

# TRANSACTIONS

The Tennessee Journal of Business Law

VOLUME 17

SPRING 2016

NUMBER 2

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# 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 The Tennessee Journal of Business Law, Inc., c/o The Clayton Center for Entrepreneurial Law, 1505 W. Cumberland Ave., Knoxville, Tennessee 37996-1810. All claims of non-receipt of an issue should be made within six months of the date of publication if claimant wishes to avoid paying for the missing issue. To order back issues, contact William S. Hein & Co., Inc. at 2350 North Forest Road, Getzville, New York 14068, 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 journal is available free online and print editions may be ordered at <http://trace.tennessee.edu/transactions>.

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## BUSINESS FACULTY NOTES

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**Professor Teri Baxter** is in her third year as member of the University of Tennessee College of Law faculty after eleven years at the Saint Louis University School of Law. Her academic focus at the College of Law includes secured transactions, torts, family and privacy law, and constitutional law.

In her first year at the College of Law Professor Baxter was awarded the 2013 W. Allen Separk Faculty Scholarship Award for her article “Tort Liability for Parents Who Choose Not to Vaccinate Their Children and Whose Unvaccinated Children Infect Others,” which was published in the *University of Cincinnati Law Review* in 2014. Her next article, “Respecting Parents’ Fundamental Rights in the Adoption Process: Parents Choosing Parents for their Children,” was published in the Summer 2015 issue of the *Rutgers Law Review*. Her most recent article, “Marriage on Our Terms” questions the role of states in regulating marriage and will be published in the Spring 2017 issue of the *N.Y.U. Review of Law and Social Change*.

Professor Baxter was featured as part of a HuffPost Live panel discussing the October 2015 Supreme Court term, participated in a panel discussion of the role of affirmative action in higher education, presented a CLE program discussing the effect of *Obergefell v. Hodges* on marriage in Tennessee, and a CLE discussing constitutional issues raised by mandatory vaccinations. In February 2015 she was featured during the University of Tennessee’s Faculty Appreciation Week recognizing faculty members who “go the extra mile” in teaching, research, and outreach.



**Visiting Professor Kevin Conboy** practiced business law in Atlanta, Georgia for more than twenty-five years, first with Powell, Goldstein, Frazer & Murphy (now Bryan Cave), and then moving to global firm Paul Hastings LLP. His practice focused on commercial lending and other debt finance transactions, structuring and documenting secured and unsecured loan transactions. Most of his practice involved representation of the agent bank in complex senior debt transactions, but he also represented borrower clients. His transactions frequently included cross-border features, first and second lien financings, unusual collateral classes, and complex intercreditor issues. His industry focus was the communications and telecommunications industry, closing many deals in cable television, radio and broadcast television, cellular telephony, internet service providers, publishing, wireless, billboard, tower and other such businesses.

Professor Conboy served for two years as deputy headmaster and teacher at a secondary school in rural Kenya, East Africa. He also taught as an adjunct faculty member at both the University of Georgia and Emory University Law Schools, and taught for a year as an Associate Professor at Atlanta's John Marshall Law School, before coming to Knoxville to serve on the faculty of The University of Tennessee College of Law. He is currently teaching Mergers and Acquisitions/Deal Skills and Commercial Lending, and he will be teaching International Business Transactions and a Seminar on Marketing and Sales for lawyers in private practice. The 2015-2016 school year is his second year as a Visiting Professor.

Professor Conboy has published six law review articles (and written much more for popular publications), including "Tips for the Practitioner Seeking to Return to the Academy," 14 *Tenn. J. Bus. L.* 147 (Spring 2013) and "Diagramming Transactions: Some Modest Proposals and a Few Suggested Rules," 10 *Tenn. J. Bus. L.* 91 (Fall 2014).



**Professor Iris J. Goodwin** in January completed a one-year term as Program Chair of the Trusts and Estates Section of the Association of American Law Schools. For the association's annual meeting, she developed a program entitled "Legal Reform and Grantors' Jurisdictional Choices: The Implications of Freedom." Professor Goodwin moderated the panel, which included Professors Anne-Marie Rhodes of Loyola University (Chicago), Stewart Sterk of Cardozo Law School, and Jeff Schoenblum of Vanderbilt Law School, along with practitioners Don Kozusko of Kozusko Harris Duncan and Susan Bart of Sidley & Austin. The program was ground-breaking in two ways. First, the panel consisted of both academics and practitioners. Second, the program presented – choice of law considerations in estate planning – is something that practitioners recognize as an essential element in their stock in trade but that academics rarely consider in depth. In January she ascended to the role of Section Chair. Her paper "Access to Justice—What to Do About the Law of Wills" was submitted for publication in February 2016. Finally, she is working with West Academic Publishers to assemble an editorial board and otherwise develop a 25th edition of the iconic casebook, originally edited by Campfield, Turnier & Dickenson, *TAXATION OF ESTATE, GIFTS & TRUSTS*.

