

TRANSACTIONS

THE TENNESSEE JOURNAL OF BUSINESS LAW

ARTICLES

DISCOUNTING LOST PROFITS IN BUSINESS LITIGATION: WHAT EVERY LAWYER AND JUDGE NEEDS TO KNOW

ROBERT M. LLOYD

A PRIMER ON OPINION LETTERS: EXPLANATIONS AND ANALYSIS

KELLY A. LOVE

WHAT'S THE COST OF A FREE PASS? A CALL FOR THE RE-ASSESSMENT OF STATUTES THAT ALLOW FOR THE ELIMINATION OF PERSONAL LIABILITY FOR DIRECTORS

LLOYD L. DRURY, III

PROFESSIONAL COMPENSATION IN BANKRUPTCY: USING CONTRACT LAW PRINCIPLES TO INTERPRET AMBIGUOUS RETENTION ORDERS

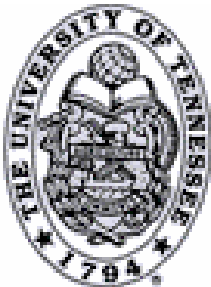
CALEB J. BARTEL

CHANGING WITH THE TIMES: EMINENT DOMAIN PRACTICE IN LIGHT OF TENNESSEE PUBLIC ACT 863

SCOTT GRISWOLD

CASE COMMENTARIES

ARBITRATION, BANKRUPTCY, BUSINESS ASSOCIATIONS, COMMERCIAL LAW, CONTRACT LAW, EMPLOYMENT LAW, INSURANCE, PROPERTY, TAXATION, & WILLS & ESTATES



A PUBLICATION OF
THE CLAYTON CENTER FOR ENTREPRENEURIAL LAW
OF
THE UNIVERSITY OF TENNESSEE COLLEGE OF LAW



VOLUME 9

FALL 2007

NUMBER 1

TRANSACTIONS

The Tennessee Journal of Business Law

VOLUME 9

FALL 2007

NUMBER 1

EXECUTIVE EDITORIAL BOARD

ELLEN R. NEESE
Managing Editor

HOLLY N. MANCL
Editor in Chief

KRISTY L. RICE
Executive Editor

SENIOR EDITORIAL BOARD

CHARLES R. FRAZIER
Senior Commentary Editor

MATTHEW K. AVERY
News & Publications Editor

ASSISTANT EDITORS

T. WILLIAM A. CALDWELL
Articles & Research Editor

REBECCA A. CASEY
Articles & Research Editor

EMILY A. CLEVELAND
Articles & Research Editor

JEREMY M. COTHERN
Articles & Research Editor

DREW H. REYNOLDS
Articles & Research Editor

JORDAN RAE SMITH
Articles & Research Editor

THIRD-YEAR MEMBERS

RUSSELL J. BLAIR
PATRICK EARNEST
RYAN C. EDENS
WHITNEY L. FRAZIER
JOHN L. FULLER
DAVID GOODMAN
KACY L. HUNT
JASON J. ISAACSON

AARON J. KANDEL
BURKE KEATY
CARA E. LYNN
JONATHAN L. MAY
MELANIE A. McDAVID
MARTHA S. McREE
AMY E. MICHAELSON
WILLIAM D. MOORE III
BEAU E. PEMBERTON

WHITNEY L. QUARLES
JONATHAN W. ROBBINS
BRADLEY C. SAGRAVES
JESSICA H. SHAFER
BRETT T. SMITH
BOBAK TALEBIAN
ASHLEY N. THOMAS
ALLISON A. WIEMER

SECOND-YEAR MEMBERS

BAHAR AZHDARI
JOHN BARNES
AMBER BECTON
MELISSA CHIARO
DAVID N. DRAPER
MARIA FOLEY
MEGHAN FOWLER
JENNIFER GOWER
VERNON GUTHRIE
JEREMY HALE
ROMAN HANKINS
STEPHEN D. HARGRAVES
PATRICK HAWLEY

ROBERT HAZELWOOD
BRADLEY J. HEARNE
CATRINA HEWLETT
NICHOLAS H. JACKSON
CHAD JARBOE
JOHN KARBAF
KAREN KENNEY
RACHEL E. LEVINSON
ANTHONY LORIA
CORINNE E. MARTIN
JOSHUA MULLEN
PATRICK W. NORTON
ANDREW OLDHAM

