ARTICLES

How Much Information is Enough: Securities Market Information and the Quest for a More Efficient Market
Richard C. Strasser

The Interface between the Bankruptcy Code and a Disgorgement Judgment Held by the Securities and Exchange Commission
Kasey T. Ingram

Navigating the Cultural Malaise: Foreign Direct Investment Dispute Resolution in the People’s Republic of China
George O. White III

The Legislative and Judicial Response to Recent Corporate Governance Failures—Will It Be Effective?
John L. Latham

Elizabeth Law

BOOK REVIEW

Angela C. Ledford

MEMO TO THE PARTNER

Non-Profit’s Formation of For Profit Subsidiary
Laura Faye Mullins

CASE COMMENTARIES

Antitrust, Bankruptcy, Business Organizations, Contracts, Copyright, Corporate, Property, & Tax

A publication of
The Clayton Center for Entrepreneurial Law
of
The University of Tennessee College of Law

VOLUME 5  FALL 2003  NUMBER 1
THE UNIVERSITY OF TENNESSEE
COLLEGE OF LAW

UNIVERSITY ADMINISTRATION

JOSEPH E. JOHNSON, B.S., M.A., Ed.D. .................................................................Interim President
LOREN W. CRABTREE, B.A., Ph.D. ........................................................................Chancellor and Vice President for Academic Affairs

COLLEGE OF LAW ADMINISTRATION

THOMAS C. GALLIGAN, JR., A.B., J.D., LL.M. ..................................................Dean and Elvin E. Overton Distinguished Professor of Law
JOHN L. SOBIESKI, JR., B.S., J.D. .................................................................Associate Dean for Academic Affairs and Lindsay Young Distinguished Professor of Law
RACHEL E. INMAN, B.S., J.D. ............................................................................Assistant Dean for Academic Affairs and
DOUGLAS A. BLAZE, B.S., J.D. ............................................................................Director of Clinical Programs and
GEORGE W. KUNEY, B.A., J.D., M.B.A. ..........................................................Director of The Clayton Center for Entrepreneurial Law and
CAROL M. PARKER, B.S., M.A., J.D. .................................................................Director of Legal Writing and Associate Professor of Law
D. CHERYN PICQUET, B.A., M.S.L.S. ................................................................Associate Professor of Law and
REBA A. BEST, B.S., M.S. ..................................................................................Head of Cataloging for the Law Library and Professor
KAREN REAGAN BRITTON, B.S., M.S., Ed.D. ..................................................Director of Admissions, Financial Aid, and Career Services
KEITH S. CARVER, JR., B.A., M.S. .................................................................Director of Development and Alumni Affairs
R. G. SMITHSON, B.S., M.S. ................................................................................Director of Public Affairs
Teresa L. Peterson, B.S.............................................................................................Budget Director
WILLIAM HODGES, B.S. ........................................................................................Computer, Electronic Services, and
MARY ANN JAMES ..............................................................................................Human Resources and Administration Manager

COLLEGE OF LAW FACULTY

DWIGHT L. AARONS, B.A., J.D., Associate Professor of Law
GARY L. ANDERSON, S.B., J.D., I.I.M., Associate Professor of Law
FRANCES LEE ANSLEY, B.A., J.D., I.I.M., Distinguished Professor of Law
BENJAMIN H. BARTON, B.A., J.D., Associate Professor of Law
WILLIAM J. BEINTEMA, B.B.A., J.D., M.S.L.S., Associate Professor of Law and Director of the Law Library
REBA A. BEST, B.S., M.S., Professor and Head of Cataloging for the Law Library
JERRY P. BLACK, JR., B.A., J.D., Associate Professor of Law
DOUGLAS A. BLAZE, B.S., J.D., Art Stolnitz Distinguished Professor of Law and Director of Clinical Programs
CATHLEEN COCHRAN, B.A., M.S.I.S., Associate Professor and Computer Services Librarian
NEIL PHILIP COHEN, B.A., J.D., I.I.M., UTK Distinguished Service Professor of Law
CAROL MORGAN COLLINS, B.A., M.S., Assistant Professor and Catalog Librarian
JOSEPH G. COOK, A.B., J.D., I.I.M., Williford Gragg Distinguished Professor of Law
JUDY M. CORNETT, B.A., J.D., M.A., Ph.D., Associate Professor of Law

