Limiting Your Liability For LLC Opinions

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Know what you know, and opine only on that.

LIMITED LIABILITY COMPANIES ("LLCs") have become the preferred business entity in many private and some public transactions, particularly those involving commercial real estate. Long a preferred venue for entity formation, Delaware now has about twice as many LLCs ("DLLCs") as corporations. Transactions involving LLCs often call for the delivery of third-party closing opinions. While these opinions can be thought of as similar to those required in transactions involving corporations or other entities, there are significant differences. Unlike corporations, for which a great many matters are determined by the mandatory provisions of the relevant corporate statute, LLCs are to a significant extent creatures of contract. Default rules provided by the relevant LLC statutes are often overridden by language in the LLC's governing instrument. When opining on an LLC, it is therefore essential to review the relevant governing instrument in light of applicable law, including contract law. Opinion-givers should be mindful that certain concepts and nomenclature appropriate to corporations have no antecedent or relevance to LLCs.

The TriBar Opinion Committee ("TriBar"), a group including lawyers who frequently participate in the delivering and receiving of legal opinions, is generally viewed

as the foremost authority on LLC opinions. (The TriBar Opinion Committee was created in 1977 and originally drew its membership from the New York State Bar Association, the New York County Lawyers' Association, and the Association of the Bar of the City of New York. While its name has remained the same, its membership has become more diverse, both geographically and otherwise.) TriBar has now issued two reports specifically addressing closing opinions relating to LLCs. The first of these, issued in 2006, *Third-Party Closing Opinions: Limited Liability Companies*, 61 Bus. Law. 679 (2006) (the "2006 Report"), speaks generally to opinions relating to:

- Status (the LLC's status as a limited liability company duly formed and validly existing in good standing);
- Power (the LLC's power to enter into and perform its obligations under specified documents);
- Action (the LLC's authorization, execution, and delivery of specified documents); and
- Enforceability of LLC agreements.

The second, issued in 2011 *Supplemental TriBar LLC Opinion Report: Opinions on LLC Membership Interests*, 66 Bus. Law. 1065 (2011), (the "2011 Report"), supplements the 2006 Report and speaks to opinions relating to:

- Valid issuance of LLC interests;
- Admission of purchasers of LLC interests as members of the LLC;
- Obligations of purchasers of LLC interests to make payments and contributions to the LLC; and
- Personal liability of purchasers of LLC interests to third parties.

Assuming the reader's general familiarity with status, power, and action opinions, this article briefly considers such opinions in the context of LLCs, proceeds to a somewhat more detailed discussion of enforceability opinions relating to LLC agreements, and continues with discussion of the salient differences between opinions on LLC membership interests and analogous opinions in the corporate context. It concludes with suggested approaches to the delivery of such opinions.

LLCS DISTINGUISHED FROM CORPORATIONS • The LLC is at once like, and unlike, the corporation. Both are separate juridical persons, distinct from their owners and managers, with potentially unlimited life. But whereas the corporation is, to a significant extent, a creature of statute, with attributes similar, if not identical, to those of other corporations formed under the same statute, the LLC is, or may be, a creature of contract, with the consequence that LLCs formed under the same statute may differ significantly from one another. The Delaware Limited Liability Company Act, Del. Code Ann. tit. §18-101 et seq. (the "Delaware LLC Act"), is sometimes referred to as a "default statute." Many of its provisions are "default" rules that can be altered by provisions in the LLC agreement. For example, while the Delaware LLC Act provides for management of DLLCs by members in proportion to their economic interests, this default rule is displaced in a great many DLLC agreements in favor of a managing member, a non-member manager, or another governance structure. In bankruptcy remote DLLCs, management is often vested, as least with respect to certain extraordinary events (like filing a voluntary petition for protection under the bankruptcy code), in a board of directors whose members include a so-called "independent director." In such instances, it is essential that all terms relating to the creation, existence, membership, powers, and authorities of the board of directors be detailed in the DLLC's LLC agreement — the Delaware LLC Act provides no guidance on such points. Indeed, the word "director" appears in the Delaware LLC Act only in its discussion of en-

tities eligible to act as registered agents for DLLCs. These potential differences between DLLCs and corporations, and between one DLLC and another formed under the same statute, can have significant consequences for opinion-givers.

