

Thomas E. Plank
Professor Emeritus
Joel A. Katz Distinguished Professor of Law Emeritus
University of Tennessee College of Law
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EDUCATION:

Princeton University, 1968, A.B. in History (Russian, American, Intellectual), with honors;
Certificate of Proficiency in Russian Area Studies. Senior Thesis: *Jacobinism and Lenin*.

University of Maryland School of Law, 1974, J.D., with honors. Editor-in-Chief, *Maryland Law Review*, 1973-74. Order of the Coif. Rank: 5th/203.

EMPLOYMENT:

Joel A. Katz Distinguished Professor of Law, University of Tennessee College of Law, 2004-2021 (Professor, 2002-2004; Associate Professor, 1994-2002). Retired December 31, 2021.

Primary courses taught:

Bankruptcy (1994-2001, 2003-2019) (f/k/a Debtor-Creditor to 2019)
Secured Transactions (2011-2012, 2014-2021) (formerly part of Commercial Law)
Payment Systems (2012-2020) (f/k/a Negotiable Instruments to 2016 and formerly part of Commercial Law)
Property (2001-2002, 2004-2005, 2007-2021)

Previous Courses taught:

Comparative Structured Finance, Summer 2019-Cambridge Summer Abroad Program at Downing College, Cambridge UK, administered by University of Mississippi College of Law
Commercial Law (Fall 1995-2001, 2003-2010; Spring 1995, 2006)
Representing Enterprises (securitization module) (Spring 1996-2000, 2005)
International (Comparative) Business Transactions (Spring 2002)
Contracts II (Spring 1995-1998, 2000)
Academic Success Program, Contracts II (Spring 1996-1998, 2000)

Visiting Professor of Law, Notre Dame Law School, 2002-2003. Courses taught: Bankruptcy; Secured Transactions; Payment Systems; Securitization.

Partner, Kutak Rock, 1986-1994, Of Counsel, 1985, Washington, D.C.

Finance (commercial, real estate and public), bankruptcy (transactional planning), and securities. Served as issuer's, bankruptcy, and underwriter's counsel for the issuance of mortgage-backed and asset-backed securities and tax-exempt housing bonds for low income families; counsel for the purchase, sale, and servicing of mortgage loans; lender's counsel in direct real estate and commercial lending.

Assistant Attorney General and Principal Counsel to the Maryland Department of Economic and Community Development (later split into two Departments), 1982-1984, Annapolis, Maryland.

Finance (real estate, commercial, public), legislation, and public law. Represented state agencies in originating, purchasing, and insuring single family, multifamily, and commercial mortgage loans; issuing tax-exempt housing bonds for low income families and industrial development bonds; insuring working capital and equipment loans for minority owned small businesses; and selling, leasing, and financing real estate. Drafted legislation and regulations and provided advice to the Department on all legal matters.

Associate, Piper & Marbury (now DLA Piper), 1981-1982, Baltimore, Maryland.

Commercial litigation (contracts, warranty, letters of credit, negotiable instruments, real estate partnership, dealer franchise regulation, odometer fraud, anti-trust). One jury trial, summary judgments and various trial court dispositive motions.

Assistant Attorney General and Counsel to the Maryland Department of Budget and Fiscal Planning, 1978-1981, Baltimore, Maryland.

Drafted Opinions of the Attorney General and letters of advice on and litigated governmental law issues (constitutional law, administrative law, legislation, public finance). Closed several real estate and revenue bond transactions. Drafted and reviewed legislation. Briefed and argued *Forsham v. Harris*, 445 U.S. 169 (1980), and eight other federal and state appellate cases. Four-month trial on the constitutionality of Maryland's public school financing system under the Maryland Constitution.

Associate, Piper & Marbury (now DLA Piper), 1975-1978, Baltimore, Maryland.

Governmental law, including the issuance of general obligation and revenue bonds, state and federal legislation drafting, and environmental, public utility, local health, and zoning regulation; appellate and trial litigation; and real estate and corporate transactions. Briefed and argued *Secretary of Transportation v. Mancuso*, 278 Md. 81, 359 A.2d 79 (1976).

Law clerk, Chief Judge Robert C. Murphy, Court of Appeals of Maryland, 1974-1975.

SCHOLARSHIP:

Custodian or Not: Scrivener's Error in A Bankruptcy Code Safe Harbor, 51 Emory Bankr. Devs. J. 51- 96 (2022).

Attachment, Perfection and Priority of Security Interests in Financial Assets (ch. 14, pages 14-1 through 14-36), in Reed D. Auerbach and Charles A. Sweet, *Offerings of Asset Backed Securities* (Wolters Kluwer 4th ed. 2021) (new chapter added in 2018 and updated in 2019).

The Key to Securitization: Isolating the Assets to Be Securitized from the Risk of An Insolvency Proceeding (ch. 2, pages 2-1 through 2-157), in Reed D. Auerbach and Charles A. Sweet, *Offerings of Asset Backed Securities* (Wolters Kluwer 4th ed. 2021) (revision and updating of similar chapter in earlier editions).

