

# StrongPOINTS



## THE MILLION DOLLAR WEDDING PHOTOS:

### BLOGGER LIABILITY WHEN YOU PUT IT ONLINE

**Bret Strong** is the founder and Managing Shareholder of The Strong Firm P.C. His areas of practice include oil, gas, and energy; commercial real estate; mergers, acquisitions, and sales; and business law and contracts. He earned a Juris Doctorate, cum laude, from South Texas College of Law, and a B.S. in Business Finance from the University of Colorado at Boulder. He is admitted to practice law in Texas, Colorado and before The United States Supreme Court. Bret is a founding board member of The Woodlands Bar Association, former Chairman of The Woodland Area Chamber of Commerce and currently serves on the Board of Leadership Montgomery County. [bstrong@thestrongfirm.com](mailto:bstrong@thestrongfirm.com)

Neely Moldovan, a self-described “30-something Dallas lifestyle and beauty blogger” known for her blog, “It All Starts with Coffee,” is facing the ultimate consequence of using social media as a way to approach a dispute with another professional. It’s easy to get caught up in the fame of all the likes, comments and shares for a post gone viral. Where’s the harm in having followers? But when a dispute erupted related to Neely’s wedding photos with Dallas photographer Andrea Polito, things took an expensive turn for the worse. What started as a seemingly innocent attempt at restitution turned into an intense court battle with costly results. On July 29, a Dallas jury found the Moldovans liable for defamation and awarded Polito \$1.08 million in damages.

As reported by media all over the country, including *People Magazine* and *The Washington Post*, the Moldovans signed a contract with Polito to photograph their wedding in October 2014. Shortly thereafter, the couple objected to paying a \$125 fee for a cover image for their photo album (the fee included in their contract). Initially, Polito would not release the digital images prior to all fees being paid, but within days she communicated she would waive the fee. But by the time Polito reached out, the Moldovans had already contacted several media sources and started what was described as a social media campaign against Polito based on the premise that the photographer was “holding their photos hostage,” according to the lawsuit. The couple is claimed to have rallied their blog and social media followers to post negative reviews and comments on popular wedding photography websites and social pages, instantly killing Polito’s business which she had operated for over 12 years in downtown Dallas. Words like “cheated” and “scam” were used in the posts and the Moldovans are said to have “liked” even more negative posts made by others. The attorney for Polito argued the posts were more about promoting the blog and the Moldovans than about receiving the digital images. “They admit in their messages and the evidence in court that they wanted it to go viral, and they wanted it to ruin Andrea’s business,” Polito’s attorney said. “The more traffic that goes to Neely’s blog, the more they can have sponsored posts, and more sponsored posts means more money.”

The jury’s \$1.08 million verdict is still open for appeal, but the moral of the story is simple: You cannot blog, post, comment, like or discuss matters online in a defamatory manner without the potential risk that any resulting damage caused may be actionable. If you decide to opine online about a particular person, business or topic, you must be sure your statements are accurate and supportable. Use of per se damaging words such as “crook,” “steal” or “scam” should be avoided unless you are prepared to back up those statements. The anonymity of the internet has all too often created an expensive trap for the bold and angry. Be careful out there.

## TABLE OF CONTENTS

The Million Dollar Wedding Photos: Blogger Liability when You Put It Online	1
But I Can Do It by Myself for Less... When Handling It Yourself is not a Good Idea from a Legal Perspective	2
Avoid Family Feuds with These Will Drafting Tips	2
Transferring a Business is a Team Effort	3
New Legislation on Texting while Driving [Insert Your Emoji Response Here]	3
Common Litigation Myths Debunked! Part 1	4
Strong in Action	5a
Strong in the Community	5b

The articles and other information contained in this newsletter are not legal advice, and this letter is not a solicitation for legal employment if you are currently represented by an attorney in a given matter. You should consult with an attorney of your choosing for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters, and emails. Your receipt of this newsletter and/or contacting our firm does not create an attorney-client relationship.

