

# Welcome

## The Newest Member of Our Corporate Group — Benjamin Butterfield



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We welcome **Benjamin Butterfield** to the firm who joins us in the firm's Corporate and M&A Practice Group. Ben primarily focuses on corporate, banking, securities law and corporate governance/compliance on behalf of local and international clients.

"We are delighted that Ben has joined our firm. He is an outstanding attorney with extensive experience in corporate transactions, governance and finance," said William T. Dymond, CEO and President of the firm. "We are committed to expanding and deepening our corporate capability, including our ability to serve our international clients. Ben understands the pressures and challenges of the corporate general counsel's office, having significant in-house experience in that role. He has a proven track record of success and is a great addition and complement to our existing corporate practice."

Over the past 30 years, Ben has worked in private practice, as general counsel and as a C-suite executive where he focused on mergers, acquisitions, dispositions, reorganizations and recapitalizations. Ben has negotiated and closed hundreds of transactions ranging in size from several million dollars to more than USD \$1 billion (which included the acquisition of one public company). Ben's general corporate experience is varied and has included extensive contract negotiation and drafting, corporate "housekeeping" matters, risk management, project management, and corporate finance.

Ben has handled matters that are exclusively international in nature (e.g., a dispute in a non-U.S. venue) or that included an international component. He has managed corporate, litigation and regulatory matters in the United Arab Emirates, Kingdom of Saudi Arabia, Qatar, Chile, the United States, Australia, New Zealand, Philippines, France, Switzerland, United Kingdom and the Netherlands.

Ben has significant experience dealing with state and federal regulatory bodies.

Additionally, Ben has been on the Managing Board of a NYSE and ASX listed company, and served as an advisor to several boards and their committees, advising them on corporate governance issues. He understands the relationship between a company's management, its board, shareholders and other stakeholders. Ben has also been an Ethics and Compliance Officer to global organizations and has been an advisor to CEOs, Audit Committees and Internal Audit on such matters. With respect to compliance matters, he has conducted internal investigations, ethics and compliance training, managed significant international compliance programs and conducted training on the Foreign Corrupt Practices Act (FCPA). Regarding the FCPA, he has appeared before board committees, regulatory authorities (including the US Department of Justice and the Securities and Exchange Commission) and foreign governmental agencies to address alleged violations of the FCPA.

As a general counsel, Ben has managed legal departments on three continents. Ben has served on the Managing Board for James Hardie NV and also held the position of European Business Manager while residing in the Netherlands.

Ben received a law degree from Stetson University College of Law and a bachelor's degree in history from Covenant College in Georgia. Prior to starting law school, Ben was the business manager for the Edgewood Children's Ranch, a non-denominational non-profit organization in Orlando, Florida. He supports Autism Speaks, Ducks Unlimited, Zebra Coalition and the SPCA. Ben is also an avid outdoorsman. ■

## Trump Directive to Reduce Regulations Could Benefit Businesses

By Amanda Wilson [amanda.wilson@lowndes-law.com](mailto:amanda.wilson@lowndes-law.com)

Amanda Wilson



President Trump has made several public statements regarding his intention to reduce the regulatory burden facing businesses, and he has taken a key step in putting his policy into action. On January 30, 2017, President Trump signed an Executive Order titled "Reducing Regulation and Controlling Regulatory Costs." This executive order requires that any federal agency that proposes to issue a new regulation must identify at least two existing regulations to be repealed. In addition, the total incremental costs associated with any new regulations (including the costs from repealing any regulations) finalized in fiscal year 2017 must be no greater than zero. In other words, any regulatory changes cannot increase the number of regulations or the costs imposed by those regulations.

While this is a clear statement directing federal agencies to reduce the regulatory burden on businesses, there is unfortunately a lot of uncertainty associated with how the executive order will be implemented. One area of confusion is how incremental costs are to be determined. Another area of confusion stems from an exception contained in the executive order. The executive order states that these rules do not impair or otherwise affect any regulatory authority granted by law to an executive department or agency. In other words, if a statute authorizes an agency to issue regulations, those regulations are not affected by the executive order. The question, though, is which regulations qualify for this exception. For example, are tax regulations covered by the executive

order? On its face, the executive order would appear to apply to tax regulations. However, Section 7805 of the Internal Revenue Code grants the Treasury Department authority to issue regulations as needed to implement the tax code. So are tax regulations exempt? We will have to wait and see, although early indications are that the Internal Revenue Service is proceeding on the assumption that tax regulations are subject to the order.