Clearinghouse Insolvency: Caution in Disregarding Contractual Allocation of Losses Between Non-Defaulting Members or Shareholders, 22 Transactions: The Tennessee Journal of Business Law 355-64 (2021).

What is a Merger Anyway?, with Joan Heminway and Don Leatherman, 21 Transactions: The Tennessee Journal of Business Law 321-55 (2020).

A New System of Control of Electronic Chattel Paper, 71 So. Car. L. Rev. 77-112 (2019).

Valuing the Duty of Loyalty in a Limited Liability Company, 20 Transactions: The Tennessee Journal of Business Law (2019).

Judicial Dissolution of LLCs and the Bankruptcy Code, 19 Transactions: The J. of Bus. Law 151-64 (2017).

Security Interests in Deposit Accounts, Securities Accounts and Commodity Accounts: Correcting Article 9's Confusion of Contract and Property, 69 Okla. L. Rev. 339-97 (2017) [lead article].

Evolution of Chattel Paper: From Possession to Control, 46 U.C.C. L.J. 1-50 (2014) (solicited article).

The Securitization of Aberrant Contract Receivables, 89 Chi.-Kent L. Rev. 171-93 (2013) (part of the Symposium on Fringe Economy Lending and Other Aberrant Contracts) (solicited article).

Article 9 of the UCC: Reconciling Fundamental Property Principles and Plain Language, 68 Bus. Law. 439-506 (2013).

Crisis in the Mortgage Finance Market: The Nature of the Mortgage Loan and Regulatory Reform, 12 Transactions: The Tennessee J. of Bus. Law 135-51 (2011), as part of the Multidisciplinary Event: The Clayton Center for Entrepreneurial Law Behavior and Business Law Conference.

Regulation and Reform of the Mortgage Market and the Nature of Mortgage Loans: Lessons from Fannie Mae and Freddie Mac, 60 So. Car. L. Rev. 779-805 (2009), part of a Symposium, "1.9 Kids and a Foreclosure: Subprime Mortgages, the Credit Crisis, and Restoring the American Dream."

Sense and Sensibility in Securitization: A Prudent Legal Structure and a Fanciful Critique, 30 Cardozo L. Rev. 617-43 (2008), responding to Kenneth Kettering's criticism of securitization in *Securitization and Its Discontents: The Dynamics of Financial Product Development* 29 Cardozo L. Rev. 1553 (2008).

Toward a More Efficient Bankruptcy Law: Mortgage Financing Under the 2005 Bankruptcy Amendments, 31 S. Ill. U. L.J. 641-68 (2007) (part of the Symposium on Shredding the Safety Net: A Critical Examination of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005) (solicited article) (discussed below).

State Sovereignty in Bankruptcy after Katz, 15 Amer. Bankr. Inst. L. Rev. 59 (2007) (solicited article) (part of the Symposium on Federalism and Bankruptcy) (discussed below).

Assignment of Receivables Under Article 9: Structural Incoherence and Wasteful Filing, 68 Ohio St. L.J. 231-71 (2007) (part of symposium on Commercial Calamities).

The Security of Securitization and the Future of Security, 25 Cardozo L. Rev. 1655-1741 (2004) (solicited article) (part of the Symposium on Threats to Secured Lending and Asset Securitization).

The Erie Doctrine and Bankruptcy, 79 Notre Dame L. Rev. 633-92 (2004), reprinted in 13 J. Bankr. L. & Prac. 55-113 (2004).

Bankruptcy and Federalism, 71 Fordham L. Rev. 1063-1131 (2002).

Bankruptcy Professionals, Debtor Dominance and the Future of Bankruptcy: A Review and a Rhapsody on a Theme, 18 Bankr. Dev. J. 337-71 (2002) (sponsored by Emory Law School) (solicited article) (reviewing David A. Skeel, Jr., *Debt's Dominion: A History of Bankruptcy Law in America* (2001)).

The Limited Security Interest in Non-Assignable Collateral Under Revised Article 9, 9 A.B.I. L. Rev. 323-49 (2001) (solicited article).

More Muddy Water from Whiting Pools: In re Greene Contends with the Errors of a Higher Court, Norton Bankruptcy Law Advisor (Feb. 2001) (solicited short article).

The Bankruptcy Trust as a Legal Person, 35 Wake Forest L. Rev. 251-93 (2000).

The Creditor in Possession Under the Bankruptcy Code: History, Text, and Policy, 59 Md. L. Rev. 253-351 (2000).

Why Bankruptcy Judges Need Not and Should Not Be Article III Judges, 72 Am. Bankr. L.J. 567-639 (1998) (solicited article) (cited by Justice Scalia in his concurring opinion in *Stern v. Marshall*, 131 S. Ct. 2594, 2621 (2011) and by Justice Thomas in his dissent in *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932, 1967 (2015)).

The Outer Boundaries of the Bankruptcy Estate, 47 Emory L. J. 1193-1287 (1998).

The Essential Elements of Judicial Independence and the Experience of Pre-Soviet Russia, 5 Wm. & Mary Bill of Rights J. 1-74 (1996).

Peter M. Pantaleo, et al., *Rethinking the Role of Recourse in the Sale of Financial Assets*, 52 Bus. Law. 159-98 (1996) (one of ten co-authors).