To retain our services, please contact us and we will send you a written engagement letter for your consideration and execution in order to hire our firm and create the attorney-client relationship. Please do not send confidential information to us until such an attorney-client relationship has been established.

Not Certified by the Texas Board of Legal Specialization.



The **Strong Firm**<sup>®</sup>  
Attorneys P.C.

[www.thestrongfirm.com](http://www.thestrongfirm.com)

Two Hughes Landing / 1790 Hughes Landing Blvd. / Suite 200 / The Woodlands, TX 77380  
Phone [281] 367-1222 / [bstrong@thestrongfirm.com](mailto:bstrong@thestrongfirm.com)



## BUT I CAN DO IT BY MYSELF FOR LESS...

### WHEN HANDLING IT YOURSELF IS NOT A GOOD IDEA FROM A LEGAL PERSPECTIVE

**Eric R. Thiergood, Sr.**, *Income Shareholder, joined The Strong Firm P.C. in 2005. Eric graduated from South Texas College of Law and is licensed to practice in Texas and in the United State Federal District and Bankruptcy Court for the Southern District of Texas. He's lived in Asturias, Oropesea Del Mar, and Madrid, Spain and is fluent in Spanish.* [ethiergood@thstrongfirm.com](mailto:ethiergood@thstrongfirm.com)

*"It's unwise to pay too much, but it's worse to pay too little. When you pay too much, you lose a little money – that is all. When you pay too little, you sometimes lose everything..."*

~Common Law of Business Balance

(frequently attributed to John Ruskin 1819-1900, but this attribution is unconfirmed and often contested)

**Potential Client:** "I'm looking to create a new LLC [or corporation or limited partnership]. What would you charge to do that?"  
[Attorney provides price for entity formation]

**Potential Client:** "Well, I read online I can form it myself for less than that."

**Attorney:** "Possibly, but it may not be advisable."

**Potential Client:** "Why not? You don't have to be a lawyer to form your own entity, right?"

**Attorney:** "Correct, but you also do not have to be a dentist to extract your own wisdom teeth, and you do not have to be a physician to give yourself stitches, but neither are recommended."

**Potential Client:** "Well, that is different. That's medical."

**Attorney:** "You do not have to be a licensed master mechanic to replace your own transmission, and you do not have to be a licensed electrician to do certain electrical work in your own home, but neither are recommended unless you have the proper equipment, training and experience."

**Potential Client:** "Well, that is different. That's complicated and potentially dangerous."

**Attorney:** "You do not have to be a licensed barber or cosmetologist to cut your own hair."

**Potential Client:** "But I would never cut my own hair, it would look horrible."

**Attorney:** "If you don't trust yourself cutting your own hair, which will grow back in weeks, why would you risk making such an important decision as forming your new business without advice from an attorney with training, knowledge and experience with entity formations?"

**Potential Client:** "OK, I get your point... How quickly can you get an entity formed for me?"

The reality is there are a lot of things you can do for and by yourself that do not legally require you to pay a licensed professional to do, but it may not be advisable or prudent to do so. This is extraordinarily true when it comes to forming a new entity for your business. As an attorney at a firm that has helped thousands of clients start new businesses, we understand funds are often tight when starting out. Looking for areas to save money in the beginning is not only wise but often necessary.

Our experience has shown us, however, that the few hundred dollars you may manage to save by forming an entity yourself is rarely, if ever, worth it in the long run. It will often cost you thousands of dollars later to fix filing and formation errors. Even the slightest of errors in forming a company can have significant and sometimes disastrous effects on the business and the business owners. One such potentially catastrophic effect we often see from self-formed entities is failure of the corporate shield, which is intended to protect the business owner from personal liability. This results in said owner finding him/herself personally liable for debts and obligations of the company. In such cases, the business owner's personal assets can be at risk and the financial blow devastating. At The Strong Firm P.C., we have assisted thousands of clients in properly forming their new entity to ensure the client has the best protection from personal liability, and we would be glad to do the same for you.