THOMAS Y. DAVIES, B.A., M.A., J.D., Ph.D., Professor of Law
THOMAS C. GALLIGAN, JR., A.B., J.D., LL.M., Dean and Elvin E. Overton Distinguished Professor of Law
PATRICK HARDIN, B.A., J.D., W. Allen Separk Distinguished Professor of Law
JOAN MACLEOD HEMINWAY, A.B., J.D., Associate Professor of Law
AMY MORRIS HESS, B.A., J.D., Waller Lansden Dortch & Davis and UTK Distinguished Service Professor of Law
BECKY L. JACOBS, B.S., J.D., Associate Professor of Law
DESEREE A. KENNEDY, B.A., J.D., I.I.M., Associate Professor of Law
JOSEPH H. KING, JR., B.A., J.D., Walter W. Bussart and UTK Distinguished Service Professor of Law
NDIVA KOFEE-KALE, B.A., M.A., Ph.D., J.D., Visiting Professor of Law
GEORGE W. KUNEY, B.A., J.D., M.B.A., Visiting Professor of Law and Director of The Clayton Center for Entrepreneurial Law
DON A. LEATHERMAN, B.A., J.D., I.I.M., Associate Professor of Law
ROBERT M. LLOYD, B.S.E., J.D., Lindsay Young Distinguished Professor of Law
SUSANNA MARLOWE, B.A., J.D., M.L.S.,
Associate Professor and
Head of Public Services in the Law Library
SIBYL MARSHALL, B.A., J.D., M.L.S.,
Assistant Professor and Reference Librarian
COLLEEN E. MEDIJII, B.A., J.D.,
Professor of Law
JEAN E. MOORE, B.A., M.A.L.S.,
Reference Librarian and Instructor
CAROL M. PARKER, B.S., M.A., J.D.,
Associate Professor of Law and Director of Legal Writing
JERRY J. PHILLIPS, B.A., M.A., J.D.,
W.P. Toms Distinguished Professor of Law and
Walter W. Bussart Distinguished Professor of Law
D. CHERYN PICQUET, B.A., M.S.L.S.,
Professor and Associate Director of the Law Library
CARL A. PIERCE, B.A., J.D.,
Professor of Law
THOMAS E. PLANK, A.B., J.D.,
Professor of Law
NATHANIEL PRESTON, B.A., M.A., Ph.D.,
Writing Specialist
M. LORETTA PRICE, B.A., M.S.L.S.,
Associate Professor and Acquisitions Librarian
GARY PULSINELLI, A.B., Ph.D., J.D.,
Associate Professor of Law
GLENN H. REYNOLDS, B.A., J.D.,
Beauchamp E. Brogan Distinguished Professor of Law
DEAN HILL RIVKIN, A.B., J.D.,
Distinguished Professor of Law
JOHN L. SOBIESKI, JR., B.S., J.D.,
Lindsay Young Distinguished Professor of Law and
Associate Dean for Academic Affairs
BARBARA J. STARK, B.A., J.D., LL.M.,
Professor of Law
GREGORY M. STEIN, A.B., J.D.,
Woolf, McClane, Bright, Allen & Carpenter Distinguished Professor of Law
OTIS H. STEPHENS, A.B., Ph.D., J.D.,
Resident Scholar in Constitutional Law and
Alumni Distinguished Service Professor of Political Science
PENNY J. WHITE, B.S., J.D., LL.M.,
Associate Professor of Law
PAULETTE J. WILLIAMS, B.A., J.D.,
Associate Professor of Law
RICHARD S. WIRTZ, B.A., M.P.A., J.D.,
Edwin E. Overton Distinguished Professor of Law