The Constitutional Limits of Bankruptcy, 63 Tenn. L. Rev. 487-584 (1996).

Sacred Cows and Workhorses: The Sale of Accounts and Chattel Paper Under Article 9 of the U.C.C. and the Effects of Violating a Fundamental Drafting Principle, 26 Conn. L. Rev. 397-520 (1994).

When a Sale of Accounts Is Not a Sale: A Critique of Octagon Gas, 48 Consumer Fin. L. Q. Rep. 45-53 (1994) (solicited article).

The True Sale of Loans and the Role of Recourse, 14 George Mason U. L. Rev. 287-359 (1991) (published fall 1992).

Appeals to Court from Administrative Agencies, MARYLAND APPELLATE PRACTICE HANDBOOK, E-117-128a (1977) (principal co-author with Henry R. Lord).

Student Note: *Baltimore City's Liability for Riot Damage: The Mayor as Conservator of the Peace*, 33 Md. L. Rev. 73-96 (1973).

AWARDS AND RECOGNITION:

2021 Carden Award for Outstanding Achievement in Scholarship, by the University of Tennessee College of Law (for distinguished record of scholarship over a period of years).

2005 Carden Award for Outstanding Achievement in Scholarship, by the University of Tennessee College of Law (for distinguished record of scholarship over a period of years).

2005 Southeastern Bankruptcy Law Institute Distinguished Visiting Professor, Georgia State University College of Law (two week long visits, one each semester 2005, to participate in classes, meet individually with students writing papers, make presentations to law faculty, bankruptcy bar and judges and advise faculty members on their current research).

2004 Marilyn V. Yarbrough Faculty Award for Writing Excellence, by the University of Tennessee College of Law (for *The Erie Doctrine and Bankruptcy*, as best article by faculty member in preceding year).

2002 Grant Gilmore Award For Writing Excellence on Commercial Finance Topics, by the American College of Commercial Finance Lawyers (for *Creditors in Possession Under the Bankruptcy Code: History, Text, and Policy*, as best article published or accepted for publication in 2000 or 2001 on commercial finance topics).

1999 Marilyn V. Yarbrough Faculty Award for Writing Excellence, by the University of Tennessee College of Law (for *Why Bankruptcy Judges Need Not and Should Not Be Article III Judges*, as best article by faculty member in preceding year).

1999 Carden Award for Outstanding Achievement in Scholarship, by the University of Tennessee College of Law (for distinguished record of scholarship over a period of years).

PRESENTATIONS:

Podcast for the Federalist Society, posted on June 7, 2023, <https://fedsoc.org/commentary/podcasts/bartenwerfer-v-buckley-post-decision-scotuscast>, discussing and criticizing the decision of the United States Supreme Court in *Bartenwerfer v. Buckley*, decided on February 22, 2023, which held that an individual debtor in bankruptcy who had incurred liability under state law as a partner in a general partnership for a fraud committed by her other partner without her participation or knowledge was not entitled to discharge her vicarious liability under Section 523(a)(2)(A) of the Bankruptcy Code, which provides that a discharge does not discharge an individual debtor from any debt for money “obtained by” actual fraud because the Court failed to distinguish the state law policy for imposing vicarious liability on partners and the Bankruptcy Code policy for the discharge of an individual’s debts.

Podcast for the Federalist Society, posted on February 14, 2023, <https://fedsoc.org/commentary/podcasts/moac-mall-holdings-v-transform-holdco-post-argument-scotuscast>, after the oral argument, discussing the case in the United States Supreme Court, *MOAC Mall Holdings LLC v. Transform Holdco LLC*, and agreeing with the petitioner and the various amici who filed supporting briefs, including Professor George Kuney, that section 363(m) of the Bankruptcy Code which, with two exceptions, provides that the reversal or modification on appeal of a court order authorizing the sale of property of the estate does not affect the validity of the sale, is merely a limitation on the remedial consequences of a reversal or modification that is subject to waiver, forfeiture or judicial estoppel and is not a limitation on the jurisdiction of the appellate court not subject to waiver, forfeiture or judicial estoppel, the position of that Court adopted in its opinion issued April 19, 2023.

Panelist, UCC Security Interests in Payment Intangibles: Intercompany Loans, Debt Obligations and “Promissory Notes,” webinar on September 29, 2022, sponsored by Strafford Publications (including coverage of the 2022 Amendments to the UCC adding controllable payment intangibles and Article 12 on controllable electronic records, with Edwin E. Smith, Partner, Morgan Lewis & Bockius, LLC, and chairman of the drafting committee, and Steven O. Weise, Partner, Proskauer Rose LLP, and member of the drafting committee).

2020 CLE/Symposium on Business Law: Connecting the Threads IV Conference, University of Tennessee College of Law Clayton Center, Friday, October 16, 2020, commenting on the presentation by Professor Colleen Baker, *Clearinghouse Shareholders and “No Creditor Worse Off Than in Liquidation” Claims*.

Bankruptcy Code Reform for Efficient Receivables Refinance, July 21, 2020, College of Law Summer Forum, presentation on current draft law review article proposing amendments to the United States Bankruptcy Code to reduce the costs of secured financing of receivables.