## AVOID FAMILY FEUDS WITH THESE WILL DRAFTING TIPS

**Katherine Wilcox**, *Associate Attorney, joined The Strong Firm P.C. as a new associate in 2016. She earned her Juris Doctorate from SMU School of Law in 2014, and is licensed to practice law in the state of Texas. Prior to joining The Strong Firm, Katherine worked as the Texas Director of Themis Bar Review.* [kwilcox@thstrongfirm.com](mailto:kwilcox@thstrongfirm.com)

In Texas, testators generally have the power to dispose of their property in the manner of their choosing. Unfortunately, when testators decide to disinherit unruly offspring, or treat beneficiaries of their estate disparately, they run the risk of disgruntled family members challenging the terms of their will. Will contests can be costly affairs for the estate and the party bringing the challenge and recognizing potential landmines ahead of time can prevent future squabbles.

*continued on page 4*



## TRANSFERRING A BUSINESS IS A TEAM EFFORT

**Royce Lanning**, Associate Attorney, joined *The Strong Firm P.C.* in 2013. He received his Juris Doctorate from the University of Hawaii, William S. Richardson School of Law and obtained immediate trial experience as a Deputy Prosecuting Attorney with the Department of the Prosecuting Attorney, Maui. He is licensed to practice law in the State of Texas, the State of Hawaii and all Federal District Courts in Texas. [rlanning@thestrongfirm.com](mailto:rlanning@thestrongfirm.com)

Thinking about buying or selling a business? It's a big step in life, so let's talk about surrounding yourself with the right help to make sure you make the best deal possible.

A tempting path for some entrepreneurs is trying to handle the entire transaction themselves. The temptation is understandable. Professional help is costly and entrepreneurs tend to be intelligent people, that have excellent knowledge about their business, and have often entered into a number of "minimally documented" (or undocumented) transactions without suffering negative consequences. An entrepreneur may look at this data and feel like s/he may as well save the cost of using a professional and go it alone.

Similarly, an entrepreneur may decide to obtain professional assistance but become so focused on managing the scope and cost of those services that s/he risks losing a large part of the value that professionals bring to the transaction. Attorneys often encounter resistance from our clients when we suggest setting up a meeting between us and the client's broker, CPA and/or financial planner to review the intended structure. However, those meetings are important to ensure the intended legal structure also provides the best financial/tax structure.

For instance, a meeting between the entrepreneur's attorney and tax professional may reveal that the tax code allows the party(ies) to make an election<sup>1</sup> that allows the buyer to obtain a "step up" in the basis of the company's assets (i.e. mimicking the tax result of an asset purchase) even though the seller is requiring the legal structure be an equity purchase. Alternatively, the same meeting may suggest a negative tax consequence to the entrepreneur if the other party makes that election. Your attorney can then use that information to expressly forbid such an election in the transaction documents.

The sale or purchase of a business is among the most important decisions you will make. Getting the advice you need to obtain the best possible results is well worth the investment. Before rushing into a deal take a few minutes and consider who might be able to help you secure the best possible outcome for you and your family.

<sup>1</sup> See e.g., 26 U.S.C §§ 338(h)(10) & 336(e)



## NEW LEGISLATION ON TEXTING WHILE DRIVING

(INSERT YOUR EMOJI RESPONSE HERE)

**Wendy Lambie**, Senior Associate Attorney, joined *The Strong Firm P.C.* in 2013. Wendy received her Juris Doctorate from South Texas College of Law and is licensed to practice law in the State of Texas and in the United States Federal District Court for the Southern District of Texas. During her career, she has gained valuable experience with Houston area firms, focusing her practice on estate planning and probate. In addition, she has in-depth experience in oil and gas matters, with special emphasis on title issues. [wlbambie@thestrongfirm.com](mailto:wlbambie@thestrongfirm.com)

Texting while driving will soon be illegal in Texas, which recently became the 47th state to pass a texting-while-driving ban. According to the Governor's Highway Safety Association, Arizona, Missouri and Montana will be the only states remaining without a ban. The Texas law will take effect September 1st and only covers texting; it prohibits the use of hand-held phones to "read, write or send an electronic message" while driving. Other Internet uses such as navigation or music programs are still permitted. Many states ban all handheld cellphone use.