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**Professor Joan M. Heminway** teaches a range of business law courses, including Advanced Business Associations, Business Associations, Corporate Finance, Representing Enterprises (our transaction simulation course), and Securities Regulation. She also serves as a co-editor of the Business Law Prof Blog, is a member of the Business Entity Study Committee and Executive Council of the Business Law Section of the Tennessee Bar Association, and teaches in The University of Tennessee’s Professional MBA program.

Professor Heminway’s scholarship continues to concentrate on business entity law, securities regulation (especially disclosure law and policy, including in the insider trading context), and crowdfunding. Limited liability companies have been a particular focus for Professor Heminway this year. A recent paper, *The Ties That Bind: LLC Operating Agreements as Binding Commitments*, 68 S.M.U. L. REV. 811 (2015), briefly explores the extent to which limited liability company operating agreements are contracts at common law. This work led to invitations to present at the 2016 Annual Meeting of the Association of American Law Schools in January 2016 as part of the program for the Section on Agency, Partnership, LLC’s And Unincorporated Associations (“Contract is King, But Can It Govern Its Realm?”) and at the 11<sup>th</sup> International Conference on Contracts in February 2016. Professor Heminway’s article on dissolution in the LLC context, “The Death of an LLC: What’s Trending in LLC Dissolution Law?,” was published in January 2016 in the American Bar Association’s *Business Law Today*. Her most recent work on crowdfunding is a book chapter entitled “Intermediating Crowdfunding: A Foundational Assessment” in STRATEGIC APPROACHES TO SUCCESSFUL CROWDFUNDING, an international research volume published by IGI Global.

Current works in process includes an article scheduled for publication in the *Wayne Law Review* later this year currently entitled “The Role of Business Counsel as Compliance Gatekeepers: Toward Understanding and Avoiding Reckless Disregard for Legal and Ethical Compliance in Business Entities,” a related work scheduled for publication in the *Stetson Law Review* on corporate criminal liability in the insider trading context, and a paper on litigation risk in crowdfunding intermediation that was presented at the 7<sup>ème</sup> Conférence Internationale sur l’Environnement Institutionnel et Technologique de la Microfinance 9ITEM 7 Conference) in Shanghai, China in March 2016. Professor Heminway also recently collaborated with Irma Russell (University of Missouri-Kansas City School of Law) to author “Representing the Organizational Client in Environmental Matters,” a book chapter scheduled for publication later this year in ETHICS AND ENVIRONMENTAL PRACTICE: THE PRACTITIONER’S GUIDE (an American Bar Association publication).

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**Professor Amy Morris Hess** spoke at a meeting of the Committee on Professional Responsibility of the American College of Trust and Estate Counsel in Las Vegas, NV, in March 2016. Her topic, “Elimination of Bias in the Profession: The Influence of Cultural Differences in Estate Planning,” was an updated version of a program that she planned and helped to present at a joint meeting of the ABA Sections of Real Property, Trust & Estate Law and Taxation in Chicago, IL, in September 2015. In May 2016 Professor Hess will moderate a panel discussion entitled “Equal Justice Under Law: Nationwide Marriage Equality (Almost)

One Year Later” at the Spring Symposia of the ABA Section of Real Property, Trust & Estate Law in Boston, MA. The panel will discuss recent developments in estates and trusts and real estate law because of the United States Supreme Court’s decision in *Obergefell v. Hodges*. Hess is Co-Chair of the RPTE Section’s Committee on Diversity and Inclusion and a member of the Section’s Council.



**Professor Becky Jacobs** has participated in several presentations recently. In January, she discussed the UT Law Environmental Practicum that she directs as part of the Agricultural and Food Law, Environmental Law, and Natural Resources and Energy Law Joint Program, *Engaging Students in Real-World Problem Solving: An Interactive Workshop*, at the annual meeting of the Association of American Law Schools New York. She also prepared a short paper entitled, *The Role of Law in Reducing Barriers to Citizen Participation in Community-Based Natural Resource Management Models*, for a panel discussion on Citizen Participation in the Decision-Making Process at the XIVème Colloque International sur Le Droit et La

Gouvernance de La Société de L’Information - Citizen Participation and Collaboration in Promoting Open Government. This Colloquium was held at the Sorbonne in Paris, France in early March, and conference papers will be published in book form. The Professor also is organizing and co-presenting a mediation CME, *Mediator Rounds: Ethics and Emotions in Professional Development and Mentoring*, that will take place in Knoxville later in March.

