

# TRANSACTIONS

The Tennessee Journal of Business Law

VOLUME 11

FALL 2009

NUMBER 1

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# TRANSACTIONS

The Tennessee Journal of Business Law

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## BUSINESS FACULTY NOTES

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**Professor Iris J. Goodwin's** recent article, "How the Rich Stay Rich: Using a Family Trust Company to Secure a Family Fortune," has garnered attention for innovative use of estate planning techniques. It will be published in the *Seton Hall Law Review*, and it appeared in the June 8, 2009 issue of *Too Much*. The editors of the Restatement (Third) of Property have requested permission to cite to the paper, and the AALS Section on Trusts & Estates selected the paper to be presented at its annual meeting in January. Professor Goodwin also recently moderated the panel on Contract Law: Morality, Efficiency and Corrective Justice at the Annual Meeting of the Southeastern Association of Law Schools in Palm Beach, Florida.

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**Professor Joan Heminway** was named a College of Law Distinguished Professor of Law in July. She recently served as guest blogger on the *Corporate Justice Blog* and has been named a "Master" for *The Conglomerate*, a popular weblog that focuses on business law issues. In May, she led a seminar session for graduate and post-graduate Brazilian law students at the Universidade do Estado do Rio de Janeiro ("UERJ") in Rio de Janeiro, Brazil on contract drafting in cross-border transactions. She also lectured on the world financial crisis for undergraduate law students at UERJ and for undergraduate law, international relations, and business students at Ibmecc, a private university in Rio de Janeiro. In September, she organized and presented at a campus program on the College of Law's global initiatives and gave a presentation on "Student Assessment through Oral Examination" at a conference at the University of Denver Sturm College of Law.

Professor Heminway has been an active academic speaker this fall. In September, she delivered her paper "Martha Stewart and the Forbidden Fruit: A New Story of Eve" at the Business Law and Narrative Symposium at Michigan State University College of Law. In October, she presented two works in progress: "Reframing and Reforming the Securities and Exchange Commission: Lessons from the Literature on Change Leadership" at Villanova Law School as part of the Symposium on Financial Regulatory Reform: Genesis, Progress, and Impact, and "Federal Investment in Private Enterprise in the United States: Evil or Cure?" at a symposium on the role of securities regulation in the current global financial crisis at the Seton Hall University School of Law. Each of these papers will be published in the law review of the respective school where she presented.



**Professor Amy Morris Hess**, who recently was named the University of Tennessee's Quest Scholar of the Week, was profiled in the September/October volume of *Probate and Property*, the ABA Real Property, Trust and Estate Section's magazine. As the successor author to *Bogert: The Law of Trusts and Trustees*, she published the latest pocket parts for all 18 volumes in September, as well as a replacement volume dealing with the scope of various fiduciary duties and beneficiaries' remedies for their breach in December. Her article, "Estate Planning for the Baby Boomers: Will They Have Estates to Plan?," which originally appeared in the Winter 2009 edition of the ABA Tax Section Quarterly, has been selected for republication in the "Best of ABA Sections" issue of the ABA's GP Solo magazine, forthcoming in March.

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**Professor Jeff Hirsch** recently presented his work in progress, "Communication Breakdown: Regulating Employee Access to Information," which addresses the importance of communication and information in workplace collective action, at the Seton Hall Labor and Employment Law Colloquium. In April, he presented a paper entitled "*Making Globalism Work for Employees*" at the symposium on "Competition in the Global Workplace: The Role of Law in Economic Markets." His paper will appear in the *St. Louis University Law Review*. In May, he spoke with National Public Radio about his views on then nominee and now Supreme Court Justice Sonia Sotomayor's decision in the 1994-95 Major League Baseball strike case.

Professor Hirsch recently moderated a panel on "Retaliation and Whistleblowers in the Workplace after *Crawford v. Metropolitan Government of Nashville*." He also served as editor for the book *Compensation, Work Hours and Benefits: Proceedings of the New York University 57th Annual Conference on Labor*, which was published in July.

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**Professor Becky Jacobs** was named a Research Scholar for the 2009-10 academic year in July. She is also now a Fellow at UT's new Center for the Study of Social Justice. Over the summer she taught in Rio de Janeiro at the Georgia State University College of Law Summer Legal and Policy Study in consortium with Seattle University School of Law and the University of Tennessee College of Law. While there, she participated in a conference at Candido Mendes University, featuring two days of panel presentations by academics, lawyers, and judges on a number of



topics related to comparative administrative law. Professor Jacobs and her co-panelist discussed the regulation and administration of international trade in Brazil and the United States.

After returning to the United States, she organized and moderated a panel at the SEALS annual conference entitled “Study Abroad: Boondoggle or Curricular Staple?” Additionally, she participated in a two-hour information session entitled “Global Initiatives at the College of Law” with the assistance of other law school faculty, staff, and students, and she was an instructor for a CME/CLE program on divorce mediation. Her latest scholarship includes an article that will appear in an upcoming symposium in the *Maine Law Review*: *Often Wrong, Never in Doubt: How Arbitration Expectancy Bias May Limit Access to Justice*, as well as a case report appearing in the current issue of this journal: *Pugh’s Lawn and Landscape Company, Inc. v. Jaycon Development Corporation: The Court of Appeals of Tennessee Limits Judicial Review of Arbitration Awards*.