Under the new law fines increase per number of offenses from \$25 to \$99 for first-time offenders and \$100 to \$200 for repeat offenders. While no driver's license points will be assigned for violations, the new law does allow a person to be charged with a Class A misdemeanor (a fine not to exceed \$4,000 and jail confinement not to exceed one year) for an accident caused by texting and driving which results in death or serious bodily injury.

Dozens of Texas cities already ban texting while driving. The new law does include a provision to preempt local texting-related ordinances. However, it does not address the ordinances of dozens of Texas cities with stricter cell phone bans than the new state law. Some lawmakers have expressed concerns that the ban will be difficult and confusing to enforce since it is not an "all or nothing" approach. It is very possible the July/August special session will see lawmakers address this concern by either wiping out local ordinances for the current one or introducing a broader ban that also supersedes local ordinances. Clearly legislators are attempting to balance public safety with government overreach and we will see what the summer special session brings.



## COMMON LITIGATION MYTHS DEBUNKED! PART 1

**Laura F. Dumas**, Associate Attorney, joined the Strong Firm P.C. in 2016 after practicing in San Francisco/Silicon Valley since 2006. She graduated from the University of the Pacific, McGeorge School of Law, and has a wide variety of experience in real estate and commercial litigation. Laura also handles corporate governance and business disputes. She is licensed in Texas and California, and in Federal Court for the Northern District of California. [ldumas@thefirm.com](mailto:ldumas@thefirm.com)

In today's competitive business climate, litigation has become an increasingly common, and often necessary, tool for businesses to protect and defend their interests. It is perhaps unfortunate, but it's often a mark of success for a business to be involved in litigation because it means it has established itself well enough to attract the interest (or ire) of individuals and/or competitors in the marketplace. As a result, it behooves businesses to understand the full purview of their potential legal needs, and to recognize that the goals in business litigation often differ substantially from the goals in business transactions. Therefore, litigation must be handled differently, and not just because a court is involved. This series will address several common myths about litigation that persist in the business world, which we hope will help you avoid unrealistic expectations and frustration with both the courts and your lawyer.

**Myth #1: When in doubt, respond aggressively.** Everyone has seen TV shows or movies portraying lawyers as sharks who attack and devour the other side to gain every conceivable advantage, often at the expense of morals, ethics or fair play. While I hope it goes without saying that these portrayals are exaggerations (or outright fabrications) for dramatic effect, many lay people nevertheless believe this is the best type of lawyer to have when faced with a lawsuit. Nothing could be further from the truth.

Contrary to popular belief, a lawyer who is combative, aggressive, and unnecessarily litigious often ends up costing his clients far more over the course of the dispute, often for little or no benefit. (After all, it takes a great deal of time and effort to fight everything, which will no doubt be reflected in the bill.) But judges with busy dockets have little patience for such lawyers and may go so far as to impose monetary sanctions against them, and even their clients. Besides, grandiose posturing, trumped-up claims, and underhanded tactics rarely make the machinery of the court system move any faster. Such tactics may delay a trial on the merits, alienate both the judge and your adversary, and make the possibility of a reasonable resolution—often the best outcome for all parties—far less likely. Instead of a shark, you should hire a lawyer who understands the nuances of litigation, picks appropriate battles, and wages them both capably and professionally.

## AVOID FAMILY FEUDS WITH THESE WILL DRAFTING TIPS

*continued from page 2*

### **Don't Wait Until the Last Minute to Create or Change Your Will**

One of the most common grounds for contesting a will is claiming the person executing the document lacked the requisite mental capacity. While it is not uncommon for testators to draft their first will or make changes toward the end of their lives, doing so may give unhappy family members cause to question the will's validity. Changes to a will made during a period of declining health may raise red flags and lead to questions regarding whether the testator was able to make informed decisions or grasp the consequences of those decisions. While age and illness are not sufficient to invalidate a will on their own, they may provide enough evidence to trigger a will contest action.