2019 CLE/Symposium on Business Law: Connecting the Threads III, University of Tennessee College of Law Clayton Center, Presenter with Professors Joan Heminway and Don Leatherman, September 2019, a panel discussion with Professors Joan Hemingway and Don Leatherman on “What is a Merger Anyway?,” published in *Transactions: The Tennessee Journal of Business Law*.

Panelist, UCC Security Interests in Payment Intangibles: Intercompany Loans, Debt Obligations and “Promissory Notes,” webinars on October 2, 2019, October 17, 2017 and July 13, 2016, sponsored by Strafford Publications (with Dean T. Kirby and Steven O. Weise).

Federalist Society Colloquium on “Freedom and Financial Markets” in Charlotte, North Carolina, March 29-30, 2019.

2018 CLE/Symposium on Business Law: Connecting the Threads II Conference, University of Tennessee College of Law Clayton Center, Friday, September 14, 2018, a response to a video presentation entitled “An Overt Disclosure Requirement for Eliminating the Duty of Loyalty” by Professor Joshua P. Fershee of the West Virginia College of Law, later published as *Valuing the Duty of Loyalty in a Limited Liability Company*, 20 Transactions: The Tennessee Journal of Business Law (2019).

Podcast for the Federalist Society, posted on May 18, 2018, discussing the United States Supreme Court opinion in *U.S. Bank National Association, Trustee v. The Village at Lakeridge, LLC*, decided March 5, 2018 (holding that the standard of review by an appellate court of a bankruptcy court’s determination on whether a purchaser of a claim for purposes of voting on a reorganization plan was a “non-statutory insider” involved more of a specific factual inquiry than the application of a more general legal standard and therefore should be the clearly erroneous standard of review).

2017 CLE/Symposium on Business Law: Connecting the Threads Conference, University of Tennessee College of Law Clayton Center, September 2017, later published as *Judicial Dissolution of LLCs and the Bankruptcy Code*, 19 Transactions: The Tennessee Journal of Business Law 151-64 (2017).

Participant, Drafting Committee of the Uniform Law Commission (ULC) on Revised Articles 1, 3, and 9 of the Uniform Commercial Code (to implement draft National Mortgage Note Repository Act in the UCC), as American Law Institute (ALI) Consultative Group member and ULC observer, March 24-25, 2017, Washington, DC, and October 13-14, 2017, Philadelphia, Pa.

Panelist, UCC Security Interests in Payment Intangibles: Intercompany Loans, Debt Obligations and “Promissory Notes,” webinars on October 17, 2017 and July 13, 2016, sponsored by Strafford Publications (with Dean T. Kirby and Steven O. Weise).

Podcasts for the Federalist Society, one posted on January 1, 2017 after the oral argument on December 7, 2016, and one posted on June 2, 2017 after issuance of the opinion on March 22, 2017, discussing the United States Supreme Court opinion in *Czyzewski v. Jevic Holding Corporation* (holding that a bankruptcy court may not approve a structured settlement dismissing a case and providing for distributions inconsistent with Bankruptcy Code priorities). I had previously joined a brief of amici law professors that had urged the Court to rule as it did.

Panelist, *Electronic Chattel Paper Financing*, Commercial Lending Today 2017, American Law Institute Continuous Legal Education, San Francisco, California, April 21, 2017 (with Steve Weise of Proskauer Rose LLP) (based on my article *Evolution of Chattel Paper: From*

Possession to Control, 46 U.C.C. L.J. 1 (2014) and my experience in drafting legal opinions on the “control” of electronic chattel paper).

Panelist, *Control of Electronic Chattel Paper: Technological Developments and Gaps in the Law*, Uniform Commercial Code Committee and Commercial Finance Committee, ABA Business Law Section Spring Meeting, New Orleans, Louisiana, April 8, 2017 (with Teresa Wilton Harmon of Sidley Austin LLP, Jamie Kocis of Kramer Levin Naftalis & Frankel LLP, Christopher P. Masterson of Sidley Austin LLP, and Steve Weise of Proskauer Rose LLP) (based on my article *Evolution of Chattel Paper: From Possession to Control*, 46 U.C.C. L.J. 1 (2014) and my experience in drafting legal opinions on the “control” of electronic chattel paper).

Federalist Society Colloquium on “Banking in a Free Society,” Las Vegas, Nevada, February 24-25, 2017.

Podcast for the Federalist Society on March 4, 2015 after the oral argument, podcast on June 21, 2014 after the decision and presentation on July 27 as part of the Federalist Society Bankruptcy Roundtable on *Wellness International Network, Limited v. Sharif* in the United States Supreme Court, holding that the parties may consent to the adjudication by a bankruptcy court, non-Article III court, on whether assets alleged to be held in trust by the debtor were property of the debtor’s bankruptcy estate. Justice Thomas in his dissent cited my law review article, *Why Bankruptcy Judges Need Not and Should Not Be Article III Judges*, 72 Am. Bankr. L.J. 567-639 (1998).