In collaboration with Dr. Elizabeth Strand, the Founding Director of Veterinary Social Work (VSW) and the “*All Creatures Great and Small*” Endowed Clinical Associate Professor at the University of Tennessee Colleges of Social Work and Veterinary Medicine, and with Jackie Kittrell, the Director of the Knox County CMC, Professor Jacobs is organizing a Continuing Education program for the Knoxville Veterinary Medical Association. That program will focus on practical

techniques for the ethical management of conflict in veterinary practice and will take place in April.

Professor Jacobs' article, "A Perplexing Paradox: 'De-Statification' of 'Investor-State' Dispute Settlement?" appeared in volume 30 of the *Emory International Law Review* in November 2015. Her most recent article, "Mandatory ADR Notice Requirements: Gender Themes and Intentionality in Policy Discourse," is currently in the submission process.



**Professor Brian Krumm** participated in a panel at the annual meeting of the Association of American Law Schools in January 2015. The panel, entitled "Integrating Clinical Pedagogy Across the Curriculum: Making It Work," was presented by the Section on Clinical Legal Education. The panel explored innovative models for how clinical pedagogy can enhance learning across the curriculum in all three years of law school. Professor Krumm also presented at the 14th Annual Transactional Clinical Conference, which took place in April 2015 in Kansas City, MO.

Professor Krumm's portion of an edited conference panel transcript, "Teaching Transactional Skills Using Real Clients From Clinic to Classroom," was included in a recent issue of *Transactions: The Tennessee Journal of Business Law*. Additionally, his article, "Registering Trade and Service Marks in Tennessee: A Brief How-To Guide," appears in this issue of *Transactions*.

Professor Krumm has been named to the Anderson Center for Entrepreneurship and Innovation Research Council, Haslam College of Business. Professor Krumm's article "University Technology Transfer - Profit Centers or Black Holes: Moving Toward a More Productive University Innovation Ecosystem Policy," will be published in the *Northwestern Journal of Technology and Intellectual Property* in December.



**Professor George Kuney's** most recent book, *BANKRUPTCY IN PRACTICE 5<sup>th</sup> Edition*, co-authored with Arnold & Porter's Michael Bernstein, was published in November. The book, which has been called the best deskbook on bankruptcy practice, covers chapter 7 and 11 practice nationwide. It joins Kuney's treatise and casebook, *BUSINESS REORGANIZATIONS*, co-authored with Brooklyn Law School's Michael Gerber as the core of the readings for Kuney's springtime seminar *Workouts & Reorganizations*, in which students produce

detailed research papers tracking various chapter 11 cases around the country and which have now been downloaded over 8,400 times in the past year. His casebook, *EXPERIENCING REMEDIES* was also published this fall. CEB of California is publishing the 2015-updated edition of Professor Kuney's single volume treatise, *California Law of Contracts*, co-authored with his wife, Adjunct Professor Donna Looper. He continues to work on three new books that are expected to be published over the next year: *A TRANSACTIONAL MATTER*, *A CRIMINAL MATTER*, and a new edition of *LEGAL DRAFTING IN A NUTSHELL*. He was honored this year with the Carden Award for Outstanding Achievement in Scholarship at the College's annual awards banquet.

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**Professor Michelle Kwon** was named a faculty fellow in January 2016 at the Center for Business & Economic Research at the University of Tennessee's Haslam College of Business. She is also serving on a committee seeking to hire a new law library faculty member.

Professor Kwon presented "Easing Regulatory Bottlenecks" at the University of Washington School of Law tax symposium in October 2015. This research considers the possibility of leveraging the intellectual capital of tax practitioners and academics to develop tax regulations. Tax regulations are crucial to both the government's enforcement efforts as well as taxpayers' efforts to adequately plan and to comply with the tax law. Unlike many other areas of law, taxpayers typically want more tax guidance, not less. But the demand for regulatory guidance exceeds their supply.

Professor Kwon has been working with Professor Leandra Lederman from Indiana University Maurer School of Law to finalize the third edition of *Understanding Corporate Taxation*, a student treatise that is part of the LexisNexis *Understanding* series.

In addition to her scholarly endeavors, since August, Professor Kwon has been a member of the Appointments Committee, which coordinates faculty hiring for the law school. Additionally, she began serving as a faculty advisor for the Christian Legal Society, along with Professor Brad Areheart.