THE 2006 REPORT. • The 2006 Report speaks in large part to the practice of issuing LLC opinions that purport to be limited to the relevant limited liability company act or statute — for instance, the Delaware LLC Act. Such opinions follow the practice that has evolved among non-Delaware lawyers regarding opinions delivered under the Delaware General Corporation Law, Del. Code Ann. tit. 8 §101 et seq. (the "DGCL"). In the context of LLCs, many of the matters generally addressed by third-party opinions are a function not of statutorily mandated provisions, but of contractual terms reflected in an LLC agreement and displacing statutory default rules. That is, LLCs differ fundamentally from corporations for opinion purposes.

The 2006 Report expresses TriBar's view that status, power, and action opinions on DLLCs cover not only the Delaware LLC Act but also applicable contract law and case law, including cases applying fiduciary duty concepts, unless such matters are expressly excluded. Interestingly, TriBar did not reach consensus on whether language purporting to limit such opinions to the Delaware LLC Act effectively excludes from status, power, and action opinions issues of contract law that such opinions otherwise would cover. The 2006 Report notes that a literal reading of such a coverage limitation (that is, exclusion of contract law) would be at odds with the Delaware LLC Act's overarching deference to the terms of the LLC agreement as superseding the default rules contained in the Delaware LLC Act. That said, provided they are attentive to the unique characteristics of LLCs, many practitioners may find that they are comfortable opining as to LLC status, power, and action. Opinions on enforceability of LLC agreements are a different matter.

Opinion preparers without requisite expertise in the entirety of applicable general contract law should not opine on the enforceability of LLC agreements. Section 18-1101(b) of the Delaware LLC Act provides that "[i]t is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements," and sections 1101(c) and (d) expressly permit expansion, restriction, or elimination of certain duties (including fiduciary duties) and related liabilities. The 2006 Report finds that enforceability opinions of necessity embrace state contract law, covering as they do all provisions of the LLC agreement and not merely those applicable to status, power, and action. Many of the bankruptcy-remoteness and other features of an LLC (e.g., its management) arise solely from the terms of the LLC agreement, having no antecedent in (but nonetheless facilitated by) the language of the Delaware LLC Act. Thus, opinion-givers should consider that limitation to the Delaware LLC Act may not effectively limit their opinions as they intend. Similarly, opinion recipients should consider that in the event an opinion is effectively limited to the Delaware LLC Act, it provides little comfort on the matters addressed to the extent they go beyond the language of the Delaware LLC Act.

Recent judicial decisions have highlighted many of the third-party protections available to lenders and others only through inclusion of appropriate contractual provisions in LLC agreements, underscoring the difficulty in providing enforceability opinions. The Delaware Supreme Court recently affirmed a Delaware Court of Chancery decision that held that creditors of an insolvent DLLC do not (unless the DLLC agreement provides otherwise) have standing under Delaware law to sue derivatively for breach of fiduciary duty. *CML V, LLC v. Bax*, 28 A.3d 1037 (Del. 2011). Although this decision has received a great deal of attention, it can be viewed as predictably consistent with the plain language of the Delaware LLC Act. Indeed,

Subchapter X of the Delaware LLC Act, subtitled "Derivative Actions," provides that a "member or an assignee" may bring a derivative action (section 18-1001), and further provides that "the plaintiff *must be* a member or an assignee" (section 18-1002, emphasis supplied). If the holding in *CLM V* was less than a revelation, those who participate in complex transactions with DLLCs should nonetheless find particularly interesting the Court's discussion of certain features of the Delaware LLC Act. Such features speak clearly and directly to a host of rights and protections lenders may value and seek in their dealings with DLLCs. They do not arise under the language of the Delaware LLC Act, but only through inclusion of appropriate contractual terms in the LLC agreement. These include:

- Creating in a lender's favor contractual rights notwithstanding that the lender remains a nonparty to the LLC agreement. Sections 18-101(7) and 18-306;
- Expanding or clarifying duties owed by a member or manager to a lender. Section 18-1101(c);
- Conditioning amendment of the LLC agreement on the lender's consent. Section 18-302(e);
- Empowering the lender to seek appointment of a receiver. Section 18-805; and
- Empowering the lender to enforce a contractual provision obligating a member to make additional capital contributions. Section 18-502(b).