Podcast for the Federalist Society on February 18, 2014 after the oral argument and podcast on June 19, 2014 after the decision, on the 2014 case of *Executive Benefits Insurance Agency v. Arkison* (holding that a fraudulent transfer recovery action that could not constitutionally be designated a “core proceeding” for which a bankruptcy court may enter final judgment may be treated as a non-core proceeding under the statute by which the United States District Court may enter final judgment after a de novo review of the bankruptcy court’s proposed findings of fact and conclusions of law).

Panelist, *A Practitioner’s Guide to Trends in True Sale and Other Structured Finance Opinions*, presented by the Securitization And Structured Finance Committee, Federal Regulation Of Securities Committee, Law And Accounting Committee, and Legal Opinions Committee, ABA Business Law Section Fall Meeting, November 22, 2013 (with Carolyn P. Richter, Troutman Sanders LLP, moderator, and Mark J. Friedman, DLA Piper LLP, and Steven O. Weise, Proskauer Rose LLP).

The Securitization of Aberrant Contract Receivables, January 2013, at the Program of the Section on AALS Section on Commercial & Related Consumer Law, “Aberrant Contracts: Fringe Economy Lending & other Atypical Consumer Agreements,” at the 2013 annual meeting of the Association of American Law Schools in New Orleans, Louisiana.

Article 9 and Plain Language: Reconciling Nemo Dat, the Filing Priority Exception, and the Plain Language of the Statute as part of the Discussion Group: Things We Like, and Dislike, About Article 9 of the UCC Article 9, Southeastern Association of Law Schools annual meeting, August 2, 2012.

Federalist Society's colloquium, *Government Ownership and the Private Sector*, April 20-21, 2012, in Warrenton, Virginia.

Reform of the Mortgage Finance Market: A Response to Professor Edward Janger, Brooklyn Law School presented at the Conference on Behavior and Business Law at the University of Tennessee College of Law, on October 2, 2010, in Knoxville, Tennessee, sponsored by the James L. Clayton Center for Entrepreneurial Law, as session of Consumer Credit and Behavioral Economics.

Intersection of Article 9 and Non-Article 9 Collateral Issues: Mostly Mortgage Loans and some Automobile Loans, presented at the Joint Subcommittee Meeting: Secured Lending (Committee on Commercial Finance) and Secured Transaction (Committee on the UCC), August 8, 2010.

Presentation to the Joint Article 9 Review Committee, September 25-26, 2009 (established by the National Conference of Commissioners on Uniform State Laws and the American Law Institute to draft amendments to the text and comments of Article 9 of the Uniform Commercial Code), on the inadvisability of proposed amendments to the comments on Article 9 relating to (1) to priority questions in the sale of accounts and chattel paper under Article 9, and (2) the treatment of chattel paper that had been converted from electronic form to tangible form and presentation of suggested amendments to the statute.

The Mortgage Market, Securitization and The Bankruptcy Code: A Proposal For Reform, January 2009, at the Joint Program of the Section on Creditors' and Debtors' Rights and the Section on Real Estate Transactions, "Real Estate Transactions In Troubled Times," at the 2009 annual meeting of the Association of American Law Schools in San Diego, California. This article was selected as a response to a call for papers.

Regulation and Reform of the Mortgage Market and the Nature of Mortgage Loans: Lessons from Fannie Mae and Freddie Mac, October 24, 2008, at the Symposium of the South Carolina Law Review, "1.9 Kids and a Foreclosure: Subprime Mortgages, the Credit Crisis, and Restoring the American Dream."

Sales of Mortgage Loans and Securitizations, Wednesday, March 5, 2008, as part of a panel the Federal Judicial Conference educational program, "The Current State of the Capital Markets: an FJC Program for Bankruptcy Judges," on March 3-5, 2008, in New Orleans, LA.

Sovereign Immunity: What is Left After Katz, co-Panelist with Karen Cordry, 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, 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), Chicago, Illinois, October 14-17, 2007.

Legislative Proposals for Regulating Mortgage Finance—Federal v. State Regulations, Subprime Mortgages, and Predatory Lending, as part of the "United States Supreme Court and Legislative

Preview: Economic Rights and Regulation,” Southeastern Association of Law Schools annual meeting, July 31, 2007.

Cutting-Edge Issues Involving Securitizations, the Financing of Accounts, Payment Intangibles and Other Rights to Payment, and Implications for Bankruptcy Law, Annual Seminar of the Financial Lawyers Conference of Southern California for 2007, April 20-22, 2007, Rancho Bernardo Inn, San Diego, California.

Toward a More Efficient Bankruptcy Law: Mortgage Financing under 2005 Bankruptcy Amendments, Spring 2007 Southern Illinois University Law Journal Symposium, “Shredding the Safety Net: A Critical Examination of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,” February 16, 2007, at the Southern Illinois University Law School in Carbondale, Illinois.

State Sovereignty in Bankruptcy after Katz, at the “Symposium on Federalism and Bankruptcy,” February 9, 2007, St. Johns Law School, New York, New York, with Professors Martin Redish of Northwestern University Law School and Ralph Brubaker of the University of Illinois School of Law (focusing 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).