While the application of this executive order is still up in the air, one thing is clear. President Trump intends to decrease both the number of regulations and the costs imposed as a result of those regulations, and that could be good news for businesses.

For more information on the firm's Tax Group, please visit: <http://bit.ly/1xEATpv> ■

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## Best Practices in Supply Chain Management

By James O'Brien

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— Previously published in *Spacecoast Business Magazine*

James O'Brien



Doing business in today's competitive global economy requires stronger, more reliable relationships in all business segments, including technology equipment, industrial goods, retail products and services. Whether you are a buyer or supplier, regardless of the industry, you must have an understanding of the challenges inherent in the procurement process.

### FIVE CONCERNS FOR THE BUYER

**1. Game Plan Consensus.** An effective procurement process begins with the participation of all internal stakeholders from the initiation of a project. Many procurement problems arise from miscommunication — and especially lack of communication — among the parties charged with defining the need, those who identify the source for the solution and those implementing the procurement. Poor communication on the front end of procurement can cause large problems, however, with planning many problems can be avoided.

**2. Realistic Expectations.** Once a procurement need has been defined, the involved stakeholders need to determine and agree on realistic expectations for development, timeframes and costs. This can be a particularly difficult issue to manage as the desire

to rush to market almost always forces unreasonable decisions in the development cycle, which in turn impacts timeframes and ultimately results in escalating costs.

**3. Multiple Sourcing.** Betting the project — or worse, the company — on a sole source is tantamount to playing Russian Roulette. While established relationships may give buyers comfort, the failure to have a backup supply option can prove extremely damaging should the trusted source fail. Supply chain planning should include the establishment of alternative relationships and supply paths to reduce source risk.

**4. Defining the Requirements.** Failing to properly define the work to be done or product to be produced is a common issue that leads to disagreements with suppliers. Detailed specifications will help minimize disagreements with the supplier, disappointments upon delivery, being late to the market, and ultimately disappointing your customers.


**5. Intellectual Property ("IP") and Rights Upon Default.** Identifying and protecting your rights related to IP involved in procurement can be critical for protecting the buyer and minimizing damage in the event of failure by the supplier. Buyers should identify all IP involved and ensure the ability to use the IP in the event of failure by the supplier, without the need of additional negotiation.

### FIVE CONCERNS FOR THE SUPPLIER

**1. Realistic Commitments.** Winning a job is a fantastic event in any company but overcommitting on the terms, whether technical, timeframes, capabilities or price, can lead to very difficult discussions with the customer. The various stakeholders from the supply side, including sales/marketing, development and production, need to reach consensus on critical terms and stick to the plan so as to avoid the difficulties associated with failing to meet the terms of the deal.

**2. Market Expectations.** In recent years, the general trend in most markets has been towards buyers shifting risk to their suppliers, witnessed by the way customers approach service

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## About the Firm



THE FINE PRINT is intended to provide information, but not legal advice regarding any particular situation. Questions about individual problems should be addressed to the Lowndes, Drosdick, Doster, Kantor & Reed attorney of your choice. Editorial inquiries should be directed to Daniel McIntosh at LOWNDES, DROSDICK, DOSTER, KANTOR & REED, P.A., P.O. Box 2809, Orlando, FL 32802-2809. Photocopying or reproducing this

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### The firm currently practices in the following areas:

Administrative Law	Eminent Domain & Condemnation	Labor & Employment Law
Alternative Dispute Resolution	Environmental Law	Litigation & Trial Practice
Aviation	Family & Marital Law	Privacy & eDiscovery
Banking & Finance	Foreign Investments in the U.S.	Private Wealth Services
Bankruptcy	Land Use & Zoning	Real Estate
Capital Markets & Technology	Commercial Leasing	Restaurant Services
Construction	Corporate & Securities	Senior Housing
Creditors' Rights	Developments of Regional Impact (DRIs)	Supply Chain Management
Distressed Real Estate Solutions	Immigration	Tax
	Intellectual Property Services	