What is clear now, if it wasn't before, is that while the court may look to corporate or other law by analogy when considering a question whose answer is elusive, when the Delaware LLC Act is clear its provisions will be enforced, regardless of their differences from analogous issues arising in the corporate law context. Because lenders can enjoy many such rights only as a function of facilitative contractual terms altering or supplementing the default rules of the Delaware LLC Act, one might reasonably anticipate increased demand for, and reliance upon, such contractual terms in the time ahead.

Of course, when specific rights are sought to be created by contract, the question of optimal, or even adequate, phrasing presents itself. Predictably, some attempts will be found sufficient, others insufficient. The language of the statute provides little, if any, guidance. Published decisions, as well as the less formal indicia of emerged and emerging views comprehensible to those who regularly deal with such matters, provide such guidance as there is. By way of illustration, note that whereas the Delaware LLC Act permits modification, and even elimination, of fiduciary duties, case law clarifies that such modification or elimination must be explicit. *Bay Center Apartments Owner, LLC v. Emery Bay PKI, LLC,* 2009 Del. Ch. LEXIS 54, at *27 n.33 (Del. Ch. Apr. 20, 2009). Similarly, case law supports the understanding that "unless limited or eliminated in the entity's operating agreement, the member-managers of a Delaware limited liability company owe traditional fiduciary duties to the LLC and its members." *Phillips v. Hove,* 2011 Del. Ch. LEXIS 137, *64-65 (Del. Ch. Sept. 22, 2011) (citing Del. Code Ann. tit. 6 §18-1101(c) and *William Penn P'ship v. Saliba,* 13 A.3d 749, 756 (Del. 2011)); *accord, Auriga Capital Corp. v. Gatz Prop., LLC,* C.A. No. 4390-CS, 2012 Del. Ch. LEXIS 19, at *23-47 (Del. Ch. Jan. 27, 2012) (appeal to the Delaware Supreme Court pending). However, Delaware law is clear on the point that the implied contractual covenant of good faith and fair dealing cannot be modified or eliminated.

THE 2011 REPORT • The 2011 Report speaks to certain opinions typically given in connection with the acquisition of LLC interests. Many have their origins in corporate practice. As traditionally sought, and sometimes received, they speak in terms without established meaning in the LLC context, giving rise to a disquieting uncertainty as to what potential risk is sought to be addressed by the opinion, the degree of success with which it has

been addressed in a given application, and the risk unwittingly assumed by the opinion-giver.

An opinion as to the valid issuance of LLC interests is generally understood to speak to the creation and issuance of the relevant LLC interests having satisfied (or not violated) the requirements of the applicable LLC statute as in effect at the relevant time, the LLC's certificate of formation, the LLC's operating agreement, and any conditions in the resolution or other action adopted by the appropriate governing body of the LLC approving the issuance. It presupposes that (but does not itself express a view as to whether) the LLC is validly existing and has requisite power to create the LLC interests at issue. It does not address enforceability of the terms of the LLC interests at issue, nor does it address compliance with securities or antitrust laws or the characterization of the LLC interests as general intangibles or securities (or otherwise, e.g. as instruments) under the Uniform Commercial Code.

Sometimes an opinion is sought to the effect that the person acquiring an LLC interest has (or will) become a member of the LLC. As a threshold matter, it is important to recognize that acquiring an LLC interest is different from achieving member status. Moreover, LLC statutes, LLC agreements, and certificates of formation can establish different requirements for admission as a member of an LLC at the time of formation, on the one hand, and at some later time, on the other. To be admitted as a member, typically the purchaser of an LLC interest must explicitly and specifically be constituted a member in compliance with the applicable LLC statute at the relevant time, the LLC agreement, and (if applicable) the LLC's certificate of formation. That is, an assignee of an LLC interest does not necessarily or automatically become a member. Rather, member status is achieved only by approval of all members other than the assigning member or compliance with any procedure provided for in the LLC agreement. Practitioners should be mindful that conditions to admission sometimes appear in subscription agreements that are incorporated by reference into or otherwise made a part of the LLC agreement or binding as preconditions to membership. The admission to membership opinion does not address whether the LLC or other members can enforce the (newly admitted) member's obligations under the LLC agreement, or whether any such member that is an entity (as contrasted with a natural person) has the power to be a member under the law and documents under which it was formed and exists.

