainly an advantage in Texas.

One trend that we are seeing, which is benefiting Texas – but not other parts of the country – is an increase in businesses relocating here from other parts of the country. I think that the business climate and the financial challenges in states such as California and Illinois may very well be contributing to this phenomenon.

One part of the Texas recovery that I hope spreads to the rest of the U.S. is that the real estate market here has been significantly less volatile than in other parts of the country. Our real estate prices did not go up nearly as fast or as far as those on either coast or in boom areas such as Arizona and Las Vegas. Likewise, we have not gone down as much as those other markets have. That stability has led to relatively greater confidence in terms of both businesses and consumers. The return of business and consumer confidence is critical to the recovery of the U.S. economy, and hopefully we’re setting a good example for that here in Texas.