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**Professor Don Leatherman** recently spoke at the ABA tax section meeting in January 2016 on the intersection of Subchapter K and the consolidated return regulations.

In December 2015, Professor Leatherman spoke at the Practising Law Institute's Los Angeles meeting on Mergers, Acquisitions, and Joint Ventures on current developments for consolidated groups.

Professor Leatherman published “An Analysis of the Section 336(e) Regulations in Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations and Restructurings” in early 2015. The Winter 2015 edition of the Tax Lawyer also contained ABA comments on the section 336(e) regulations, comments for which Professor Leatherman was a principal author.

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**Associate Dean Alex Long** published in summer 2015 the second edition of PROFESSIONAL RESPONSIBILITY IN THE LIFE OF A LAWYER (2nd ed. West) with co-authors and professors Judy Cornett and Paula Schaefer. Dean Long teaches in the areas of Professional Responsibility, Torts, Employment Law, and Disability Law at the University of Tennessee College of Law. Professor Long also published an article in Spring 2015 in the *Houston Law Review: Off the Record*, “Finding New Inspiration in the ADAAA.”

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**Professor Thomas Plank** published his revised chapter of *The Key to Securitization: Isolating the Assets to Be Securitized from the Risk of An Insolvency Proceeding* in December 2015 as Chapter 8 of the latest edition of John Arnholz, Reed Auerbach and Edward E. Gainor, eds., OFFERINGS OF ASSET BACKED SECURITIES (Wolters Kluwer 3d ed. 2015).

In November 2015, Professor Plank participated in a Colloquium sponsored by the Federalist Society on the “Theory of the Firm”. The Colloquium consisted of a series of informal, moderated discussions of a small number of invitees examined the ongoing debate regarding the nature and proper purpose of the corporation.

In October 2015, Professor Plank participated in the first drafting session of the advisors and consultants for the Restatement (Fourth) of Property of the

American Law Institute. The reporters drafting the Restatement proposed a broad coverage of the topic, including contract rights and security interests as property. Although some suggested that the Restatement should focus on real estate, Professor Plank argued for the broad coverage, including contract rights and security interests, and most attendees agreed.

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**Professor Gary Pulsinelli** continues to serve on the Website, Technology, and Communications Committee of the Southeastern Association of Law Schools for the 2015-16 academic year. Professor Pulsinelli teaches in the areas of Property and Intellectual Property. His background includes biotechnology patent prosecution and related legal research.

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**Professor Paula Schaefer's** article, "A Primer on Professionalism for Doctrinal Professors," which appeared in the *Tennessee Law Review* in 2014, was noted on the Legal Skills Prof Blog. A related chapter by Schaefer will appear in the book, BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD, to be published later this year by Lexis. Additionally, Professor Schaefer spoke at the 2015 Igniting Law Teaching Conference, on the subject, "Tips for Finding the Attorney Professionalism Lessons Hiding in Plain Sight in Every Casebook," at American University, Washington College of Law in Washington, DC. She teaches Legal Profession, Civil Procedure, E-Discovery, and Business Associations and was a co-author of PROFESSIONAL RESPONSIBILITY IN THE LIFE OF A LAWYER (West Academic, 2015).

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**Associate Dean Greg Stein's** article, "Chinese Real Estate Law and the Law and Development Theory: A Comparison of Law and Practice," has been accepted for publication in the *Florida State Journal of Transnational Law and Policy*. The article will appear in spring of 2016. His recent book, MODERN CHINESE REAL ESTATE LAW: PROPERTY DEVELOPMENT IN AN EVOLVING LEGAL SYSTEM, received a favorable review in the *Law and Politics Book Review*. In addition, Stein has been invited to serve as one of the inaugural editors of Jotwell–Property. Jotwell, the *Journal of Things We Like (Lots)*, is the place where legal

academics identify, celebrate, and discuss the best new legal scholarship by others in short 500-1000 word articles. Stein will write regular articles for the Journal.

Stein participated on a panel at the Annual Meeting of the Association for Law, Property, and Society (ALPS). His presentation, "Harmonizing Chinese Real Estate Law with the Theory of Law and Development," was part of a panel on the Chinese Real Estate Market. The ALPS Conference was hosted by the University of Georgia School of Law in Athens, GA. Stein was interviewed on the subject, "China Goes Boom, but it's Raining Money," for the radio show Your Weekly Constitutional. The show, hosted by Professor Stewart Harris, is produced at WETS-FM, the NPR affiliate in Johnson City, Tennessee, and syndicated nationally. Stein also gave a Pre-Football CLE Continuing Legal Education presentation on September 12, on "Government Conditions on Real Property Development: When Are They Constitutional and When Are They a Taking?"