VANESSA A. PATEL
MELANIE A. PRINCE
JOHN J. RADACSY IV
PETER RIPLEY
BETHANY K. SCOTT
CHRISTOPHER SHERMAN
WALT SIEDENTOPF
SCOTT E. SIMMONS
SHELTON C. SWAFFORD
LINDSEY M. VAUGHAN
KATHERINE WELLBORN
GEORGE R. WHITFIELD III
TAYLOR WILLIAMS

FACULTY ADVISOR

PROFESSOR GEORGE W. KUNEY
*DIRECTOR, THE CLAYTON CENTER FOR
ENTREPRENEURIAL LAW*

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 is \$20.00 per volume, \$10.00 per single issue; foreign 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 does not discriminate on the basis of race, sex, color, religion, national origin, age, handicap, or veteran status in provision of educational opportunities or employment opportunities and benefits. The UT College of Law does not discriminate on the basis of sex or handicap in its educational programs or activities, pursuant to requirements of Title IX of the Educational Amendments of 1972, Public Law 92-318, and Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, and the Americans With Disabilities Act of 1990, Public Law 101-336. This Policy extends to both employment by and admission to the University. Inquiries concerning Title IX, Section 104, and the Americans With Disabilities Act should be directed to the Office of Equity and Diversity ("OED") at 1840 Melrose Avenue, Knoxville, TN 37996-3560; or telephone (865) 974-2498. Charges of violations of the above policy should also be directed to OED.

Copyright © 2007 *Transactions: The Tennessee Journal of Business Law, Inc.*

THE UNIVERSITY OF TENNESSEE

COLLEGE OF LAW

UNIVERSITY ADMINISTRATION

JOHN D. PETERSEN, B.S., Ph.D..... *President*
LOREN W. CRABTREE, B.A., Ph.D..... *Chancellor and Vice President for Academic Affairs*

COLLEGE OF LAW ADMINISTRATION

JOHN L. SOBIESKI, JR., B.S., J.D..... *Interim Dean and
Lindsay Young Distinguished Professor of Law*
DOUGLAS A. BLAZE, B.S., J.D..... *Interim Associate Dean for Academic Affairs,
Art Stolnitz Distinguished Professor of Law, and
Elvin E. Overton Distinguished Professor of Law*
DOLORES WHITERS, B.A., J.D..... *Interim Assistant Dean for Student Affairs*
JERRY P. BLACK, JR., B.A., J.D..... *Interim 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 Dispute Resolution and
Associate Professor of Law*
GEORGE W. KUNEY, B.A., J.D., M.B.A..... *Director of The Clayton Center for Entrepreneurial Law and
Associate Professor of Law*
CAROL M. PARKER, B.S., M.A., J.D..... *Director of Legal Writing and Associate Professor of Law*
WILLIAM J. BEINTEMA, B.B.A., J.D., M.S.L.S..... *Director of the Law Library and Associate Professor*
D. CHERYN PICQUET, B.A., M.S.L.S..... *Associate Director of the Law Library and Professor*
REBA A. BEST, B.S., M.L.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*
HOWARD AVERY, B.S., M.Ed..... *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
Networking Manager of the Law Library*
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., LL.M.,
Associate 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.L.S.,
Professor and Head of Cataloging for the Law Library
JERRY P. BLACK, JR., B.A., J.D.,
*Associate Professor of Law and
Interim Director of Clinical Programs*
DOUGLAS A. BLAZE, B.S., J.D.,
*Art Stolnitz Distinguished Professor of Law,
Elvin E. Overton Distinguished Professor of Law, and
Interim Associate Dean for Academic Affairs*
ROBERT C. BLITT, B.A, M.A., J.D., LL.M.,
Associate Professor of Law
CATHLEEN COCHRAN, B.A., M.S.I.S.,
Associate Professor and Computer Services Librarian
CAROL MORGAN COLLINS, B.A., M.S.,
Assistant Professor and Catalog Librarian
JOSEPH G. COOK, A.B., J.D., LL.M.,
Willford 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.,
UT National Alumni Professor of Law
IRIS J. GOODWIN, A.B., Ph.D., J.D.,
Associate Professor of Law
JOAN MACLEOD HEMINWAY, A.B., J.D.,
Associate Professor of Law
JENNIFER S. HENDRICKS, B.A., J.D.,
Associate Professor of Law
AMY MORRIS HESS, B.A., J.D.,
*Waller Lansden Dortch & Davis Professor of Law and
UTK Distinguished Service 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
DESERIEE A. KENNEDY, B.A., J.D., LL.M.,
Associate Professor of Law
JOSEPH H. KING, JR., B.A., J.D.,
*Walter W. Bussart Professor of Law 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.,
Associate 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 Reference Librarian
CAROL M. PARKER, B.S., M.A., J.D.,
Associate Professor of Law and Director of Legal Writing
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