**Where are your business needs?** Modern business often spans continents and time zones, and we are here to help you navigate through complex legal issues around the world. As a founding member of Meritas, our firm has access to a global alliance of more than 7,450 experienced lawyers in 189 full-service law firms serving 240 markets around the world — all rigorously qualified, independent and collaborative. Membership in Meritas is by invitation only. Members are required to participate in ongoing recertification and periodic peer reviews, ensuring their adherence to high levels of client service. ■



## What's New?

### Congratulations to Our New Shareholders

We are pleased to announce that **Jennifer Dixon, Ronald (Ronny) Edwards, Michael Provenzal** and **Stephen Thomas** have been promoted to the position of shareholder. Jennifer and Stephen have recently served as counsel to the firm. Ronny and Michael most recently served as senior associates at the firm. Stephen is located in the firm's Melbourne office while Jennifer, Ronny and Michael are located in the firm's main Orlando office.

"We are delighted to welcome these four outstanding attorneys into our firm's ownership and elevate them to shareholders," said **William T. Dymond**, CEO & President of the firm. "Jennifer, Ronny, Michael and Stephen are dedicated to our firm, our clients and our community, and we are certain that in their new roles they will strengthen our law firm and enhance our ability to serve our clients."



### Meet Our New Attorneys



Left to right: Brian Lawrence, Nancy Conicella, Steven Strickland and Diana Coronel David

We welcome four new associates, **Brian Lawrence, Nancy Conicella, Steven Strickland** and **Diana Coronel David** to the firm's Orlando office.

**Brian** is a member of the Litigation Group. He is a graduate of the University of Florida Levin College of Law. He received his bachelor's degree from Florida International University.

**Nancy** is a member of the Land Use & Zoning Group. She is also a graduate of the University of Florida Levin College of Law. She has received her undergraduate degree from the University of Pittsburgh.

**Steven** is a member of the Corporate and Securities Group. He is a graduate of the University of Miami School of Law. He received his bachelor's degree from Harvard University.

**Diana** is a member of the Estate Planning Group. She is a graduate of Florida A&M University. She received her undergraduate degree from the University of Cauca – Colombia.

### Kudos



Congratulations to our CEO & President **William T. Dymond** who was recognized by Mayor Dyer as past chair of the Downtown Development Board and CRA Advisory Board and for his eight years of service and commitment.

**William T. Dymond**, Eddy Moratin & Sandy Hostetter were honored with the Economic and Community Involvement Award for their work on behalf of LIFT Orlando, Inc. at this year's CREW Orlando Celebration of Champions Gala.

Congratulations to **Jackie Bozzuto** who received the **Orlando Woman of Influence** award during this year's CREW Orlando Celebration of Champions Gala.

**Melody Lynch** was honored with the **Orlando Business Journal 40 Under 40** award.

**Quino Martinez, Jon Gibbs** and **Jackie Bozzuto** were featured in the "Awesome Attorneys 2016 for Real Estate Law" section of the *Orlando Family Magazine*.

The firm has been recognized in the 2016 edition of **Chambers USA**, a highly regarded directory of America's leading lawyers for business, for several firm practice areas and individual lawyers with top rankings. The following attorneys have been recognized for 2016 as "Leaders in their Field": **Aaron Gorovitz, Gary Kaleita, Hal Kantor, Joe Lane, Michael Ryan, Miranda Fitzgerald, Peter Reinert** and **Richard Fildes**. Chambers USA also ranked the firm in the areas of Real Estate: Zoning/Land Use and Real Estate.

We are also pleased to announce that 21 of the firm's lawyers have been named **Florida Super Lawyers** for 2016 by *Super Lawyers* magazine. Additionally, 11 of the firm's attorneys have been recognized as **2016 Florida Rising Stars**.

The firm has been recognized once again as one of the leading firms in the 2017 edition of "Best Law Firms" list by *U.S. News and World Report* and **Best Lawyers in America**.

We have been highlighted in the 2016 edition of **The Legal 500 United States**, a directory of client- and peer-recommended firms, practices and lawyers used by clients throughout the country, for our M&A/corporate and commercial — M&A: middle-market (sub-\$500m) — real estate and construction — land use/zoning. Additionally, **Peter Reinert**, Chair of the firm's Capital Markets & Technology Group, was listed as the recommended attorney for M&A/corporate and commercial — M&A — middle-market (sub-\$500m), and **Aaron Gorovitz, Miranda Fitzgerald** and **Rebecca "Becky" Wilson** were listed as the recommended attorney for real estate and construction — land use/zoning.