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**Professor George Kuney** appeared as part of a panel entitled “The Present and Future of ‘One Size Fits All’: Do We Need a Chapter for Those ‘Too Big to Fail?’” at the American Bankruptcy Institute’s 2009 Legislative Symposium, held at Georgetown University Law Center in November. In February, *The American Bankruptcy Law Journal* published Professor Kuney’s most recent law review article, “Unethical Protection? Model Rule 1.8(h) and Plan Releases of Professional Liability.” Professor Kuney also recently joined a group of law professors in submitting an Amicus Brief in Support of Respondent Francisco J. Espinosa in the Supreme Court case of *United Student Aid Funds, Inc. v. Francisco J. Espinosa*. The case involves the question of whether a student loan claim can be discharged through a Chapter 13 plan based on the non-objection of the lender when an adversary proceeding under 11 U.S.C. § 1327 has not been commenced.

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**Professor Don Leatherman** recently spoke to the Affiliated and Related Corporations Committee of the ABA Tax Section in Chicago, focusing on a recent regulations package for which Professor Leatherman is also writing an ABA report. He spoke in December at a Practising Law Institute event on current developments for consolidated groups. Professor Leatherman also recently published the most recent edition of his textbook, *Federal Income Taxation of Corporations and Partnerships*, which he co-authored with Richard Doernberg and Howard Abrams.



**Professor Robert Lloyd** continues to research and write on the subject of damages for lost profits. His chapter, “*Discounting Damages: Case Law*,” was published in *The Comprehensive Guide to Lost Profits Damages*. His article “*Proving Lost Profits After Daubert: Five Questions Every Court Should Ask Before Admitting Expert Testimony*,” which was previously published in *The University of Richmond Law Review*, was also included as an appendix in the *Guide*.

Professor Lloyd is also contributing a chapter on lost profits to the fourth edition of *Cost of Capital, Applications and Examples*, which is a standard reference work among investment banker and business valuation analysts.

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**Professor Alex Long** recently gave a CLE presentation focusing on ethical infrastructures at law firms and the obligations of supervising attorneys to establish firm-wide policies for complying with ethical rules. He also wrote an article based on that presentation which appeared in the December issue of the *Tennessee Bar Journal*. His article, “*Ethical Infrastructures and Whistleblowing Attorneys*,” was recently published in the *Maryland Law Review*.

Professor Long also spoke in October at the Seton Hall Labor and Employment Law Colloquium. He participated on a panel discussing a chapter devoted to workplace torts in the proposed draft of the *Restatement of Employment Law*. Professor Long provided commentary on the sections of the draft relating to tortious interference claims. He also presented his paper, “*Viva State Employment Law!: State Law Retaliation Claims in a Post-Crawford/Burlington Northern World*,” which will appear in the *Tennessee Law Review*.

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**Professor Carl Pierce** is currently serving as the interim director of the Howard Baker, Jr. Center for Public Policy at the University of Tennessee. Professor Pierce has also provided extensive input on revisions to the Tennessee ethics rules, and his work was mentioned favorably at 77 USLW 274, which noted that “Tennessee has special familiarity with the Ethics 2000 Commission’s work. Three lawyers from the state served in the Ethics 2000 effort[, including] University of Tennessee law professor Carl A. Pierce[,who] was one of the commission’s three reporters.”

Professor Pierce also moderated a panel at an environmental law conference hosted by the Baker Center. The panel addressed the topics of “Clean Air Act Legislation and Greenhouse Gas Legislation.”

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**Professor Thomas Plank** made a presentation entitled *Securitization and the Mortgage Finance Market* as part of a panel entitled “The Current State of the Mortgage and Credit Markets” at the 62nd Annual Meeting of the Southeastern Association of Law Schools in Palm Beach, Florida this year. His article, “*Regulation and Reform of the Mortgage Market and the Nature of Mortgage Loans: Lessons from Fannie Mae and Freddie Mac,*” was also recently published in the *South Carolina Law Review*.

Professor Plank is a member of the American Law Institute Members Consultative Group on the Joint Article 9 Review Committee, which is drafting amendments to Article 9 of the Uniform Commercial Code, the article dealing with security interests in personal property. He drafted two memoranda opposing two proposed amendments to Article 9 and its comments, and proposing different legislative solutions to the specific issues. One of the issues involved certain priority rules on the sale of accounts and chattel paper, and the other involved the conversion of electronic chattel paper to tangible chattel paper and how to maintain control or possession of the chattel paper. Professor Plank also attended the September meeting of the Joint Article 9 Review Committee, and the Committee agreed with his position on the priority rules for the sale of accounts and chattel paper, dropping the proposed amendment. The committee also decided to drop its proposed amendments regarding the conversion of electronic chattel paper to tangible paper, and Professor Plank was invited to comment on a proposal to the Permanent Editorial Board for Article 9 to draft a commentary on this issue.