MAE C. QUINN, B.A., J.D., LL.M.,
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
Interim Dean*
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*
MAURICE E. STUCKE, A.B., J.D.,
Associate Professor of Law
PENNY J. WHITE, B.S., J.D., LL.M.,
*Associate Professor of Law and
Interim Director of The Center for Advocacy and Dispute
Resolution*
PAULETTE J. WILLIAMS, B.A., J.D.,
Associate Professor of Law

FACULTY EMERITI

FRANCES LEE ANSLEY, B.A., J.D., LL.M.,
Distinguished Professor of Law
NEIL PHILIP COHEN, B.A., J.D., LL.M.,
*UTK Distinguished Service Professor of Law and
W.P. Toms Professor of Law*
GRAYFRED B. GRAY, B.A., J.D.,
Associate Professor of Law
PATRICK HARDIN, B.A., J.D.,
W. Allen Separk Distinguished Professor of Law
RICHARD S. WIRTZ, B.A., M.P.A., J.D.,
Elvin E. Overton Distinguished Professor of Law

TRANSACTIONS

The Tennessee Journal of Business Law

VOLUME 9

FALL 2007

NUMBER 1

CONTENTS

BUSINESS FACULTY NOTES 1

ARTICLES

DISCOUNTING LOST PROFITS IN BUSINESS LITIGATION: WHAT EVERY LAWYER AND JUDGE NEEDS TO KNOW *Robert M. Lloyd* 9

A PRIMER ON OPINION LETTERS: EXPLANATIONS AND ANALYSIS *Kelly A. Love* 67

WHAT'S THE COST OF A FREE PASS? A CALL FOR THE RE-ASSESSMENT OF STATUTES THAT ALLOW FOR THE ELIMINATION OF PERSONAL LIABILITY FOR DIRECTORS *Lloyd L. Drury, III* 99

PROFESSIONAL COMPENSATION IN BANKRUPTCY: USING CONTRACT LAW PRINCIPLES TO INTERPRET AMBIGUOUS RETENTION ORDERS *Caleb J. Bartel* 149

CHANGING WITH THE TIMES: EMINENT DOMAIN PRACTICE IN LIGHT OF TENNESSEE PUBLIC ACT 863 *Scott Griswold* 179

CASE COMMENTARIES

ARBITRATION, BANKRUPTCY, BUSINESS ASSOCIATIONS, COMMERCIAL LAW, CONTRACT LAW, EMPLOYMENT LAW, INSURANCE, PROPERTY, TAXATION, & WILLS AND ESTATES 249

BUSINESS FACULTY NOTES



Professor Iris J. Goodwin spent the Fall 2007 term visiting at the University of Richmond Law School where she taught Property for first-year students, in addition to Gratuitous Transfers. While there, she presented her most recent article, “What is Public about Public Charity: Robertson v. Princeton and the Frustrations of Cy Pres Reform,” at a Faculty Workshop.