We were honored to be a finalist once again for the Winter Park Chamber of Commerce **Ovations Awards**.

## In the Community

**Matthew Brenner** was appointed for a two-year term as the president of the Florida Bar Foundation, a statewide charitable organization, established in 1956 by The Florida Bar Board of Governors and the Florida Supreme Court, to provide greater access to justice in Florida.

**Richard Dellinger** published an article titled "Summary of Rule Revision in the Business Court" in the *OCBA Briefs*. To read the article, go to: <http://bit.ly/2kuRulo>

Our CEO and President, **William T. Dymond**, was featured in the January issue of *Spacecoast Business Magazine*. To read the story, go to: <http://hubs.ly/H05KzC60>

**Miranda "Randi" Fitzgerald** has moderated and participated in a panel discussion on plat issues and pitfalls at a seminar sponsored by the Environmental and Land Use Section of The Florida Bar in Orlando.

### Meet Matthew!

We welcome attorney **Matthew McMurtrey** to the firm as an associate in the firm's Real Estate Group. Matthew focuses on real estate transactions, development and finance, with an emphasis on hospitality, leisure assets and senior living facilities.

### Community Service

We are honored to have received two **2016 Corporate Philanthropy Awards** from the *Orlando Business Journal*.

We have raised a total of \$7,780 for the **Leukemia and Lymphoma Society** during our 2016 annual summer fundraiser. The firm has been hosting the summer fundraiser for 16 years and has raised a grand total of \$167,181.44.

**Aaron Gorovitz** has been honored with a national **STOP Diabetes-SHARE** award by the American Diabetes Association (ADA) for his outstanding contributions in the fight against diabetes. This award is unique, and has not been given to anyone else in the US during the past twelve months. As the chairman of the local ADA Father of the Year (FOTY) Council and a 2011 FOTY award recipient, Aaron has helped grow the FOTY Awards event in Orlando. The FOTY awards is a fundraising event for the ADA that celebrates family.

**Ahmad El-Gendi** participated with the Young Lawyers Section of the Orange County Bar Association at the Great Oaks Village, a residential foster group home located in Orlando that takes in children ages 6 to 18 who have been removed from their homes due to abuse, neglect or abandonment.



Matthew Brenner



Richard Dellinger



William T. Dymond



Randi Fitzgerald

**Rachel Gebaide** was interviewed by NPR in Washington, D.C. about the overtime pay rule. To listen to the show, go to: <http://n.pr/2kcurpz>

**Mark Heimendinger** spoke at a Strafford live webinar titled "Interest Rate Hedges in Real Estate Finance: Placing Swaps, Caps, and Collars on Floating Rate Loans."

**Matt O'Kane** was quoted in a feature article titled "Florida Businessmen Anticipate Trump Tax Cuts" which was published in the *Orlando Sentinel*. To read the article, go to: <http://bit.ly/2lz40HW>

**Brendan Lynch** was quoted in a feature article titled "Prospective FDOT Taking Near Disney Leaves Crossroads Restaurants in Limbo" which was published in *GrowthSpotter*. To read the article, go to: <http://bit.ly/211NFO6>



Rachel Gebaide



Mark Heimendinger



Matt O'Kane



Brendan Lynch

**Amanda Wilson** was highlighted in a front-page story titled "Questions Linger About Impact Of Executive Order On Tax Regs" in the *CCH Standard Federal Tax Reports*. To read the story, go to: <http://bit.ly/2kNuB7o>

**Drew Sorrell** addressed Cyber Security at TerraCom Direct. To view the presentation, go to: <http://hubs.ly/H04ZM9v0>

**Tara Tedrow** and client Knox Medical were highlighted in a WFTV Channel 9 spotlight on the business of medical marijuana which aired on Super Bowl Sunday. To watch the video, go to: <http://bit.ly/2lxQovB>

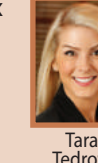
**Tara** was also highlighted in a *Rostrum* article titled "One Alum's Quest to Expand Speech and Debate." *Rostrum* is a National Speech & Debate Association publication which is circulated nationwide. To read the article, go to: <http://hubs.ly/H05mLRH0>



