Transactions: The Tennessee Journal of Business Law

ISSN 4486-1457. Transactions: The Tennessee Journal of Business Law is published semi-annually and edited by students of the University of Tennessee College of Law. The publisher is Transactions: The Tennessee Journal of Business Law, Inc., c/o The Clayton Center for Entrepreneurial Law, 1505 W. Cumberland Ave., Knoxville, Tennessee 37996-1810. The domestic subscription rate for hard copies of the journal is $20.00 per volume, $10.00 per single issue; a foreign hard-copy subscription is $25.00 per volume, $15.00 per single issue, plus postage. Unless notice to the contrary is received, Transactions: The Tennessee Journal of Business Law assumes that a renewal of the subscription is desired. All claims of non-receipt of an issue should be made within six months of date of publication if claimant wishes to avoid paying for the missing issue. To order back issues, contact William S. Hein & Co., Inc. at 1285 Main Street, Buffalo NY 14209-1987, or call toll free at (800) 828-7571. POSTMASTER: Send address changes to: Transactions: The Tennessee Journal of Business Law, c/o The Clayton Center for Entrepreneurial Law, 1505 W. Cumberland Ave., Knoxville, Tennessee 37996-1810.

THE UNIVERSITY OF TENNESSEE

COLLEGE OF LAW

UNIVERSITY ADMINISTRATION

JOE DIPETRO, B.A., M.A., M.D. .................................................... President
JIMMY G. CHEEK, B.S., MEd., Ph.D. .................................................. Chancellor

COLLEGE OF LAW ADMINISTRATION

DOUGLAS A. BLAZE, B.S., J.D. ....................................................... Dean and Art Stiluatz & Elvin E. Overton Distinguished Professor of Law
CAROL M. PARKER, B.S., M.A., J.D. .................................................. Interim Associate Dean for Academic Affairs, Associate Professor of Law and Director of Legal Writing
GREGORY M. STEIN, A.B., J.D. ....................................................... Associate Dean for Faculty Development and Woody McClane, Bright, Allen & Carpenter Distinguished Professor of Law
KATRICE J. MORGAN, B.A., J.D. ....................................................... Assistant Dean of Student Affairs, Director of Clinical Programs and Associate Professor of Law
PENNY J. WHITE, B.S., J.D., LL.M. .................................................... Director of the Center for Advocacy and Elvin E. Overton Distinguished Professor of Law
GEORGE W. KUNEY, B.A., J.D., M.B.A. ........................................... Director of the Clayton Center for Entrepreneurial Law and W.P. Toms Professor of Law
WILLIAM J. BEINTEMA, B.B.A., J.D., M.S.L.S. .................................. Director of the Clayton Center for Entrepreneurial Law and Fish H. and Mary Barton Professor of Law
REBA A. BEST, B.S., M.L.S. ......................................................... Acting Director of the Law Library and Associate Professor
CAROL M. COLLINS, B.A., M.S. ..................................................... Interim Head of Cataloguing for the Law Library and Associate Professor
KAREN REAGAN BRITTON, B.S., M.S., Ed.D ......................... Director of Admissions, Financial Aid, and the Betty B. Lewis Career Center
HOWARD AVERY, B.S., M.Ed. ........................................................ Director of Development and Alumni Affairs
R.G. SMITHSON, B.S. ................................................................. Director of Public Affairs
Teresa L. Peterson, B.S. ........................................................... Budget Director
MARY ANN JAMES ................................................................. Human Resources and Administration Manager