Professor Joan Heminway recently wrote an article, emanating from her comments at an academic roundtable last spring, entitled “Hell Hath No Fury Like an Investor Scorned: Retribution, Deterrence, Restoration, and the Criminalization of Securities Fraud under Rule 10b-5.” The article was released in the University of Maryland School of Law’s *Journal of Business & Technology Law* Vol. 2 No. 1 earlier this fall. That same publication was number 1 on the Social Science Research Network’s Top Ten List for “CL: Causes & Consequences of Crime” based on the number of downloads of that paper within a 60-day period from September to November 2007. Another one of her papers, “Personal Facts About Executive Officers: A Proposal for Tailored Disclosures to Encourage Reasonable Investor Behavior,” recently published in Vol. 24, No. 3 of the *Wake Forest Law Review*, made SSRN’s Top Ten List for “Law & Society: Public Law.” Additionally, Professor Heminway led a group discussion on the question “Does Sarbanes-Oxley Foster the Existence of Ethical Role Models?” at a forum sponsored by the University of Tennessee’s Corporate Governance Center, and she spoke on the same question at the University of Maryland School of Law’s October 2007 conference entitled “The Sarbanes-Oxley Act of 2002, Five Years Later: Assessing its Impact, Charting its Future.” Professor Heminway also gave a continuing legal education seminar at the New York office of Skadden, Arps, Slate, Meagher & Flom, LLP in October 2007 entitled “What Corporate Lawyers Can Learn (About the Law) from Martha Stewart.” Finally, in November 2007, Professor Heminway was a panelist at a Drexel University program entitled “‘No Seat at the Table’: A Discussion of Women and Corporate Boards.”



Professor Amy Morris Hess was named the Williford Gragg Professor of Law in June 2007. She is in the process of replacing several volumes of the multi-volume treatise BOGERT, *THE LAW OF TRUSTS AND TRUSTEES* and also prepares annual pocket parts for all volumes of the work. Thompson-West published her most recent pocket parts in the summer of 2007 and published her replacement volume dealing with the history of the law of trusts, restatements and uniform laws relating to trusts, and several other aspects of trust creation in the fall of 2007. Another replacement volume dealing with the scope of trustees' investment duties and beneficiaries' remedies for breach is in progress. In October 2007, Professor Hess presented a continuing professional education program entitled "Estate Planning Council of the Emerald Coast in Destin, Florida." At the request of students in the Business Clinic, she was the principal speaker at an estate planning workshop for low-income homeowners.

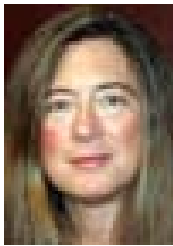


Professor Jeff Hirsch recently served as a moderator at the American Constitution Society for Law and Policy and West Virginia University College of Law's conference entitled "Reversing Field: Examining Issues of Commercialization, Race and Labor in 21st Century Sports Law," moderating the panel "Balls or Strikes: Are Economic Weapons Finding the Zone?" Professor Hirsch also presented his paper entitled "Regulatory Pragmatism in the Workplace," proposing a single, universal law governing all termination claims as a means to minimize the confusion that currently exists on the subject, at the Second Annual Colloquium on Current Scholarship in Labor and Employment Law held at the University of Colorado Law School and the University of Denver Sturm College of Law. Professor Hirsch's essay "Taking States Out of the Workplace," questioning the efficiency of permitting state regulation of the workplace, will be published in the Yale Law Journal Pocket Part. Additionally, Professor Hirsch's "Understanding Employment Law," which he co-authored with Professors Rick Bales (Northern Kentucky) and Paul Secunda (Mississippi) has been published by LexisNexis as part of its Understanding series.



Professor George Kuney had the second edition of his *Legal Drafting: Process, Techniques, and Exercises*, co-authored with Prof. Emeritus Thomas Haggard of the University of South Carolina School of Law, published by West as part of its American

Casebook Series. This work parallels the authors' *Legal Drafting in a Nutshell*, which West also published earlier this year. A CD-ROM edition of Prof. Kuney's book "Chapter 11 – 101," co-authored with Professor Jack Ayer, Michael Bernstein, and Jonathan Friedland, was published by the American Bankruptcy Institute earlier this fall, as well. Additionally, the *Hastings Business Law Journal* will publish Prof. Kuney's article "What Your Lender and Mortgage Broker Didn't Tell You: A Proposal for Increased Disclosure of Purchase Money Borrower Protections and their Loss on Refinance," an article particularly relevant during the current real estate market downdraft in California and other locations.