Amanda Wilson



Drew Sorrell



Tara Tedrow



Matthew McMurtrey

## Actually, Hotel Franchise Agreements Are Negotiable



Ormend Yeilding

By Ormend Yeilding [ormend.yeilding@lowndes-law.com](mailto:ormend.yeilding@lowndes-law.com)

There is a widespread assumption that brand franchise agreements are not negotiable. This assumption is so prevalent that many real estate investors will devote substantial effort to negotiating the terms of a hotel purchase agreement, management agreement and loan agreements, while accepting the brand's first draft of the franchise agreement with a shrug.



This is a mistake. Because like most widespread assumptions, it is true only part of the time. Here are a few provisions that are often negotiated between hotel brands and prospective franchisees (but note the caveat below):

**Franchise Fees** — franchise fees are based on a percentage of room revenues. Franchisees can sometimes negotiate a temporary reduction of the applicable percentage, particularly if the hotel is new construction or if the franchisee will perform substantial renovations.

**Guarantor** — many form franchise agreements require a personal guaranty to be signed by a principal of the franchisee entity. This requirement can usually be waived so long as the franchisee will have substantial equity in the hotel.

**Interest Transfers** — transfers of interests in the franchisee entity are subject to the brand's approval. However, franchisees can sometimes get specific types of future transfers pre-approved by the brand.

**Right of First Refusal** — many form franchise agreements contain a ROFR/ROFO in favor of the franchisor in the event the franchisee elects to sell the hotel during the term. Franchisees should get this removed up front.

**Area of Protection** — brands will sometimes agree to an "area of protection" for the franchisee, prohibiting any additional hotels under the same brand within a certain area for the first few years of the term. The territory and number of years are negotiable (and increasingly in this age of brand mergers, whether the restriction applies to more than one brand).

**Key Money** — for important properties, brands will sometimes provide upfront capital to the franchisee, called "key money". Key money does not have to be repaid so long as the hotel performs under the franchise agreement throughout its stated term, which is why it is popular with franchisees. Note, however, that the provision of key money may make the brand less flexible in negotiating other terms.

A better way to frame the question is not "what" provisions are negotiable, but rather "when" a franchise agreement is negotiable. A brand needs a compelling reason to change its form agreement. If a franchisee is in a position to walk away from a deal unless certain changes are made, or, even better, has the option to go with another brand offering better terms for the same hotel, then the brand is often willing to work with the franchisee. But if a franchisee waits to negotiate the franchise until a week before the closing deadline (after the deposit is non-refundable), the best the franchisee can usually do is accept the franchise agreement with a shrug.

For more information on the firm's Hospitality & Leisure Group, visit: <http://bit.ly/2l8F1st>

## Best Practices in Supply Chain Management

...continued from page 1

level commitments and the remedies associated with the failure to meet those commitments. The supplier team needs to develop terms and approaches to these concerns and proactively be prepared to introduce solutions as the customer may face similar expectations with the end user.

### 3. Warranty and Post-Warranty.

Suppliers are increasingly faced with the demands for expanded warranties and warranty periods. Similarly, post-warranty commitments for availability of product, spares, components and service for extended periods with fixed pricing have become more common. Suppliers need to factor these types of requests into their proposals to customers.

**4. International Issues.** As the opportunity for suppliers to furnish goods and services to international customers continues to increase, the application of U.S. export control laws, the potential imposition of international and foreign laws, and the associated complexities with international transactions have become more frequent. Most suppliers should seek outside guidance to address these issues and avoid exposure to the potential risks.

**5. Know Your Customer.** The excitement of a new relationship or a big order can sometimes override the standard diligence process that suppliers should undertake with their customers and prospects. Keep up to date on current customers,

especially their creditworthiness, which can change all too quickly. Information on most businesses is readily available and should be one of the first undertakings by a supplier in considering a new or continuing relationship so as to reduce the risk of surprise.

Many issues arise during the negotiations of a supply agreement but you can help reduce risks by addressing these critical steps and preparing for a fair agreement that meets the needs of both the buyer and supplier.

For more information on the firm's Supply Chain Management Group, please visit: <http://bit.ly/2lWmJfZ>