Cost Savings From Securitization: Avoiding the Bankruptcy Tax on Secured Credit, as part of Teaching Consumer Law: The Past, Present and Future of Consumer Law, sponsored by University of Houston Law Center, Center for Consumer Law, May 19, 2006.

United States Supreme Court and Legislative Preview: Economic Rights and Regulation (discussing *Watters v. Wachovia Bank* [cert. granted on preemption of state law by Comptroller of the Currency’s interpretation of the National Bank Act and OCC regulations], and *Marrama v. Citizens Bank* [cert. granted on denial of debtor’s right to convert from chapter 7 liquidation to chapter 13 arrangement on non-statutory bad faith grounds]), Southeastern Association of Law Schools annual meeting, July 18, 2006.

Exactng Change Through Law, Howard Baker, Jr. Center of Public Policy, University of Tennessee, October 18, 2005 (as part of the Open World Leadership Program).

Implications of the Definition of Property of the Estate—a Contrarian View, Georgia State University College of Law, September 26, 2005 (as the Southeastern Bankruptcy Law Institute Distinguished Visiting Professor, Georgia State University College of Law).

Panel, *Law Review Publishing*, Southeastern Association of Law Schools annual meeting, July 20, 2005, August 2, 2004, and July 23, 2003.

The Constitutional Limits on Using Bankruptcy Law As An Alternative Legal System, Georgia State University College of Law, January 26, 2005 (as the Southeastern Bankruptcy Law Institute Distinguished Visiting Professor, Georgia State University College of Law).

Eastern District of Pennsylvania Bankruptcy Conference Annual Forum, January 30-31, 2004 (analyzing provisions of Bankruptcy Code governing swaps and forward merchant contracts).

The Security of Securitization and the Future of Security, Symposium on Threats to Secured Lending and Asset Securitization, Cardozo Law School, April 7, 2003 (New York, NY).

Perfection of Security Interests—Electronic Chattel Paper and Forms of Opinions, Revised Article 9: Questions from the Perplexed: Common Drafting Problems, American Bar Association Business Law Section Annual Meeting, April 4, 2003 (Los Angeles, Cal).

The Efficiency of Securitization: The Inefficiency of Bankruptcy, Notre Dame Law School, October 2002.

Supreme Court and Legislative Update (United States v. Craft, United States v. Young, and SEC v. Zandford), Southeastern Association of Law Schools annual meeting, July 28, 2002.

Eastern District of Pennsylvania Bankruptcy Conference Annual Forum, January 25-26, 2002 (analyzing the new value exception to absolute priority rule).

What Revised Article 9 Tells Us About the Bankruptcy Code, Debtor-Creditor Section Program on Teaching, Scholarship, and Revised Article 9 of the Uniform Commercial Code, Association of American Law Schools, Annual Meeting, January 4, 2002 (New Orleans, La.).

The Efficiency of Securitization and the Implications for Bankruptcy Law, Southeastern Association of Law Schools annual meeting, July 15, 2001.

Bankruptcy, Federalism, and the New Common Law, Southeastern Association of Law Schools annual meeting, July 31, 2000.

Legal Issues in Securitizing Equipment Leases, First Annual Rocky Mountain Leasing Conference, January 27, 2000 (Denver, CO).

The Firm Legal Foundations of Securitization, ABA Section of Real Property, Probate and Trust Law, 10th Annual Spring CLE & Committee Meeting, May 19-21, 1999 (Washington, D.C.).

Advantages of Law Review Publication at The University of Tulsa 12th Annual Comparative Literature Symposium, ‘The Sociomaterial Turn: Excavating Modernism’ on March 5-7, 1998.

AMICUS BRIEFS:

City of Chicago, Illinois v. Robbin L. Fulton, 138 S. Ct. 133 (2021) (brief for Amici Curiae Law Professors Ralph Brubaker, Ronald Mann, Charles Mooney, Jr., Thomas E Plank, and Charles Tabb in support of petitioner on the interpretation of the Bankruptcy Code's automatic stay and turnover provisions, which interpretation the Court adopted in reversing lower court). The Court The amici brief relied in part on my law review article, *The Creditor in Possession Under the Bankruptcy Code: History, Text, and Policy*, 59 Md. L. Rev. 253-351 (2000) and also cited my article, *The Outer Boundaries of the Bankruptcy Estate*, 47 Emory L. J. 1193-1287 (1998).

Czyzewski v. Jevic Holding Corp., 137 S. Ct. 973 (2017) (an amicus in Support of Petitioner opposing structured settlements that purported to reverse Bankruptcy Code priorities, which position the Court adopted in reversing lower court)).

Law v. Siegel, 134 S. Ct. 118 (2013) (amicus in support of Petitioner's position that bankruptcy courts may not deny an exemption on a ground not specified in the Bankruptcy Code, which position the Court adopted in reversing lower court denial of a exemption).

Rumsfeld v. Forum for Academic and Institutional Rights, Inc., 546 U.S. 807 126 S.Ct. 1297 (2006) (an amicus in Support of Petitioner Rumsfeld et al., which prevailed) [Not bankruptcy].

PUBLIC SERVICE:

Fellow of the American College of Commercial Finance Lawyers (2021-present).

