

February 11, 2010

Interim Judiciary Committee

Revised Uniform Limited Liability Company Act

CHAIRMAN GRIFFIN AND COMMITTEE MEMBERS:

My name is Bill Neumann. I appear on behalf of the State Bar Association of North Dakota.

Last year this Committee asked the State Bar Association to appoint a task force to study the Revised Uniform Limited Liability Company Act (ReULLCA). Attorney William Guy was named Chair of that task force. Unfortunately, Mr. Guy is unable to be here today, so I am speaking in his place.

The task force recommendation at this time is to hold up work on the Revised Uniform Limited Liability Company Act until the 2013 session. Mr. Guy cites three reasons for the recommendation. First, at this point only two states, Iowa and Idaho, have enacted the ReULLCA, and Iowa's adoption has not gone well, requiring significant amendments in their next legislative session. Second, North Dakota's current LLC Act is a fairly recent enactment that has been regularly updated; it is currently serving our citizens well. Apparently, the primary reason for enacting the ReULLCA is to make its provisions available for out-of-state entities. These two facts suggest our best course of action may be to retain our current law and enact the ReULLCA as an alternative. Finally, Minnesota is currently working on an effort to retain their current LLC Act, and to find some way to incorporate aspects of the ReULLCA as an alternative available to those entities who may want to utilize it in Minnesota. Minnesota's work product and experience with their project should be a valuable resource to us if we delay consideration until 2013.

An email chain including Mr. Guy's email conveying the recommendation (page 3 of 5) is attached to and is a part of this testimony. If you have any questions, I will try to answer them.

## Bill Neumann

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**From:** Klemin, Lawrence R. [klemin@nd.gov]  
**Sent:** Wednesday, February 03, 2010 5:00 PM  
**To:** William L. Guy III; Larry Klemin; Bill Neumann; Jaeger, Al A.; Jenkins, Clara M.  
**Cc:** Amy S. Bush  
**Subject:** RE: ULLCA

Bill Neumann can give a status report to the Judiciary Committee with the observation that it is unlikely that the ULLCA will be introduced in the 2011 ND Session for the reasons Bill Guy mentioned. Bill N. can also inform the committee that we will continue to update the committee at future meetings.

To Bill N: I understood that you would be able to attend the Feb. 11 meeting. If things change let me know so I can inform the committee counsel of the status. Thanks.

Larry

Rep. Lawrence R. Klemin  
District 47 Bismarck  
[www.klemin.com](http://www.klemin.com)

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**From:** William L. Guy III [wguy@vogellaw.com]  
**Sent:** Wednesday, February 03, 2010 10:36 AM  
**To:** Larry Klemin; Bill Neumann; Jaeger, Al A.; Jenkins, Clara M.  
**Cc:** Amy S. Bush; Klemin, Lawrence R.  
**Subject:** RE: ULLCA

The only email that I have received from Bill Klein was a very short one that passed on his contact information.

After receiving the Harry Haynesworth email I called Bill Klein. The MN timetable in yesterday's email was given to me by Bill Klein during the course of our telephone conference. Mr. Klein's task force plans complete a draft of the legislation sometime this spring. However, that draft will then be released to the MSBA sections for review and comment. Probably real estate, tax, business entities and possibly others will comment. I believe Mr. Klein expects that they will recommend changes. His task force will then distill those recommendations into the final bill by November/ December 2010 for submission to the 2011 MN legislature. It is quite possible that the bill would see amendment in the legislature prior to enactment.

I intend to remain in contact with Bill Klein during 2010. However, yesterdays email reflects my realistic expectations at this point. Again:

We have only Iowa and Idaho to look to at this point...and Iowa is not happy its transition to the ULLCA.

The current ND LLC statute works well. While I believe that ND will want to adopt ULLCA in some fashion, I do not believe that our state would be well served by being one of the first states to enact this legislation .

If May 2010 is the next meeting of the Interim Committee, I would be happy to provide another update on the MN effort at that time. However, I don't think that after its upcoming meeting that the Interim Committee should be left with the impression that ND legislation is likely in 2011.

Bill

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**From:** Larry Klemin [mailto:lklemin@bkmpc.com]  
**Sent:** Tuesday, February 02, 2010 4:16 PM  
**To:** Bill Neumann; William L. Guy III; Jaeger, Al A.; Jenkins, Clara M.  
**Cc:** Amy S. Bush; lklemin@nd.gov  
**Subject:** RE: ULLCA

I guess I'm not sure why we have to make a recommendation to the Judiciary Committee now. I think we should wait at least until the following meeting (probably in May) when we should know more about what Minnesota is doing.

Larry

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**From:** Bill Neumann [mailto:bill@sband.org]  
**Sent:** Tuesday, February 02, 2010 4:02 PM  
**To:** Larry Klemin; William L. Guy III; Jaeger, Al A.; Jenkins, Clara M.  
**Cc:** Amy S. Bush; lklemin@nd.gov  
**Subject:** RE: ULLCA

Larry,

I plan to be there on behalf of Bill, and pass on his recommendation to the Committee.

Bill Neumann

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**From:** Larry Klemin [mailto:lklemin@bkmpc.com]  
**Sent:** Tuesday, February 02, 2010 3:33 PM  
**To:** William L. Guy III; Jaeger, Al A.; Bill Neumann; Jenkins, Clara M.  
**Cc:** Amy S. Bush; lklemin@nd.gov  
**Subject:** ULLCA

Bill:

The attachment with the email string did not include the information or email that you received from Bill Klein. The email that I received from Harry Haynesworth [which is a part of the email string] indicates that the Minnesota Committee plans to complete its work in the next month or so. Harry is also from Minnesota. Maybe we shouldn't make a decision yet on whether to defer this to 2013 in ND and wait to see what Minnesota actually does. We have time.