Stein participated in the Fall Meeting of the American College of Real Estate Lawyers (ACREL) in two different capacities, serving as a Member-Elect of the Board of Governors and Co-Chairing the Meeting of the Law Professors' Committee. Stein previously served on the ACREL Board from 2011 through 2013. The meeting took place in October 2015 in Baltimore. Stein was also elected to the Executive Committee of the Real Estate Transactions Section of the Association of American Law Schools.

In addition, Stein has been invited to serve as a peer reviewer for *Frontiers of Law in China*, a law journal published in English by Renmin University School of Law in Beijing, China.



**Professor Maurice Stucke** was, in the Spring 2015 semester, an Academic Visitor at Oxford University's Institute of European and Comparative Law, a Fellow at Oxford's Centre for Competition Law and Policy, and a Senior Associateship at Pembroke College. While at Oxford with his family, Professor Stucke undertook several research projects. First, he examined, with Ariel Ezrachi, the relationship between competition and quality in two-sided markets. That led to their article, "When Competition Fails to Optimise Quality: A Look at Search Engines," *Yale Journal Of Law & Technology* (forthcoming

2015), available at <http://ssrn.com/abstract=2598128>

Second, Professor Stucke examined the implications of a data-driven economy on privacy, consumer protection and competition law. That led to two books: *BIG DATA AND COMPETITION POLICY* (Oxford University Press, forthcoming 2016) (with Allen P. Grunes) and *THE END OF COMPETITION AS WE KNOW IT: THE RISE OF PRICE ALGORITHMS, MACHINE LEARNING AND ARTIFICIAL INTELLIGENCE* (Harvard University Press, forthcoming 2016) (with Ariel

Ezrachi). Finally, he is developing ways that companies can promote an ethical organizational culture to deter wrongdoing.

Professor Stucke co-authored two articles with Allen Grunes on the implications of Big Data on competition policy: “No Mistake About It: The Important Role of Antitrust in the Era of Big Data,” which appeared in *The Antitrust Source* and “Debunking the Myths over Big Data and Antitrust,” which appeared in *CPI Antitrust Chronicle*. Professor Stucke also coauthored with Allen Grunes an op-ed piece entitled, “Dancing Around Data.” The article, which appears in *The Hill*, argues that privacy concerns should be given greater consideration in the evaluation of corporate mergers. His article, “In Search of Effective Ethics and Compliance Programs,” was published in the *Journal of Corporation Law*, a publication of the University of Iowa College of Law, and his article, “How Competition Agencies Can Use Behavioral Economics,” was published in *The Antitrust Bulletin*.

Professor Stucke recently authored a chapter “Leniency, Whistleblowing and the Individual: Should We Create Another Race to the Competition Agency?,” in *ANTI-CARTEL ENFORCEMENT IN A CONTEMPORARY AGE: THE LENIENCY RELIGION* (Caron Beaton-Wells ed., Hart Publishing 2015).

Finally, he presented the above research at University of Oxford’s The Antitrust Enforcement Symposium; before the U.S. Federal Trade Commission’s workshop, The “Sharing” Economy: Issues Facing Platforms, Participants, and Regulators; at Oxford’s Round Table Discussion on Information Exchange and Market Transparency; at the American Bar Association Section of Antitrust Law’s 63rd Spring Meeting; in Madrid at the law firm Uría Menéndez’s Mesa Redonda: Privacidad y Competencia en la Era del Big Data, at Bar Ilan University’s conference, Fairness in Antitrust; and Concurrences Journal’s and Cadwalader, Wickersham & Taft’s forum in Brussels, Antitrust, Privacy & Big Data.



**Professor Kris Anne Tobin**, along with Brad Morgan, associate director of the Institute for Professional Leadership, presented at the annual conference of the Institute for Law Teaching and Learning. The title of their presentation was “Combining Legal Research Pedagogy, Pro Bono and Experiential Learning in the First Year Curriculum at the University of Tennessee College of Law.” Professor Tobin continues to serve on the Executive Committee for the AALS Section on Admiralty and Maritime Law.

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**Professor Paulette J. Williams** teaches the Nonprofits Clinic, the Nonprofits Seminar, and the Business Clinic. During the Fall 2015 semester she attended the Engagement Scholarship Consortium at Penn State University, and she presented on the final plenary panel at the Southern Clinical Conference at the University of Memphis Cecil C. Humphreys School of Law. Professor Williams recently served as a member of the ABA-AALS site visit team for the University of Massachusetts School of Law at Dartmouth.