

TRANSACTIONS

THE TENNESSEE JOURNAL OF BUSINESS LAW

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ANTITRUST, BANKRUPTCY, BUSINESS ORGANIZATIONS, COMMERCIAL,
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BUSINESS FACULTY NOTES



Professor Joan Heminway's article entitled "Rock, Paper, Scissors: Choosing the Right Vehicle for Federal Corporate Governance Initiatives" will be published in an upcoming issue of the Fordham Journal of Corporate & Financial Law. Reflecting on the experience of the Sarbanes-Oxley Act of 2002, this article suggests a model for assisting rule proponents in determining whether Congress, the Securities and Exchange Commission, or the federal courts should adopt specific corporate governance rules at the federal level. Professor Heminway delivered a presentation at the Law and Society Association annual conference in May entitled "Insider Trading and Agency: A Comparative Multinational Perspective." In June, Professor Heminway's coauthored piece (with UT College of Law alumnus Terry W. Gentle, Jr.) entitled "Buying Stock in Tennessee: An Annotated Model Tennessee Stock Purchase Agreement" was published in Transactions: The Tennessee Journal of Business Law. Earlier, she presented a paper entitled "Through the (Agency) Looking Glass: Observations About the Development of Insider Trading Regulation in the United States, Japan, and Germany" at the annual conference of the Southeastern Association of Law Schools. In September, Professor Heminway gave a luncheon talk to the East Tennessee Association for Female Executives on the securities fraud claims brought against Martha Stewart and, together with Professor George Kuney, presented a session on "Ethical Considerations In The Formation And Representation Of Entities" as part of a continuing legal education seminar on the organization and operation of Tennessee unincorporated business entities. Professor Heminway also introduced the seminar with a discussion of choice of entity issues and limited liability. Finally, Professor Heminway's methods and tips for teaching Business Associations are featured in a new book from Carolina Academic Press, entitled "Teaching the Law School Curriculum," which was released in October



Professor Amy Hess is working on the next replacement volume of the treatise Bogert and Hess, The Law of Trusts and Trustees. In the Fall of 2004, the ABA Section of Real Property, Probate and Trust Law appointed Professor Hess a Vice-Chair of its Standing Committee on Community Outreach, a standing committee that organizes free 14-week seminars in basic real estate law and basic estate planning for the benefit of newer lawyers, particularly members of minorities, who would like to concentrate their practices in these areas but have no mentor to help them get started. Professor Hess also presented a seminar on the Tennessee Uniform Trust Code sponsored by Cavalry Banking, Murfreesboro, Tennessee in October of 2004.



Professor Jeffrey Hirsch's article, "Can Congress Use Its War Powers to Protect Military Employees from State Sovereign Immunity?," was published in Volume 34 of the Seton Hall Law Review and addresses the conflict between Congress's attempt to attract and keep soldiers and the Supreme Court's burgeoning state sovereign immunity jurisprudence, arguing that the Court's recent holdings show that USERRA's abrogation, enacted pursuant to Congress's war powers, is an exception to the general prohibition against abrogation under Article I. The article also shows-through a comprehensive look at state legislation-that this issue is important, as few suitable alternatives exist for military personnel who are deprived of their USERRA rights by state employers.



At the summer meeting of the UT Board of Trustees, the Board voted to grant tenure to **Professor George Kuney**. This comes at a busy time for Professor Kuney, who is involved in multiple projects, including preparation of an amicus curiae brief addressing one of his areas of scholarly interest: successor liability in the context of Bankruptcy Code section 363 sales. He is also serving as an expert witness regarding Tennessee contract law and non-competition agreements in a breach of contract/unfair competition/infringement of trade secret lawsuit in China's Changsha Intermediate People's Court in Hunan Province. Professor Kuney's article, "Hijacking Chapter 11," has been accepted for publication as the lead article in the Fall issue of The Emory Bankruptcy Developments Journal. The article discusses, among other things, structural features of the bankruptcy code that have led to strategies and tactics that can allow secured creditors to use their priority as an enabling power to refocus Chapter 11 from a debtor-unsecured-creditor-focused reorganization process into a federal unified foreclosure system protecting the interests of secured creditors in large chapter 11 cases. Thompson/West has also selected Professor Kuney's article, "Let's Make It Official: Adding an Explicit Preplan Sale Process as an Alternative Exit from Bankruptcy," previously published in the Houston Law Review, for republication in the Journal of Bankruptcy Law & Practice this fall.



Professor Becky Jacobs made a presentation at the Rulci Colloquium on Constitutional Law and Theory at the University of the Western

Cape in Cape Town, South Africa, August 9-10. Her topic was: "The Post-Apartheid City in the New South Africa: Constitutional Triumph?"