Professor Becky Jacobs' article, "Unbound by Theory and Naming: Survival Feminism and the Women of The South African Victoria Mxenge Housing and Development Association," will appear in an upcoming edition of the *UCLA Women's Law Journal*. She also contributed an essay, "The Red-Headed Step Child Matures: A Lexical Examination and (Unscientific) Survey of Expanded Clinical Experience in U.S. Law Schools," to the *Tennessee Law Review* as part of its Charles Miller Legal Clinic 60th Anniversary Symposium edition. Professor Jacobs also organized and moderated a panel on "Expanding Clinical Experiences" at the symposium. She also participated in a roundtable discussion on "Teaching Negotiation" at the annual SEALS conference in the summer of 2007 and a panel addressing "Coalition Building, Globally and Locally" at the LatCrit VII in Miami in October 2007. Also in October 2007, she provided introductory remarks at the Mediation Day Award Luncheon in honor of University of Tennessee Professor Emeritus Grayfred Gray. In the Georgia State University Summer Legal and Policy Study in Rio de Janeiro, in consortium with Seattle University and the University of Tennessee, Professor Jacobs designed and taught Public Health Law & Policy: Global and Comparative Perspectives and co-taught International Environmental Law with the Program's Director Professor Colin Crawford. She also continues to work with the Knoxville mediation community. In 2007, the University of Tennessee College of Law Mediation Clinic, which she directs, and the Community Mediation Center conducted a joint training program for Rule 31 certified mediators seeking to become CMC volunteer mediators. Professor Jacobs again coached student Moot Court teams in two separate competitions in 2006-2007: the ABA's Representation in Mediation Competition and the Philip C. Jessup International Law Moot Court team.



Professor Don Leatherman moderated a panel discussing the proposed unified loss disallowance rules for consolidated groups at the May meeting of the American Bar Association tax section. At the October meeting of the ABA tax section, Professor Leatherman moderated a panel on the history of the consolidated return regulations. In November, Professor Leatherman participated on a panel discussing asymmetric acquisitions at the University of Chicago Federal Tax Institute. Professor Leatherman will submit an article on asymmetric acquisitions to be published in the December issue of TAXES that will follow up on his presentation at the University of Chicago Federal Tax Institute. Also in November, Professor Leatherman is scheduled to speak on current developments for consolidated groups at the Practising Law Institute's Los Angeles meeting on Mergers, Acquisitions, and Joint Ventures. Additionally, his article entitled "The Proposed Unified Loss Disallowance Rules" is forthcoming in *Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations and Restructurings 2007* (Practising Law Institute 2007).



Professor Robert Lloyd's article, "Discounting Lost Profits in Business Litigation: What Every Lawyer and Judge Needs to Know," appears in this issue. Chapters by Professor Lloyd will also appear in forthcoming books. *Trial Advocacy Stories* edited by Michael Tigar and Angela Davis will contain Professor Lloyd's chapter describing the multi-billion dollar lawsuit arising out of the battle for control of Getty Oil Company. *The Complete Guide to Lost Profit Damages* will include Professor Lloyd's chapters on discounting future damages and excluding the testimony of lost profits experts.



Professor Alex B. Long recently presented his paper entitled "Retaliatory Discharge and the Ethical Rules Governing Lawyers" at the Second Annual Colloquium on Current Scholarship in Labor and Employment Law held at the University of Colorado Law School and the University of Denver Sturm College of Law. The paper will also be published in an upcoming issue of the University of Colorado Law Review. Professor Long's article "The Troublemaker's Friend: Retaliation Against Third Parties and the Right of Association in the Workplace" will be published in the Winter 2007 issue of the Florida Law Review.



Professor Carl Pierce published “Representing One Client at a Time in Connection with the Formation and Organization of a Corporation” in Volume 8 Issue 2 of *Transactions*, and he is currently working on two follow-up pieces: one covering joint representation in the same context and the other dealing with representing an entity to be formed without representation of any of the promoters. Professor Pierce is also working with University of Tennessee Professor Judy Cornett on a professional responsibility course book to be published by Thompson West in 2009. Professor Pierce continues to serve as Chairperson of the Tennessee Supreme Court Task Force on the Study of Self-Represented Litigant Issues.