EMERITI

GRAYFRED B. GRAY, B.A., J.D.,
Associate Professor of Law
FREDERIC S. LE CLERCQ, B.A., M.A., LL.B.,
Professor of Law
TOXEY H. SEWELL, B.S., J.D., I.I.M.,
Professor of Law
# TRANSACTIONS
## The Tennessee Journal of Business Law
### CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Business Faculty Notes</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>Articles</strong></td>
<td></td>
</tr>
<tr>
<td>How Much Information is Enough: Securities Market Information and the Quest for A More Efficient Market</td>
<td>5</td>
</tr>
<tr>
<td>Richard C. Strasser</td>
<td></td>
</tr>
<tr>
<td>The Interface Between the Bankruptcy Code and a Disgorgement Judgment Held by the Securities and Exchange Commission</td>
<td>31</td>
</tr>
<tr>
<td>Kasey T. Ingram</td>
<td></td>
</tr>
<tr>
<td>Navigating the Cultural Malaise: Foreign Direct Investment Dispute Resolution in the People’s Republic of China</td>
<td>55</td>
</tr>
<tr>
<td>George O. White III</td>
<td></td>
</tr>
<tr>
<td>The Legislative and Judicial Response to Recent Corporate Governance Failures – Will It Be Effective?</td>
<td>73</td>
</tr>
<tr>
<td>John L. Latham</td>
<td></td>
</tr>
<tr>
<td>Elizabeth Low</td>
<td></td>
</tr>
<tr>
<td><strong>Book Review</strong></td>
<td></td>
</tr>
<tr>
<td>Angela C. Ledford</td>
<td></td>
</tr>
<tr>
<td><strong>Memo to the Partner</strong></td>
<td></td>
</tr>
<tr>
<td>Non-Profit’s Formation of For-Profit Subsidiary</td>
<td>169</td>
</tr>
<tr>
<td>Laura Faye Mullins</td>
<td></td>
</tr>
<tr>
<td><strong>Case Commentaries</strong></td>
<td></td>
</tr>
<tr>
<td>Antitrust, Bankruptcy, Business Organizations, Contracts, Copyright, Corporate, Property, &amp; Tax</td>
<td>177</td>
</tr>
</tbody>
</table>
Professor Joan Heminway’s articles “Materiality Guidance in the Context of Insider Trading: A Call for Action” and “Enron’s Tangled Web: Complex Relationships; Unanswered Questions” were published as the lead articles in the most recently released volumes of The American University Law Review (Vo. 52, No. 5) and The University of Cincinnati Law Review (Vol. 71, No.4), respectively. In October, Professor Heminway was a presenter in a Knoxville CLE program entitled “Partnerships, LLCs And LLPs: Organization And Operation In Tennessee,” at which she spoke on two topics: “Choice of Entity” and “Ethical Considerations In The Formation And Representation Of Entities.” She also was a featured presenter in a November Tennessee Bar Association CLE program entitled “Fundamentals of Business Acquisitions,” at which she also spoke on two topics: “Structuring the Transaction” and “Key Terms of Acquisition Agreements.” Additionally, in June, Professor Heminway presented a paper entitled “Rock, Paper, Scissors: Choosing the Right Vehicle for Federal Corporate Governance Initiatives” at the Annual Meeting of the Law and Society Association. She also served as a moderator of a panel discussion for a program entitled “The Feminist Pervasion: How Feminist Scholarship Informs Law and Law Teaching” at the Southeastern Association of Law Schools (“SEALS”) Annual Meeting and Conference in July. In October, Professor Heminway was honored with an Alumni Service Award for her distinguished and continuing volunteer service to Brown University.

Professor Amy Hess has been on a research leave for the Fall 2003 semester rewriting two volumes of the Bogert Treatise on Trusts and Trustees. The topics she will cover in the revised volumes (which will be published as Bogert and Hess, The Law of Trusts and Trustees) are taxation of trusts and the effect of several new uniform laws on the law of trusts. These volumes will be available in 2004. She is also working on the teacher’s manual for An Introduction to Trusts and Estates, a casebook published in December 2002 and co-authored by Professor Hess with Professors Valerie J. Vollmar and Robert Whitman. In the Summer of 2004, Professor Amy Hess will be the faculty member accompanying University of Tennessee College of Law students to Cambridge where she will teach Trusts and Estates.
This winter, **Professor George Kuney**’s articles, “Let’s Make it Official: Adding an Explicit Pre-Plan Sale Process as an Alternative Exit from Chapter 11,” and “Bankruptcy Law and the Tort Lawyer” will be published in Volume 50 of *The Houston Law Review* and Volume 70 of *The Tennessee Law Review*, respectively. His essay, “All I Ever Needed to Know about Enron I Learned in Kindergarten” is being published in the text supplement *Enron: Corporate Fiascos & Legal Implications* by Foundation Press. He is also currently drafting *California Contract Law*, a treatise to be published by the University of California’s Continuing Education of the Bar in 2004-2005. Professor Kuney will be giving a presentation on “Teaching Contract Drafting” at the annual conference of the Legal Writing Institute in the summer of 2004.