For years, many have sought opinions that the LLC interest being acquired is "fully paid and nonassessable." Such opinions are awkward, at best, in that the requested phrase generally has no antecedent in LLC statutes (by contrast, the language does appear in section 152 of the DGCL), and has no accepted or customary meaning in the LLC context. In a "can do" act of legerdemain, some opinion-givers would (if circumstances permitted) insert into LLC agreements provisions to the effect that upon their issuance, e.g. as reflected by the preparation, execution, and delivery of evidencing certificates, LLC interests would be deemed "fully paid and nonassessable." While perhaps facilitating completion of the opinion process, such an approach hardly elucidated the phrase. The 2011 Report reframes the issue in terms of the meaning generally thought to be intended — whether acquirers of LLC interests are, at risk of colloquialism, "all paid up" upon tender of the purchase price, or whether, by contrast, their checkbooks remain exposed for, e.g., capital calls. TriBar suggests limiting such opinions to applicable LLC statutes, rather than applicable state law generally. Given the distinction between "assignees" and "members" discussed above, opinion givers should take care, as appropriate, to phrase their opinions in terms of potential financial obligations of holders of LLC interests or members, as the case may be. Opinion givers should, as appropriate, exclude obligations in subscription agreements and LLC agreements, obligations to re-

pay to the LLC wrongfully distributed funds, and obligations arising from a member's demand (e.g., cost of copies of books and records), though at least with respect to this last issue TriBar regards explicit exclusion as unnecessary (the demand itself, rather than the status of being a member, giving rise to such obligations).

As an adjunct to the opinion discussed immediately above, recipients sometimes seek an opinion as to the absence of personal liability of purchasers of LLC interests to third parties. This opinion has no analogue in the corporate context and derives from an opinion commonly delivered in the limited partnership context. Opinion-givers should adopt an approach similar to that suggested in the preceding paragraph, limiting their statements to liability arising solely by reason of being a member of the LLC or a holder of an LLC interest. The 2011 Report takes the view that, implicitly, such opinions do not address liabilities arising from or under state and federal laws (e.g., securities laws, environmental laws) imposed on controlling persons; veil piercing, alter ego, or similar theories; tortious or wrongful conduct of purchaser; or actions taken in other capacities (e.g., as a manager).

PRACTICE POINTS • What follows is a sample phrasing of each opinion discussed above and an enumeration of the due diligence steps suggested to accompany each such opinion.

1. Status Opinion. "The LLC has been duly formed and is validly existing in good standing as a limited liability company under the laws of the State of Delaware."

Discussion. This opinion has three discrete components:

(a) "Duly formed" — the steps taken to form the LLC satisfied all then-applicable statutory requirements. Due diligence includes:

i. Reviewing the certificate of formation (as amended through the date of the opinion);

ii. Confirming inclusion of the name of the LLC, the address of its registered office, the name and address of its registered agent, and any other required information;

iii. Confirming the certificate was executed and filed by an "authorized person." Note that the Delaware LLC Act does not define the phrase "authorized person." Many practitioners explicitly deem the signatory on the certificate an "authorized person" by insertion of text to such effect in the LLC agreement;

iv. Confirming adoption of an LLC agreement meeting any applicable requirements. While many LLC statutes permit LLC agreements to be oral or written (the Delaware LLC Act also permits "implied" LLC agreements), this article assumes opinion givers will speak only to LLCs evidenced by written agreements; and

v. Confirming that the LLC has, and at all relevant times had, at least one member meeting any eligibility requirements.

(b) "Validly existing" — this opinion states that the LLC still exists — that it hasn't terminated. LLCs can terminate in four ways. Due diligence considers whether the LLC terminated:

i. On a specified termination date;
ii. On the happening of a specified occurrence;
iii. By operation of law; or
iv. By the taking of voluntary action.

(c) "In good standing" — based on a certificate from the Secretary of State (or similar office) of the jurisdiction under whose law the LLC was formed

and exists, this opinion's meaning may vary from one state to another. It generally conveys that required reports have been filed and franchise taxes paid, with the consequence that the LLC's status as such has not been revoked or suspended.

2. Power opinion. "The LLC has all necessary limited liability company power and authority to execute and deliver the [Transaction Documents], and to perform its obligations thereunder."