Professor Don Leatherman was promoted to full Professor of Law at the UT Board of Trustees' summer meeting. In June, Professor Leatherman was also a panelist on a teleconference entitled "Applying § 108 to Consolidated Groups," also for the American Bar Association tax section. Professor Leatherman also spoke on a panel discussing current developments for consolidated groups in November at the Practising Law Institute's Los Angeles meeting on Mergers, Acquisitions, and Joint Ventures. Professor Leatherman's article, "Menu of Recent Consolidated Developments," was published this fall by the Practising Law Institute in *Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations and Restructurings*.



Professor Robert Lloyd's article "Making Contracts Relevant: Thirteen Lessons for the First-Year Contracts Course" will appear in the Spring 2004 issue of the *Arizona State Law Journal*. Professor Lloyd's book review of "Wild Bill: The Legend and Life of William O. Douglas" was published in the September issue of the *Tennessee Bar Journal*.



Professor Carl Pierce is working on an article on "noisy withdrawal" as might be required by either the SEC or state ethics rules in order for a lawyer to avoid assisting a client's crime or fraud or breach of a fiduciary duty. He is also working with Professor Judy Cornett on a casebook for Professional Responsibility, slated for publication in Spring 2005. Several chapters of the casebook will be devoted to the responsibility of corporate attorneys in transactional settings.



Professor Tom Plank's article "The Erie Doctrine and Bankruptcy" was recently published by the *Notre Dame Law Review* (79 *Notre Dame L. Rev.* 633 (2004)). The article analyzes the extent to which bankruptcy courts are required to follow state law when the Bankruptcy Code is silent on an issue and argues that when the issue is outside of Congress's power to enact bankruptcy law, federal courts in bankruptcy

must follow non-state law. Prof. Plank also recently finished writing an article, "The Security of Securitization and the Future of Security," which will be published in the *Cardozo Law Review*. Prof. Plank has also been appointed the Southeastern Bankruptcy Law Institute Distinguished Visiting Professor at the Georgia State University College of Law for 2005. Prof. Plank will be arguing a case in the United States Court of Appeals for the Tenth Circuit on the issue of the interpretation of a condition to a funding commitment in the securitization of loans secured by life insurance policies on behalf of a finance company.



In July, **Professor Gary Pulsinelli** gave a presentation at the SEALS summer meeting on the topic of "Intellectual Property Infringement: Liability of Researchers at State Universities."



Professor Greg Stein has been named the first Woolf, McClane, Bright, Allen and Carpenter Distinguished Professor of Law. Prof. Stein contributed a chapter to the recently published book, *Courting the Yankees: Legal Essays on the Bronx Bombers*. His chapter, entitled "The House That Ruth Built," discusses some of the real estate and property issues surrounding the building and reconstruction of Yankee Stadium. Prof. Stein has been elected to the Executive Committee of the Real Estate Transactions Section of the Association of American Law Schools. On February 20, 2004, Prof. Stein spoke to the Sevier County Bar Association on the topic, "Recent Developments in Real Estate Law." He has also been invited to speak at the ABA Section of Real Property, Probate and Trust Law's Continuing Legal Education Program, to be held in Seattle in May 2004. Prof. Greg Stein's article, "Takings in the 21st Century: Reasonable Investment-Backed Expectations After Palazzolo and Tahoe-Sierra," has been selected by the publishers of the *Land Use and Environment Law Review* as one of the 30 best land use and environmental law articles published in the last year. Prof. Stein's article, which appeared in the *Tennessee Law Review*, discusses how two recent Supreme Court opinions have resuscitated a method of analyzing regulatory takings cases that many observers thought the Court had abandoned. Ten of these articles, yet to be chosen, will be included in the next edition of the *Land Use and Environment Law Review*, published by Thomson West.



Professor Paula Williams teaches the Business Clinic, and does research in the areas of affordable housing and economic development. In July 2003 presented at the Annual Meeting of the Community Development Society entitled “Doing Business in Knoxville’s Empowerment Zone” and in October 2003 she assisted The Clayton Center for Entrepreneurial Law in co-sponsoring a CLE program at the College of Law on “Tax Incentives in Knoxville’s Empowerment Zone.” Her article “The Continuing Crisis in Affordable Housing: Systemic Issues Requiring Systemic Solutions” will be published in the *Fordham Urban Law Journal* in 2004. Prof. Williams presented a talk on “Funding Opportunities for Small Businesses in Empowerment Zones and Enterprise Communities” at Tuskegee, Alabama, in December 2003. She presented on “Teaching Problem Solving in a Small Business Legal Clinic,” at the Preventing and Solving Legal Problems Creatively Conference in San Diego in March 2004. She also presented material on teaching transactional clinics at conferences in Philadelphia and San Diego in April and May 2004. She will be presenting material at the Gonzaga Institute for Law Teachers Conference in July 2004 and at the SEALS Annual Meeting in August 2004. She has attended professional development conferences on community economic development and critical race theory and economics during the Spring 2004 semester. She is currently working on articles on Teaching Problem Solving in a Business Clinic and on Low-Income Home Ownership.