Member, The American Law Institute (ALI) (1993-present); Member, ALI Consultative Groups:

Restatement of the Laws Fourth, Property (2015-present) (review and submit comments on drafts of the Restatement to the reporters for the restatement who draft the restatement and attend drafting sessions of the reporters);

Joint Study Committee on the Uniform Commercial Code and Emerging Technologies (2019-2022) (formed by ALI and the Uniform Law Commission (ULC) to review the Uniform Commercial Code (UCC) with a view to recommending amendments or revisions to accommodate emerged and emerging technological developments);

Drafting Committee of the ULC on Revised Articles 1, 3, and 9 of the UCC to implement draft federal National Mortgage Note Repository Act in the UCC (2017-2019) (review and submit comments on drafts of amendments to the Official Text of various Articles of the UCC to the drafting committee and attend committee drafting sessions);

Joint Article 9 Review Committee (2009-2010) (review and submit comments on drafts of the 2010 Amendments to the Official Text of Article 9 of the UCC and attend committee drafting sessions);

Revision of Articles 3, 4, & 4A (Current Payment Methods) of the UCC (2000-2002) (review and submit comments on drafts of the 2002 Amendments to the Official Text of Articles 3, 4, & 4A of the UCC and attend committee drafting sessions)

Transnational Insolvency Project (1999-2000) (review and submit comments on drafts of the ALI Model Cross Border Insolvency Law to the reporters drafting the Model law and attend drafting sessions of the reporters);

Revision of Article 9 of the UCC (1993-2001) (review and submit comments on drafts of the revision of the Official Text of Article 9 of the UCC to the drafting committee and attend committee drafting sessions);

Restatement (Third) of Property (Mortgages) (1993-1996) (review and submit comments on drafts of the Restatement to the reporters for the restatement who draft the restatement and attend drafting sessions of the reporters).

Member, ABA Securitization Committee Task Force on the AICPA Asset Isolation Opinion Project: Subsequent Purchaser Opinion Suggestion (2012-2016).

Member, ABA Securitization Committee Task Force on the Proposed Uniform Home Foreclosures Procedure Act (being drafted by a committee of the Uniform Law Commission) (2013-2015)

Member, Editorial Advisory Board, *American Bankruptcy Law Journal* (2005-2007).

Member, Editorial Advisory Board, *American Securitization* (2006-2011).

Peer Reviewer, *American Bankruptcy Law Journal* (2002-2009).

OTHER LEGAL EXPERIENCE (PART-TIME):

Kutak Rock (Consultant 1994-2002); McKee Nelson LLP (Of Counsel 2001-2009), Bingham McCutchen LLP (Of Counsel 2009-2014), successor to McKee Nelson; Morgan Lewis and Bockius, LLP Of Counsel, 2014-2022, and Special Counsel, 2023-2024, successor to Bingham McCutchen LLP, providing legal advice and drafting legal opinions on security interests, bankruptcy, real estate, and other legal issues in connection with mortgage backed and asset backed securities and other real estate and commercial public finance transactions.

Expert witness, February 2013-2015, for Fortress Credit Corp., the lender to a special purpose entity sponsored by Fair Finance Company, to finance the purchase of consumer loan receivables, on the use and characteristics of structured finance transactions using a bankruptcy remote special purpose entity, *Bash v. Textron Financial Corp. (In re Fair Finance Co.)* U.S. Bankr. N. D. Ohio, No. 10-50494 [expert report prepared and submitted; deposited; case settled].

Expert witness, December 2006-May 2007, on behalf of Tenaska, Inc. and affiliate sellers of certain upstream ownership interests in a co-generation power facility to a special purpose entity on use and characteristics of special purpose entities and other matters, *Brazos Electric Power Cooperative, Inc. v. Tenaska, Inc.*, D. Ct, Johnson Co., TX, 249th Jud. D., No. C-2002-00267 [expert report prepared and submitted; deposited; case settled].

Expert witness, January 2006-August 2008, for Bank of America, N.A., the lender to a special purpose entity sponsored by Enron Corp., to finance the purchase of natural gas, on use and characteristics of special purpose entities, *AEP Energy Services Gas Holding Co. v. Bank of America, N. A.*, U.S. S. D. Tex., No. NO. H-03-4973 [expert report prepared and submitted; deposited; deposition formed part of basis for successful motion for final summary judgment].

Expert witness, January-November 2005, for General Electric Capital Corporation, the investor in a monetization of payments under a contract for telecommunication services, on the meaning of the term “monetization”, *Qwest Communications International Inc., et al., v. KMC Telecom LLC, et al.*, Dist. Ct, Denver, Co, Case No. 04CV0445 [expert report prepared and submitted; deposited; case settled].

Appellant’s Counsel, *Lifewise Master Funding v. Telebank*, 374 F.3d 917 (10th Cir. 2004) (drafted the appellant and reply briefs and presented oral argument on the issue of

interpretation of condition to funding commitment in securitization of loans secured by life insurance policies, on behalf of finance company; obtained reversal of district court grant of motion for directed verdict).

Expert witness, February 2001, for Abbey National Treasury Services, the investor in a trade receivables securitization, on the true sale of receivables and structuring of securitization, *In re LTV Steel Co.* (Bankr. N. D. Ohio, No. 00-43866) [expert report filed; case settled].