**Professor Becky Jacobs’** article, “Pesification and Economic Crisis in Argentina: The Moral Hazard Posed by a Politicized Supreme Court,” has been published at 34 *U. Miami Int’l & Comp. L. R.* 391 (2003).

**Professor Don Leatherman** recently wrote an article entitled, “A Primer on § 1.1502-35T” forthcoming in *Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations and Restructurings 2003* (Practicing Law Institute 2003). Furthermore, in November of 2003 Professor Leatherman spoke on a panel discussing current developments for consolidated groups at the Practicing Law Institute’s Los Angeles meeting on Mergers, Acquisitions, and Joint Venturers. Moreover, in January 2004 he will speak on two panels considering both the current developments for consolidated groups, and tax treatment of cancellation of indebtedness income of members of a consolidated group at a meeting of the Tax Section of the American Bar Association.

**Professor Robert Lloyd**’s article “Making Contracts Relevant” will be published in Volume 36, No. 1 of the *Arizona State Law Journal*. 
The UT Board of Trustees approved the promotion of Professor Colleen Medill to the rank of Professor of Law.

The UT Board of Trustees approved the promotion of Professor Carl Pierce to the rank of Professor of Law. He continues to serve as the Reporter for the Tennessee Bar Association Committee on Ethics and Professional Responsibility, and he has recently been named co-chair of the Tennessee Supreme Court’s Task Force on Self-Represented Litigants. Furthermore, Professor Pierce has recently published a 3-part article in the *Tennessee Law Review* that analyzes the ethical prohibition against a lawyer communicating with represented persons without the consent of the represented person’s lawyer. See Pierce, “Variations on a Basic Theme: Revisiting the ABA’s Revision of Model Rule 4.2, Parts I, II, and III,” 70 *Tenn. L. Rev.* 121-200, 321-389, 643-736,(2002-2003). A portion of the article addresses the application of the rule to a lawyer’s communication the employees of represented organizations.

Professor Tom Plank returned to UT after a one-year visit at the Notre Dame Law School. Last summer, Professor Plank participated on a panel discussing the writing and publishing of legal scholarship at the annual meeting of SEALS. In the Fall semester, he finalized two articles to be published shortly, “The Erie Doctrine and Bankruptcy” in the *Notre Dame Law Review*, and “The Security of Securitization and the Future of Security,” in the *Cardozo Law Review* symposium on the Threats to Secured Credit.

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 returned to UT after spending a semester as Visiting Fulbright Professor of Law at Shanghai Jiaotong University Law School in Shanghai, China. Professor Stein taught two classes at Jiaoda. One course, “Introduction to the Law of Property,” covered basic topics in property law for third- and fourth-year undergraduate law students. The second course, “Real Estate Transactions and Finance: A Legal and Business Approach,” addressed some advanced topics in real estate finance for first- and second-year graduate law students. Professor Stein reports that his students were extremely well prepared and spoke excellent English, but that it was a bit of a challenge teaching property law in a nation that is just beginning to develop a law of property. While in China, Professor Stein also had the opportunity to speak at an American Studies conference at Nankai University in Tianjin, China. The conference was attended by over one hundred Chinese, American, and Japanese academics, as well as undergraduate and graduate students from Nankai University.

In May, Professor Paula Williams was on a panel entitled “The Challenges of Working with Social Workers and Other Professionals in the Clinic” at the AALS Workshop on Clinical Legal Education in Vancouver, Canada. Professor Paula Williams teaches the Business Law Clinic, and does research in the areas of affordable housing and economic development. In July 2003 she did a presentation 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.