COLLEGE OF LAW FACULTY

DWIGHT L. AARONS, B.A., J.D., Associate Professor of Law
JERRY P. BLACK, JR., B.A., J.D., Associate Professor of Law
ROBERT C. BLITT, B.A., M.A., J.D., LL.M., Associate Professor of Law
CATHLEEN COCHRAN, B.A., M.S.L.S., Computer Services Librarian and Associate Professor
JOSEPH G. COOK, A.B., J.D., LL.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., Alumni Association Distinguished Service Professor of Law
IRIS J. GOODWIN, A.B., Ph.D., J.D., Associate Professor of Law
JOAN MACLEOD HEMINWAY, A.B., J.D., College of Law Distinguished Professor of Law
JENNIFER S. HENDRICKS, B.A., J.D., Associate Professor of Law
AMY MORRIS HESS, B.A., J.D., UTK Distinguished Service Professor of Law and National Alumni Association Distinguished Service Professor of Law
THOMAS J. HIGDON, B.A., M.A., J.D., Associate Professor of Law
JEFFREY M. HIRSCH, B.A., M.P.P., J.D., Associate Professor of Law
BECKY L. JACOBS, B.S., J.D., Associate Professor of Law
JOSEPH H. KING, JR., B.A., J.D., Walter W. Bassett and UTK Distinguished Service Professor of Law
GEORGE W. KUNEY, B.A., J.D., M.B.A., Associate Professor of Law and Director of The Clayton Center for Entrepreneurial Law
DON A. LEATHERMAN, B.A., J.D., LL.M., W. Allen Separk Distinguished Professor of Law
ROBERT M. LLOYD, B.S.E., J.D., Lindsay Young Distinguished Professor of Law
ALEX B. LONG, B.A., J.D., Associate Professor of Law
SIBYL MARSHALL, B.A., J.D., M.L.S., Assistant Professor and Head of Public Services for the Law Library
KARLA MCKANDERS, B.A., J.D., Associate Professor of Law
CARL A PIERCE, B.A., J.D., W. Allen Separk Distinguished Professor of Law and Director, Howard Baker Jr. Center for Public Policy
THOMAS E. PLANK, A.B., J.D., Joel A. Katz Distinguished Professor of Law
NATHAN A. PREUSS, B.A., J.D., M.S.L.S., Assistant Professor and Reference & Education Services Librarian
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. Bryan Distinguished Professor of Law
DEAN HILL RIVKIN, A.B., J.D.,
College of Law Distinguished Professor of Law
PAULA SCHAEFER, B.A., J.D.,
Associate Professor of Law
JOHN L. SOBIESKI, JR., B.S., J.D.,
Lindsay Young Distinguished Professor of Law
OTIS H. STEPHENS, A.B., Ph.D., J.D.,
Resident Scholar of Constitutional Law and
Alumni Distinguished Service Professor of Political Science
MAURICE E. STUCKE, A.B., J.D.,
Associate Professor of Law
PAULETTE J. WILLIAMS, B.A., J.D.,
Associate Professor of Law

FACULTY EMERITI

GARY L. ANDERSON, S.B., J.D., I.L.M.,
Associate Professor of Law
FRANCES LEE ANSLEY, B.A., J.D., I.L.M.,
College of Law Distinguished Professor of Law
NEIL P. COHEN, B.A., J.D., I.L.M.,
UTK Distinguished Service Professor of Law and
W.P. Tomp Professor of Law
GRAYFRED B. GRAY, B.A., J.D.,
Associate Professor of Law
PATRICK HARDIN, B.A., J.D.,
W. Allen Suspact Distinguished Professor of Law
D. CHERYN PICQUET, B.A., M.S.L.S.,
Professor
RICHARD S. WIRTZ, B.A., M.P.A., J.D.,
Elvin E. Overton Distinguished Professor of Law
CONTENTS

BUSINESS FACULTY NOTES                                    1

ARTICLES

THE REASONABLE CERTAINTY REQUIREMENT IN LOST PROFITS LITIGATION: WHAT IT REALLY MEANS  Robert M. Lloyd  11

THE FOX AND THE OSTRICH: IS GAAP A GAME OF WINKS AND NODS?  Arthur Acevedo  63

LISTEN TO YOUR STATE: RESOLVING THE NONEMPLOYEE UNION REPRESENTATIVE ACCESS DEBATE THROUGH STATE PROPERTY LAW  Jesse Dill  129

NONEMPLOYEE ACCESS TO EMPLOYER PROPERTY: A STATE OR FEDERAL SOLUTION?  Jeffrey M. Hirsch  175

RIGHTS TO PURCHASE A NON-PROFIT GENERAL PARTNER/MANAGING MEMBER INTEREST: ARE THEY A VIABLE STRUCTURING TOOL IN LOW INCOME HOUSING TAX CREDIT TRANSACTIONS WHEN THE ENTITY FILES BANKRUPTCY?  Carolyn A. Rowland  193

CASE COMMENTARIES

AGENCY, BANKRUPTCY, BUSINESS ASSOCIATIONS, CIVIL PROCEDURE, CONTRACTS, LABOR & EMPLOYMENT, PROPERTY, REAL ESTATE, & TAX  219