Sales Performance is entitled to appoint one of STO’s managers, both managers must approve decisions, and unanimous consent is required for virtually all decisions reserved to the members. In addition, the court indicated that the plaintiff had not alleged anything that would support imposing broad fiduciary duties on Sales Performance based on its control over management compensation.

Finally, Strategic Management failed to convince the Business Court that Sales Performance, as a party to a joint venture, owed fiduciary duties in favor of Strategic Management. Because Strategic Management and Sales Performance chose to structure their joint venture as a limited liability company, the court explained, the law governing limited liability companies applied.

The Business Court’s decision in Strategic Management is significant because of the guidance the court provides regarding when a member becomes subject to fiduciary duties. The question is one of control, and not surprisingly given the contractual nature of the limited liability company, the terms of the operating agreement are key.

Tom Molony is associate professor of Law at Elon University School of Law.

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**Legislative Update**

By Charles Marshall

The General Assembly has completed its long session for 2017, as well as special sessions to address legislative redistricting. During the long session, legislators considered a number of items of interest to the Business Law Section.

First and foremost, the General Assembly passed, and Governor Cooper signed, Senate Bill 621, which was sponsored by Senator Tamara Barringer. The new law validates North Carolina choice of law and forum selection provisions contained in business contracts. Broadly speaking, the law authorizes parties to a business contract the right to designate North Carolina law to govern their rights and duties under the contract. If (and only if) the parties so designate North Carolina as the governing law, the parties may also agree to litigate a dispute arising from the business contract in North Carolina courts. The new law applies only to “business contracts,” which are defined to include “a contract or undertaking, contingent or otherwise, entered into primarily for business or commercial purposes,” and it does not apply to “a consumer contract or an employment contract.” The new law applies to business contracts entered into before, on, or after the effective date of the law, which is July 18, 2017. The new law helps contracting parties avoid the previous uncertainty that often plagued the enforceability of contractual choice of law or forum selection provisions.

The Senate passed Senate Bill 622, also sponsored by Senator Barringer, which contains a package of revisions to the Business Corporations Act. The comprehensive bill includes, among other things, changes to laws regarding corporate governance, shareholders’ agreements, boards of directors, and mergers. Because the bill passed the Senate, it is eligible for further action next year during the short session. It currently sits in the House Rules Committee.

Several other items were of interest to the Section during the long session. The General Assembly passed legislation, signed by the Governor, which postponed until December 1, 2017, the implementation of a law enacted in 2016 to revise the law governing the filing of assumed business names. The General Assembly rejected House Bill 616 to establish a North Carolina Public Benefit Corporation Act, and it took no action on House Bill 263 to modify provisions of the Uniform Commercial Code applicable to accord and satisfaction by use of an instrument.

The General Assembly’s “short session” begins in May 2018. The General Assembly drew new legislative districts this year to comply with a federal court order. The new districts will be in place for the 2018 election unless the court orders any further relief.

Marshall practices in Raleigh with Brooks Pierce McLendon Humphrey & Leonard LLP.

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