

Unedited transcript of

## **'Ask the Experts' Q&A**

from **Organizing an LLC**

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### **Speaker(s)**

Kelly L. Dutremble, Esq.

Joshua E. French, Esq., Nutter McClennen & Fish LLP, Boston

>>: So really quickly, I - I've got a handful of questions that rolled in that we haven't dealt with, so I just want to run through them quickly so I can - so we can get you those answers. There's a question about registering a foreign LLC in Massachusetts - so an LLC that's created in another state - and if you qualify them, does that make them amenable to suit for anything in Massachusetts? Does it make Massachusetts address a principal place of business to make it at home for purposes of diversity jurisdiction? So you've got the wrong people. This is (laughter) - in terms of the - in terms of questions about civil procedure, that can go to my friends in the litigation department. I - the last time I learned anything about diversity jurisdiction was when I studied for the bar exam in 2008. However, you know, if you do the thing in Massachusetts, or if you're located in Massachusetts, under the statute, you're probably obligated to file as a foreign corporation. And if you want to take advantage of Massachusetts courts, if you're not qualified to do business, you probably won't be able to get access to the state courts because you're not registered to do business here - you may not be able to anyhow. So that's something to be thoughtful of. Question is asked, you know, if a member of an LLC in their capacity as doing business in the LLC gets into an auto accident, the LLC may be liable in a tort claim - right? - because the member is doing its thing. But is the member also personally liable? Again, torts question, 2008, I was doing my bar prep. However, I mean, the short version is if you do - if you commit a negligent act, then while there may be other pockets that could be liable, you could also be sued in your capacity as doing an inappropriate, you know, and negligent act that results in personal liability. So that's different than the

company takes out debt or has a service provider that they owe money to, and then the company runs out of money, and you, as the individual are not obligated to pay that. That's a totally different thing. Question, what if there's no operating agreement? Do you fall back to the default statutory rules? The answer is yes, and then the slightly longer answer is the statutory rules are not something you want to rely on. They are very vague at best. There's very little there. So if you've got an LLC that's got multiple members, spend the time. Put together an operating agreement. Practical advice about choosing a registered agent, short answer there is, you know, make sure you find one that is reputable, right? There are different companies out there that do this, and there are very large ones. There are small ones. Most of them do a good job finding one that you have a good connection with. My dog is freaking out. Come here. You want to say hello? All right, just calm down for the rest of this. Three more questions, if the entity refuses to buy back the ownership interest in accordance with a repurchase agreement, then what happens? So two things there, typically, it's not a company obligation to buy back the equity. It's a seller's obligation to sell if the company chooses to buy it back. However, if it was the other way, then obviously breach of contract. And so, you know, you start there, whether that's money damages or specific performance. Don't know - you know, that's a question for the litigators in the group. But oftentimes, it's the opposite way. And in that situation, if the company calls the equity, and you refuse to deliver it - right? - there's typically provisions that say the company can pay you the money and then update its books and records accordingly. Have we ever set up membership interest jointly with the right of survivorship? Yeah, it happens. We see that sometimes where it's jointly owned, not frequently, but it can happen. So there's nothing - it's like any other property. Property interests, you can do it however you want. And then the last question, can a Massachusetts professional corporation elect to be treated as an S corp? The answer there is yes. S corporation status is not a different type of entity. It is a tax classification. So a corporation is a corporation is a corporation. A professional corporation is a type of corporation within the state that's used for professional - you know, professional professions - licensed professions. But in terms of the tax status, that's a federal tax overlay. And so, yes, you can elect to have S status. All right, I've settled Leo down, but thank you all for hanging with us. Hopefully, we got answers to your questions, but you should feel free

to reach out to us. We're both at Nutter. We do this all the time. Kelly and I work together frequently. We work with emerging companies. We work with medium-sized companies. We help companies all through their life cycle, from formation to fundraising to operations to their eventual sale and hopefully for large amounts of money. So feel free to reach out if there's any other ways that we can be helpful to you and your practice.