I don't think there is need for you to go to the next meeting of the Judiciary Committee. I also have a conflict that day and won't be there either. Perhaps Al or Clara could go to the meeting to tell the Judiciary Committee that we are waiting to see what Minnesota does and will report further at a subsequent meeting of the Judiciary Committee. If they can't go, or prefer not to go at this time, then I will call the committee counsel and inform her of the status and she can inform the committee. I haven't seen an agenda for the meeting yet.

Let me know what you think about deferring a decision on what to do. We will need to tell the Judiciary Committee something.

Larry

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**From:** William L. Guy III [mailto:wguy@vogellaw.com]  
**Sent:** Tuesday, February 02, 2010 1:53 PM  
**To:** Jaeger, Al A.; Larry Klemin; William A. Neumann; Jenkins, Clara M.  
**Cc:** Amy S. Bush; William L. Guy III  
**Subject:** FW: Contact Information

Al, Larry and Bill...Bill Klein (see the preceding email) chairs the MN ULLCA Drafting Task Force. He anticipates that their work will be complete in November 2010 and that their legislation will be presented to the 2011 MN legislature.

If I understood him correctly, MN will be retaining its current LLC statute (MN Statutes Chapter 322B) largely intact and will be adopting some or all of the ULLCA as an alternative (possibly in a separate MN Statutes chapter).

I believe that the MN Task Force feels that the current MN LLC statute works extremely well for the average closely held LCC in that its governance structure and operating provisions parallel (as much as possible) those of the MN Business Corporation Act (MN Chapter 302A). On the other hand they recognize the need for the ULLCA ... primarily with regard to entities that will operate on a national level (and that might otherwise use the Delaware LLC Act). I expect that the current MN LLC statute will be amended to include some key elements of the ULLCA.

As you know, since 1985 ND has largely patterned its Business Corporation Act and (since 1993) its LLC Act (as well as our other corporate and partnership statutes) after their MN counterparts...and I believe that this approach has served our state very well. MN spends a great deal of time and money on these statutes that ND has been able to utilize to great advantage.

As you can see in the attached email string, only Iowa and Idaho have adopted the ULLCA at this point (although others are in the "study and drafting" phase). In a telephone conference yesterday morning Clara Jenkins indicated:

That Iowa's adoption has not gone well and that significant amendments will be necessary in their next legislative session; and,  
 That she has not been able to get much information regarding the Idaho experience to date.

It is my recommendation to the Interim Judiciary Committee that we hold up work on this project until we see the approach that MN takes and then see if it would be the best alternative for ND as well. Thus, my recommendation will result in holding off on our ND legislation until the 2013 session.

While I know that we would all like to resolve this matter more quickly than that, our situation with respect to the LLC statute in ND is quite different for that which we faced with our 2007 adoption of the Uniform Trust Code. In that case the existing trust law had been enacted in 1943 with little revision over the intervening 64 years. In contrast our LLC Act was adopted in 1993 and has been up dated in each subsequent legislative session. By all accounts (from citizens who have formed LLCs, accountants, legislators, the ND Secretary of State Office and other attorneys) our current statute works very well.

While I am in favor of the ULLCA if it either can be offered as an alternative to our current statute or carefully integrated into our current statute, I believe that we would be making a serious mistake to either replace our

current statute with the ULLCA or to attempt our own integration with only the experience of two other states for guidance . When ND adopted the Uniform Trust Act in 2007, the drafting task force had the benefit of the modifications made by 15 other states (many of which were included in the final ND legislation).

If any of you have any questions, please give me a call (or an email). Unless the Interim Committee wants me to be present at their upcoming meeting, I will be unable to attend due to prior commitments. If they want me to attend, then I will rearrange my schedule.

Bill

P.S. Attached is a string of recent emails that pertain to the ULLCA.



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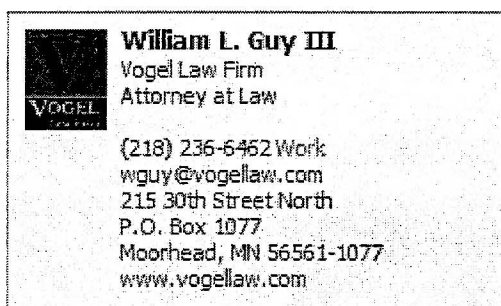
**From:** William L. Guy III  
**Sent:** Monday, February 01, 2010 1:49 PM  
**To:** 'Klein, William D.'  
**Cc:** Amy S. Bush  
**Subject:** RE: Contact Information

Bill...Thank you for your update on the status of the adoption of the ULLCA in Minnesota. If you receive the approval of your task force to forward a copy of the proposed legislation for the adoption of the ULLCA in Minnesota, I would very much appreciate a copy as soon as you are ready to release it. I will stay in touch with you as our respective projects progress.

My contact information is at the end of this email.

Again, thank you.

Bill



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**From:** Klein, William D. [mailto:William.Klein@gpmlaw.com]  
**Sent:** Friday, January 29, 2010 5:01 PM  
**To:** William L. Guy III  
**Subject:** Contact Information

Bill,

My information is at the end of this e-mail.

Best wishes,

Bill

**William Klein**

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