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**Professor Paula Schaefer** was selected as a 2009 Fellow of the National Institute for Teaching Ethics and Professionalism (NIFTEP). She participated in the NIFTEP workshop held in Georgia in November, where she contributed a teaching demonstration from her seminar, “*Smart Lawyer, Stupid Decisions.*” Professor Schaefer also has made several other presentations on the topic of Professional Responsibility. She recently presented “*Clawbacks, Quick Peeks, and Confidentiality*” at the Scholarship Roundtable of the 35th ABA National Conference on Professional Responsibility in Chicago. In August, she participated in a New Scholars Colloquium at the Southeastern Association of Law Schools annual

conference, speaking on the topic of “*Zealous Advisor? Harming Business Clients with Zealous Advocacy.*”

In September, Professor Schaefer presented “*Attorney Advertising & Ethics in Today’s Competitive Environment*” to the Knoxville City Group of the Lawyers Marketing Association’s Southeast Chapter. In October, she participated in Washington University School of Law’s junior faculty regional workshop, during which she presented her paper “*Harming Business Clients with Zealous Advocacy.*” Most recently, Professor Schaefer was a color commentator and speaker at the Knoxville Bar Association’s third annual Ethics Bowl competition, where she presented both “*Recent Developments in Tennessee Attorney Ethics*” and “*Clawbacks, Quick Peeks, and Confidentiality in Tennessee.*”



**Professor Gregory Stein** has been named a member of the Task Force on Real Property Law School Curriculum of the American Bar Association’s Section of Real Property, Trust and Estate Law. This Task Force is focusing on the problems that are created by the reduction of the number of credit hours for the first-year Property course at many law schools. In October, Professor Stein spoke at a reception hosted by the College of Law recognizing law faculty members who published books between March 2008 and March 2009. He was also recognized at this reception for co-authoring, along with Morton P. Fisher, Jr. and Marjorie P. Fisher, the second edition of *A Practical Guide to Commercial Real Estate Transactions: From Contract to Closing*, which was published by the American Bar Association.

Professor Stein’s article on “Property Law” was published recently in the *Berkshire Encyclopedia of China*. This new five-volume encyclopedia includes more than 800 articles on Chinese history and culture. His entry provides an overview of Chinese property law, both before and after the introduction of a new code in 2007. In March, he will give a presentation at Georgetown Law School entitled “*Chinese Real Estate Law: The Divergence Between Published Statutes and Actual Practice*” at the annual meeting of the Association for Law, Property, and Society.



**Professor Maurice Stucke** recently participated in several antitrust policy conferences. In addition, he was appointed by the United States as one of its Non-Governmental Advisors to the International Competition Network, named to the Advisory Board of Loyola University Chicago’s Institute for Consumer Antitrust Studies, and elected as a member of the Academic Society for Competition Law (ASCOLA).

In July 2009, the British Institute of International and Comparative Law invited Professor Stucke to address competition law scholars, lawyers, and policymakers from the European Commission and the Office of Fair Trading on behavioral economics at its Competition Law Forum in London. In June, ASCOLA invited him to present his behavioral law and economics working paper, “*Money, Is That What I Want?*” at ASCOLA’s annual conference in Washington D.C. The papers from this conference will be published by Edward Elgar in a book on competition policy. He also presented the paper to the directors and researchers of the Max Planck Institute for Research on Collective Goods in Bonn, Germany.

In August 2009, Professor Stucke moderated a panel on the Current State of the Mortgage and Credit Markets at the Southeastern Association of Law Schools Annual Conference. He also presented his paper “*How Do (and Should) Competition Authorities Treat a Dominant Firm’s Deception?*” at an antitrust conference hosted by Loyola University and Haifa University. Approximately 20 antitrust policymakers and scholars were invited, and the papers from this conference will be published in a special symposium edition of the *Antitrust Law Journal*.

Professor Stucke also served as a guest lecturer for a course on the intersection of competition law and regulation at Haifa University. Also in May, in a conference hosted by the University College London and IMEDIPA Greece in Santorini, Greece, he presented his paper, “*Toward a Better Competition Policy for the Media: The Challenge of Developing Antitrust Policies that Support the Media Sector’s Unique Role in Our Democracy*,” which was published in the November 2009 issue of the *Connecticut Law Review*. Professor Stucke’s article, “*Does the Rule of Reason Violate the Rule of Law?*” was also published in the *University of California-Davis Law Review*.



**Professor Paula Williams** is currently serving as the Executive Editor of the American Bar Association’s Journal on Affordable Housing and Community Development. She also recently served on the Planning Committee of the 2009 Association of American Law Schools (AALS) Conference on Clinical Legal Education. In August, Professor Williams attended the Annual Meeting of the Southeastern Association of Law Schools in Palm Beach, Florida, and participated in a panel entitled “*New Visions and Voices: Pedagogical and Other Innovations.*”