

TRANSACTIONS

THE TENNESSEE JOURNAL OF BUSINESS LAW

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CASE COMMENTARIES

BANKRUPTCY, BUSINESS ORGANIZATIONS, COMMERCIAL, CONTRACTS,
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BUSINESS FACULTY NOTES



Professor Joan Heminway recently published a paper in the *Texas Journal of Women and the Law* entitled “Save Martha Stewart? Observations About Equal Justice in U.S. Insider Trading Regulation” at 12 *Tex. J. Women & L.* 247 (2003). The paper identifies potential structural sources of selective enforcement in U.S. insider trading regulation and isolates certain easily recognizable bases for enforcement bias in the application of that regulation, using the Martha Stewart insider trading investigation as an example. Ultimately, the paper recommends more rigorous investigation into possible sources of selectivity and bias in insider trading enforcement and offers preliminary suggestions for ways in which the identified potential for bias may be obviated or overcome, consistent with the current federal regulatory and political environment. In March, Prof. Heminway was quoted in *The Boston Globe* in two separate news articles including the March 6 issue under the headline “SEC Still Plans to Pursue Charges,” as well as in the March 11 issue in a story headlined “Bank of America Fined Record \$10m.” Later that month, Prof. Heminway’s testimony as an expert witness on corporate finance matters was quoted in a story published in the *Birmingham (Ala.) News* on March 31 under the heading “Judge Gives HealthSouth More Time.” In April, Prof. Heminway gave two presentations on campus: “Did Martha Stewart Commit Securities Fraud” for the College of Law’s Business and Tax Law Association; and “Determining the Road to be Taken: Analyzing Federal Avenues for Corporate Governance Rulemaking” for UT’s Corporate Governance Center.



Professor Amy Hess just completed the manuscript of a replacement volume on the taxation of trusts for the Bogert, *Treatise on Trusts and Trustees*. The volume will be published by Thomson/West this summer as Bogert and Hess, *The Law of Trusts and Trustees*. Currently, she is working on the 2004 pocket parts for the entire treatise and is completing a 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 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 committee that organizes courses for minority lawyers interested in concentrating their practices in the areas of real estate transactions, probate, and estate planning.



The *Houston Law Review* has published **Professor George Kuney's** article, "Let's Make It Official: Adding an Explicit Preplan Sale Process as an Alternative Exit from Bankruptcy" in Volume 40, starting at page 1265. The article describes the reorganization-by-sale-of-substantially-all-the-assets-of-a-business process and presents a series of proposed statutory amendments intended to improve the procedural protections afforded parties in interest subject to this type of reorganization strategy. The *Los Angeles Daily Journal* accepted a short article titled "Director & Officer Fiduciary Duties In The Zone of Insolvency" by Prof. Kuney and his colleague David Kays, Esq. He is also serving as lead bankruptcy counsel to a personal injury plaintiff that is asserting a successor liability claim against a § 363 asset purchaser that claims to be insulated from liability under the sale order and § 363(f) of the Bankruptcy Code. He has prevailed in the Ohio home bankruptcy court of the debtor and purchaser. The matter is now proceeding on appeal in the 6th Circuit Bankruptcy Appellate Panel and to trial in the United States District Court for the District of South Carolina.



Professor Becky Jacobs spoke at a program entitled "Beyond Formal Democracy: Re-Conceiving Self Determination" at the Inter-American University School of Law in San Juan, Puerto Rico, December 11, 2003. Her latest article, "Policy and Praxis: A Role for LatCrit 'Institutional-Class Analysis' in Latin American Judicial Reform" will be published in Volume 16 Number 3 of the *Florida Journal of International Law*.



Professor Don Leatherman will be a panelist at the May meeting of the American Bar Association tax section discussing current developments relating to consolidated groups.



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 Colleen Medill organized and moderated a program entitled "Coverage of Reproductive Technologies Under Employer Sponsored Health Care Plans" at the January meeting of the Association of American Law Schools in Atlanta. Prof. Medill also completed her term as Chair of the Section on Employee Benefits Law.



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.