### **Look Out for and Address Potential Problems Ahead of Time**

Identifying potential landmines, such as radical beneficiary changes or the outright disinheritance of a child, may allow testators to plan for and potentially ameliorate later family strife. Before making changes to a will, testators should take the time to review their prior estate plan, if any. Will contests are often triggered by heirs feeling blindsided and hurt by the unexpected contents of a will. By identifying radical beneficiary changes, testators have the ability to explain the grounds for the change and reach out to affected heirs. If having this discussion in person will create too much discord, testators can write a letter explaining their decision or include the reason for any changes or iniquities in the will itself. By preparing heirs and answering their questions ahead of time, testators can potentially avoid surprises.

### **Include a "No-Contest" Clause**

Including a no-contest provision may act as a deterrent for dissatisfied heirs who believe they are getting less than their fair share. Under a no-contest clause, beneficiaries risk disinheritance if they contest the content or validity of a will without probable cause. The risk of taking nothing under a will if they lose may cause heirs to carefully evaluate the validity of their claim and the likelihood of its success on the merits.

**Summer 2017**

**The Strong Firm** represents buyer in the closing of a \$6.5 million construction loan.

**The Strong Firm** represents Montgomery County church in the review and negotiation of a \$8.5 million refining and construction loan.

**The Strong Firm** represents borrower in the modification and extension of a \$13.25 million commercial loan.

**The Strong Firm** defends managing partner in \$1.3 million business dispute and obtains dismissal of all causes of action and affirmative recovery for client.

**The Strong Firm** represents borrower in extension and amendment of a \$5.3 million commercial credit facility.

**The Strong Firm** represents managing member in ownership dispute regarding control of a Texas limited liability company.

**The Strong Firm** represents retail office condominium owners in nuisance claim against occupant.

**The Strong Firm** assists Woodlands restaurant client in claim against accountant for improperly reporting and filing applicable alcoholic beverage sales taxes.

**The Strong Firm** represents borrower in amendment and modification of a \$6.6 million commercial loan.

**We provide legal services in all of the following areas:**

REAL ESTATE  
 MERGERS, ACQUISITIONS, AND SALES  
 BUSINESS LAW AND CONTRACTS  
 CORPORATIONS, LLCs, AND PARTNERSHIPS  
 TRUSTS AND ESTATE PLANNING  
 BUSINESS DISPUTES  
 COMMERCIAL DISPUTES  
 LENDING AND BORROWING  
 TRADEMARKS  
 OIL, GAS AND ENERGY  
 MEDIATION



**Bret L. Strong**, Attorney, Founder, and Managing Shareholder;  
**Royce Lanning**, Associate Attorney; **Katherine Wilcox**, Associate Attorney;  
**Wendy Lambie**, Senior Associate Attorney; **Laura F. Dumas**, Associate  
 Attorney; **Eric R. Thiergood, Sr.**, Income Shareholder

**HURRICANE HARVEY**

While some of our staff sustained flood damage to their homes after **Harvey** our families are all safe. Sadly, that's not the case for so many in our community. For those looking for ways to help, please consider support through our friends at Saddle River Range who are collecting non-perishable food, personal care items, diapers, and clothing or donations to Interfaith of The Woodlands or other local charities and faith-based organizations who are directly helping support and rebuild our community. God Bless our wonderful community, the City of Houston and the great State of Texas.

~ Bret Strong



*Left.* In support of the **Education for Tomorrow Alliance's** "Trivia Night" in August, The Strong Firm was a sponsor and volunteered for the event. Pictured are Bret Strong, emcee, with Scott Harper, Major Gifts Officer at YMCA of Greater Houston.



*Above.* Wendy Lambie has been elected to the **Leadership Montgomery Class of 2018**



*Right.* The Strong Firm was a sponsor of **The Woodlands Area Chamber of Commerce's** Chairman's Ball themed "Celebrating The Heart of Our Community." Pictured are Angela and Bret Strong.



*Above.* Attending the VIP soft opening for Goode Co. BBQ in July, which raised donations to benefit **Interfaith of The Woodlands**, are (from left) John & Wendy Lambie with Steve & Renee Glazer.