Professor Thomas Plank gave a presentation in August on “Legislative Proposals for Regulating Mortgage Finance-Federal v. State Regulations, Subprime Mortgages, and Predatory Lending,” describing possible Congressional responses to the Supreme Court’s decision in *Watters v. Wachovia Bank, N.A.* (decided April 17, 2007), upholding the OCC’s ability to preempt state regulation of mortgage lenders and to the current market conditions in the mortgage market that saw a large increase in the foreclosure rates for sub-prime mortgage loans, as part of the panel on the “United States Supreme Court and Legislative Preview: Economic Rights and Regulation” at the Southeastern Association of Law Schools’ annual meeting. In October, as part of the “Bankruptcy From a Government Perspective Seminar” sponsored by the National Association of Attorneys General (NAAG) and States’ Association of Bankruptcy Attorneys (SABA), Professor Plank travelled to Chicago to participate in an analysis of “What’s Left Post-Katz” on the January 2006 Supreme Court decision, *Central Virginia Community College v. Katz*, which held that a state’s sovereign immunity did not prevent a bankruptcy trustee from recovering from a state agency a preferential transfer to the state agency under the Bankruptcy Code.



Professor Gary Pulsinelli’s article “Freedom to Explore: Using the Eleventh Amendment to Liberate Researchers at State Universities from Liability for Intellectual Property Infringements” appeared in 82 WASH. L. REV. 275 (2007) (available on Professor Pulsinelli’s SSRN page, <http://ssrn.com/author=880362>). He has recently completed an article entitled “Harry Potter and the (Re)Order of the Artists: Are We Muggles or Goblins?” (also

available on his SSRN page) and submitted it for publication. This paper made SSRN's Top Ten List for "Property, Citizenship & Social Entrepreneurism." Professor Pulsinelli also presented this paper in a talk at the Gordon Ford College of Business at Western Kentucky University. He is currently working on completing his article "Fixing *Festo*: How the Foreseeability Test for the Doctrine of Equivalents Punishes Innovation (and What to Do about It)," which he presented last summer as a work in progress at the Intellectual Property Scholar's conference held at DePaul University.



Professor Gregory M. Stein recently gave a presentation at the annual meeting of the Asian Real Estate Society in Macau, China. His talk was entitled "Informal Mortgage Law in the People's Republic of China." Professor Stein also served as a member of a University of Tennessee delegation that visited three Chinese universities in June in an effort to establish student and faculty linkages between the University and those schools. Professor Stein's book review, "Doomed to Re-Repeat History: The Triangle Fire, The World Trade Center Attack, and the Importance of Strong Building Codes," was published this spring, at 21 *St. John's Journal of Legal Commentary* 767 (2007). His article entitled "Acquiring Land Use Rights in Today's China: A Snapshot from on the Ground" was published this summer, at 24 *UCLA Pacific Basin Law Journal* 1 (2007). Professor Stein's article, "The Chinese Land Use Right: Is It Property?" appeared this fall at 21 *Probate and Property* No. 5, p. 22 (Sept./Oct. 2007). And his article "Mortgage Law in China: Comparing Theory and Practice" will appear in the November 2007 issue of the *Missouri Law Review*. Professor Stein and two co-authors are currently revising their book "A Practical Guide to Commercial Real Estate Transactions," which originally appeared in 2001. The revised edition will be published by the American Bar Association in 2008.



Professor Maurice E. Stucke participated in round-table discussions in Chicago earlier this year hosted by the Institute for Consumer Antitrust Studies and the Competition Law Forum of the British Institute of International and Comparative Law, which focused on single firm dominance from a comparative EU-US perspective. His recent article, "Better Competition Advocacy," which will be published in *St. John's Law Review*, questions the assumption that the free market is a self-initiating, self-correcting sphere operating independent of the government, and outlines how the government may play a key role in providing or promoting the necessary institutions for our industries to remain or become competitive.



Professor Paulette J. Williams teaches the Business Law Clinic. She is President of the Clinical Legal Education Association for 2007, and she serves on the Executive Committee of the Clinical Section of the Association of American Law Schools. She is actively involved in efforts to reform legal education, including dissemination of *Best Practices for Legal Education* published by CLEA in 2007, and participation in a conference on “Legal Education at the Crossroads: Ideas to Action, Part I” held at the University of South Carolina in November 2007. Professor Williams is the co-chair of the Legal Educators Committee of the Forum on Affordable Housing and Community Development of the American Bar Association. Her current scholarship is in the area of homeownership for low income people. She presented her article as a work in progress at a conference on “Affordable Housing and Public/Private Partnership: The Intersection of Housing, Property and Real Estate” at the University of Colorado Law School in October 2007.