Discussion. The power opinion, of course, requires a referent. The phrasing suggested above assumes that referent is the documents governing the transaction. It indicates that, as an organic matter, the specified actions are among those the LLC may rightly take. While most LLC statutes provide for potentially broad powers, opinion givers should recall that a great many LLCs are structured as so-called "special purpose entities" and their powers severely constrained. Similarly, an LLC that has dissolved is generally prohibited from any action other than the winding up of its affairs (see discussion of status opinion above). Note it is generally understood that power and authority opinions don't address restrictions arising under other (i.e. non-entity) law, such as licensing requirements to engage in certain activities. Due diligence includes confirming that:

(a) The LLC statute permits LLCs to have the power and authority to take the relevant actions; and

(b) The LLC at issue in fact has such power and authority, and that no provision of the LLC agreement or certificate of formation compromises or deprives the LLC of such power and authority.

3. Action opinion. "The execution and delivery by the LLC of the [Transaction Documents], and the performance by the LLC of its obligations thereunder, have been duly authorized by all necessary limited liability company action on the part of the LLC."

Discussion. Like the power opinion, the action opinion requires a referent. The phrasing suggested above assumes that referent is the documents governing the transaction. The action opinion provides comfort that the appropriate person or persons, having been vested with the requisite managerial authority to do so, have taken the type of action required by the LLC statute and LLC agreement, in the manner so required, to approve the specified actions on behalf of the LLC. Note that management structures can vary widely in LLCs. As discussed above, the statutory default rule for DLLCs is management by members in proportion to their economic interests. But that default rule can be, and often is, varied. Some LLCs follow a corporate model and through the provisions of their LLC agreements create a board of managers or board of directors. Some follow a limited partnership model, designating a manager (who may or may not be a member). Still others follow a general partnership model, leaving managerial authority in their members (though perhaps vesting members with authority disproportionate to their economic interests). Due diligence includes:

(a) Determining the range of governance or management structures permitted by the applicable LLC statute;

(b) Confirming that the structure adopted by the relevant LLC is permitted and is adequately clear and unambiguous;

(c) Determining what person(s) are vested with or comprise the bodies vested with the requisite managerial authority to authorize the relevant action;

(d) Confirming that such person(s) or bodies have clearly and unambiguously authorized the relevant

action in accordance with all formalities and procedures imposed by the LLC statute and the LLC agreement.

4. Enforceability opinion. "The [LLC agreement] is a valid and binding obligation of the [Members], and is enforceable against the [Members], in accordance with its terms."

Discussion. The "remedies" opinion may be reasonably requested where the recipient is acquiring a membership interest, or a lender or rating agency has particular reason to be concerned about enforceability of covenants, restrictions, and internal governance provisions of the LLC agreement. The opinion is generally understood to mean that each specific remedy provided in the LLC agreement will be enforced; that if there is no specific remedy, there nonetheless will be some remedy; and that the other terms, such as governance provisions, will be enforced by a court applying applicable law. Standard exceptions include bankruptcy and equitable principles. As discussed above, this is the most difficult of the opinions discussed in the 2006 Report, in large part because it cannot clearly and coherently be limited to the relevant LLC statute, but instead is likely to implicate the entire body of relevant contract law. Due diligence includes:

(a) Confirming that the applicable prerequisites to contract formation have been met; and

(b) Analyzing each undertaking to determine whether, in the reasonable exercise of the opinion giver's professional judgment, the highest court of the state whose law governs would decline to give effect to any of them.

5. Valid issuance opinion. "The [LLC Interests] are validly issued limited liability company interests in the LLC."

Discussion. The valid issuance opinion is generally understood to mean that: (i) the creation and issuance of the LLC interests satisfied all applicable requirements of the applicable LLC statute as in effect at the relevant time, the LLC agreement, and the LLC's certificate of formation, if relevant, as well as any requirements or conditions in the resolution or other action approving the issuance; and (ii) the terms of the LLC interests covered by the opinion do not violate the foregoing. It does not speak to enforceability of the terms of the LLC interests, compliance with securities or antitrust laws, or the status or characterization of the LLC interests under the Uniform Commercial Code. Due diligence includes:

(a) Confirming that issuance of the relevant interests is permitted by the applicable LLC statute, the LLC agreement, and the certificate of formation, if applicable;

(b) Confirming that any preconditions to such issuance have been met;

(c) Determining what person(s) are vested with or comprise the bodies vested with the requisite managerial authority to authorize and effect the issuance;

(d) Confirming that such person(s) or bodies have clearly and unambiguously effected the issuance in accordance with all formalities and procedures imposed by the LLC statute and the LLC agreement.

