

# LLC's vs. S Corporations

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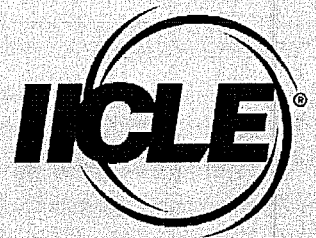
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# LLC (and S Corporation) Liability Limitations, Dispute Processes, and Leadership/Management Structures

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## **BUSINESS POINTS**

### **LLC RELATED BUSINESS POINT UPDATES: FROM SELECTED ILLINOIS AND DELAWARE DECISIONS, JANUARY 2011-FEBRUARY 2012**

*Note for Delaware Cases: For those who may find current Delaware alternative entity decisions helpful, a colleague, Ellisa Habbart, principal of Delaware Counsel Group provides an excellent newsletter summarizing notable Delaware alternative entity decisions. You may subscribe, and reach her, through her website at [www.delawarecounselgroup.com](http://www.delawarecounselgroup.com)*

<b>SELECTED BUSINESS POINTS</b>	<b>CASE CITATION</b>	<b>DATE</b>	<b>JUDGE(S)</b>
<p><b>PRE-FORMATION CONTRACT SIGNING</b></p> <p>A Person who signs a contract on behalf of an Illinois LLC to be formed though which is never formed is not personally liable on the contract; the contract so signed is not a binding contract unless the LLC is subsequently formed and the agreement ratified. (That the party so signing might have liability in tort for fraudulent inducement was not addressed by the Court; the Court's oblique comments obliquely dealing with torts of LLC did not address a potential individual tort theory)</p>	<p><i>Carollo v. Irwin, 2011 IL App (1st) 102765, 959 N.E.2d 77</i></p>	<p>Sept 22, 2011</p>	<p>Pucinski, Fitzgerald-Smith, Sterba</p>
<p><b>ENFORCEMENT OF LLC AGREEMENT AGAINST NON-SIGNING NEW MEMBER</b></p> <p>By acquiring a membership interest in a Delaware LLC, a person is bound to the LLC agreement including any fee shifting terms.</p> <p>Unless the scope of an indemnification clause pertaining to an agreement (governed by Delaware law) assigning LLC rights of a member of a Delaware LLC is specifically restricted, indemnification includes both a third party's and one's own act or default.</p> <p>Investigate numbers being relied upon for any transaction and incorporate them into representations or warranties.</p> <p>Take action; the longer the wait, the greater the chance of getting it wrong.</p>	<p><i>Broaddus v. Shields, 665 F.3d 846 (7th Cir 2011)</i></p>	<p>Dec. 21, 2011</p>	<p>Magnus-Stinson, Flaum, Manion</p>