Expert witness, December 1998-May 1999, for the United States on the fraudulent issuance of mortgage backed securities in a criminal racketeering trial, *U. S. v. Weiss et al.* (M. D. Fla., No. 98-99-Cr-Orl-19A) [qualified and testified; defendants convicted].

APPELLATE CASES: (except as noted, all decisions upheld positions I argued)

Forsham v. Harris, 445 U.S. 169 (1980) (medical research data held by University of Maryland not “agency records” subject to disclosure under Federal Freedom of Information Act even though the research on effectiveness of certain drugs was funded by federal agency, federal agency could obtain data, and data was basis of reports relied upon by FDA in taking certain action relating to drugs).

Lifewise Master Funding v. Telebank, 374 F.3d 917, 925 (10th Cir. 2004) (the term “recourse” in security agreement provision releasing security interest in receivables sold without recourse refers to liability of a seller of receivables to purchaser for default by obligors on receivables and not to liability for breach of representations and warranties on receivables).

Adams v. Harris, 643 F.2d 995 (4th Cir. 1981) (notices of denial of disability benefits complied with requirements of U.S. Constitution, Social Security Act, and applicable regulations).

Dorsey v. Solomon, 604 F.2d 271 (4th Cir. 1979) (affirming the district court ruling that Maryland denies the constitutional rights of persons summarily committed to state mental hospitals after being acquitted of criminal charges on the ground of insanity by placing on them the burden of proving their fitness for release but stating that the state's release procedures otherwise provide an adequate remedy for such persons).

Maryland Bd. of Registration for Professional Engineers and Professional Land Surveyors v. Armacost, 407 A.2d 1148 (Md. 1979) (unsuccessful attempt to convince Court of Appeals to overrule prior precedent that administrative agencies may not appeal trial court decisions on appeal from agency determination).

Bayne v. Secretary of State, 392 A.2d 67 (Md. 1978) (conditions to an appropriation item in annual budget bill not subject to referendum under Maryland Constitution).

Snyder v. State, Central Collection Unit, 391 A.2d 437 (Md. 1978) (in case reviewing lower court ruling on several federal constitutional issues, dismissing writ of certiorari as improvidently given because of failure of plaintiff to raise constitutional issues at trial).

Secretary of Transp. v. Mancuso, 359 A.2d 79 (Md. 1976) (holding that consolidated

transportation bonds funded by gasoline taxes and other highway user revenues were debt subject to Maryland Constitution debt limitation requiring imposition of tax sufficient to repay debt in 15 years).

Maryland Automobile Ins. Fund v. Sparks, 400 A.2d 26 (Md. App. 1979) (reversing trial court summary decision for plaintiff because of necessity for determination of important questions of fact, but rejecting argument on state automobile insurance fund's interpretation of statute regarding date coverage begins)

Ohio Casualty Ins. Co. v. Insurance Commissioner, 387 A.2d 622 (Md. App. 1978) (upholding dismissal of insurance company's appeal from order of insurance commission and holding that that reliance on descriptive subtitle in applicable rule of appellate procedure did not justify failure to comply with rule).

PART-TIME TEACHING EXPERIENCE:

George Mason University School of Law: Bankruptcy, 1993, 1994.

University of Maryland School of Law: Real Estate Transactions, 1988; Legislation, 1983, 1984; Legal Method-Property (assisted prof.), 1982; Legal Writing, 1978, 1979.

INSTITUTIONAL SERVICE (UNIVERSITY OF TENNESSEE COLLEGE OF LAW):

Member, UTK Residency Committee (2015-2021).

Chairman, Search Committee for Director of Legal Writing (2018-2019).

Chairman, Search Committee for Associate Dean for Academic Affairs (2017-2018).

Chairman, Search Committee for Associate Dean for Faculty Development (2017-2018).

Member, Adjuncts Committee (2015-2021).

Member, Faculty Development Committee (2011-2015), By-Laws Committee (2014-2015).

Member, Governance Committee (2008-2009, 2009-2010, 2010-2011).

Chairman (2005-2006, 2006-2007, 2007-2008, 2011-2012) and Member (2001-2002, 2003-2004), Faculty Appointments Committee.

Member, Academic Standards and Curriculum Committee, College of Law (1995-2001).

Member, Entrepreneurial Law Center working group, College of Law (1994-2001).

Senator, University of Tennessee at Knoxville Faculty Senate (1998-2001).

BAR MEMBERSHIP: Maryland (1974-present; inactive since 2009); Tennessee (1995-present); District of Columbia (1985-1995) (resigned in good standing).

PERSONAL: Married, five children (born 1977-1992). Lieutenant, United States Marine Corps, 1968-1971 (platoon honor man, 10 week 55th OCC and 5 month TBS 7-69 (4th out of 250); eight months in Vietnam as a security platoon commander, 3rd MP Bn., and rifle platoon commander, D Co., 1st Bn., 7th Marine Regiment, 1st Mar. Div.). Languages studied: Russian (4 years); elementary Vietnamese; elementary Spanish.

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