6. Admission opinion. "Each of the [Transferees] has been duly admitted to the LLC as a member of the LLC."

Discussion. Recognizing that becoming a transferee of a limited liability company interest, e.g., by assignment, bears no fixed correlation to achieving member status, this opinion addresses the independent, though perhaps contemporaneous, step of

admission as an LLC member (and, thus, obtaining the rights of a member). As a general matter, only members may exercise membership rights (unless, of course, provision to the contrary is made in the LLC agreement). Due diligence includes:

(a) Determining the preconditions to admission established by the applicable LLC statute;

(b) Determining the preconditions to admission established by the applicable LLC agreement and, if relevant, the certificate of formation, subscription agreements, and the like;

(c) Confirming compliance with the foregoing insofar as relevant.

7. Obligations opinion. "Under [the Delaware LLC Act], the [Transferee] has no obligation to make further payments for its purchase of [LLC Interests] or contributions to LLC solely by reason of its ownership of [LLC Interests] [or its status as a member of the LLC] [except in each case as provided in its Subscription Agreements or the LLC agreement] [and except for its obligation to repay any funds wrongfully distributed to it]."

Discussion. In the corporate context, this is the "fully paid and non-assessable" opinion. As discussed above, those words generally have no antecedent, and thus no clear meaning, in the LLC context. Instead, opinions should be drafted to speak directly to obligations to make payments or contributions. Due diligence includes:

(a) Reviewing the applicable LLC statute;

(b) Reviewing the applicable LLC agreement and, if relevant, the certificate of formation, subscription agreements, and the like;

(c) Confirming that none of the foregoing give rise to obligations of the type addressed by the opinion. Examples include both general provision for capital calls and specific provision for further contributions in narrowly described circumstances.

8. Liability (combined with obligation) opinion. "Under [the Delaware LLC Act], the [Transferee] has no obligation to make further payments for its purchase of [LLC Interests] or contributions to LLC solely by reason of its ownership of [LLC Interests] [or its status as a member of the LLC], and no personal liability for the debts, obligations and liabilities of the LLC, whether arising in contract, tort or otherwise, solely by reason of being a [Transferee] or [member] of the LLC [except in each case as provided in its Subscription Agreements or the LLC agreement] [and except for its obligation to repay any funds wrongfully distributed to it]."

Discussion. There is no analog to the liability opinion in the corporate context, and TriBar is hopeful that as opinion recipients become more comfortable with the protections afforded by LLC statutes, such opinions will cease to be requested or given. When given, the opinion generally is combined with the "obligations" opinion discussed at paragraph 7 above. The "liability" opinion does not address liabilities imposed on controlling persons by state or federal laws, because mere transferee or member status does not give rise to such liability. Similarly, the opinion does not address veil-piercing, alter ego, or similar theories, nor tortious or other wrongful conduct. Due diligence includes:

(a) Reviewing the applicable LLC statute;

(b) Reviewing the applicable LLC agreement and, if relevant, the certificate of formation, subscription agreements; and the like.

(c) Confirming that none of the foregoing give rise to liabilities on the part of transferees or members, as appropriate.

CONCLUSION • While a great many features of corporations are a function of the statutes under which they are formed, LLCs are uniquely creatures of contractual provisions adopted under enabling language in governing statutes. Whenever any attribute of an LLC differs from the statutory default rule, and particularly in bankruptcy-remote or other complex transactions, many of the issues of greatest interest to participants will be governed by language in the LLC agreement. Counsel is sometimes expected to provide legal opinions regarding various issues in relation to LLCs. Some are relatively easy, some very hard. Some require a comprehensive command of applicable contract law, and others, while perhaps clear in the corporate context, are nonsensical (or, at least, ambiguous) in the context of LLCs. While delivery of a third-party opinion does not establish a lawyer-client relationship with the opinion recipient, the lawyer nonetheless owes the recipient a duty to exercise care — to exercise the competence and diligence normally exercised by lawyers on similar matters. Restatement (Third) of Law Governing Lawyers §§51(2) and 52(1); and §52 cmt. b (2000). Don't assume that all entities, or all LLCs, or even all DLLCs, are the same or even similar. Don't assume a seemingly clear statement is sufficient to create a particular right, or to eliminate a particular duty. In short, know what you know, and opine only on that.