

BUSINESS LAW BULLETIN

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ENTERPRISE RISK MANAGEMENT: A COMPARATIVE OVERVIEW

by Michelle M. Harner & Jennifer Ivey-Crickenberger '12

The potential of significant risk events to develop into large, sometimes devastating consequences continues to increase as the global economy becomes more complex and interconnected. Although it has become clear that the largest firms have the most pronounced international exposure to such risk events, “the reality is that few organizations are immune to the vagaries of the global economic and financial markets and the related impact on demand, rates, credit availability and currencies” (Poole, at 5.)

The practice of enterprise risk management (ERM) is growing in firms around the world, and many governmental and regulatory agencies are increasingly encouraging or even requiring firms to manage risks. With that, several different frameworks have emerged to help firms manage their enterprise risks. Historically, a firm adopted an ERM framework largely based upon its country of origin, its industry, or the timing of its ERM implementation. This is still somewhat accurate today, and may be driven by regulatory schemes that recommend or mandate certain risk management practices and disclosures. Nevertheless, as businesses and even regulations become more global, we may see a convergence in ERM frameworks.

Among the existing frameworks, the COSO ERM and ISO 31000 frameworks appear to be the most widely used and cited. Notably, each scheme holds potential value for firms and by understanding the key similarities and differences between them, a firm can tailor an ERM program to its industry and business model. Many commentators consider the ISO 31000 a great starting point for firms considering ERM for the first time. The COSO framework, on the other hand, may provide more specific, in-depth insight and guidance that might benefit firms with more mature ERM programs.

Considerations in ERM Implementation: Rating Agencies, Listing Exchanges, Global and Local Regulations

Large public companies and firms in the financial services industry are leading the charge in ERM development and implementation. For public firms, the interest in ERM-like programs stems, at least in part, from the listing guidelines of the various exchanges. The New York Stock Exchange requires each firm’s audit committee to discuss risk assessment and risk management policies, although risk assessment and management are, practically speaking, the responsibility of the CEO and other senior management. The London Stock Exchange requires an annual directors’ report that must include a review of the firm’s performance, its position in the marketplace, and “a description of the principal risks and uncertainties that they face.” The Toronto Stock Exchange Corporate Governance Guidelines invite voluntary disclosure of the firm’s principal risks, the process that the board or committee follows to evaluate risks, and the procedures that are in place to manage risks. The NASDAQ



COSO stands for “Committee of Sponsoring Organizations of the Treadway Commission,” which is a joint initiative of five private sector organizations, all based in the U.S. The five professional organizations that comprise the COSO Commission are tailored to accounting, auditing, or financial professionals.

ISO stands for the International Organization for Standardization. The ISO is made up of 163 member country organizations. ISO standards are developed and negotiated by technical committee and a panel of experts. ISO 31000 is focused on Enterprise Risk Management best practices.

has proposed a new rule regarding risk management processes and internal audit, although it is unclear whether the rule will be adopted in its initial form. The similarities among risk management listing requirements likely is contributing to a convergence in ERM programs and standards.

Many countries have introduced risk management requirements and related corporate governance obligations for public, and sometimes non-public firms. For the most part, a majority of these regulations require either a basic level of risk management or a relatively comprehensive risk disclosure, but do not mandate a more holistic, integrated ERM framework such as COSO and ISO 31000. Emerging markets such as India and China also are incorporating ERM into their governance regulations. Commentators are closely monitoring progress in these countries to determine whether the concentrated ownership structure common among Indian and Chinese firms might impact the effectiveness of ERM.

In addition to national regulation, many firms in the financial services industry are also subject to the global, voluntary, regulatory standard promulgated by the Basel Committee on Banking Supervision. Though each state adopting the Basel Committee's recommendations will implement the accord in its own way, risk management is on the agenda. The most recent iteration, Basel III, aims to improve risk management and governance in financial services firms through industry-wide structural changes and enhanced firm-specific enterprise-wide risk management practices. Financial services firms (and to some extent, non-financial services firms) may also be interested in improving their enterprise risk management programs because of increased scrutiny by the ratings agencies.

Comparative ERM Practices

Studies indicate the most widely used ERM framework in the U.S. is the COSO framework, while ISO 31000 is most widely used in New Zealand, Australia, Finland, and Canada. Both frameworks are designed to provide direction and guidance – or best practices – which should be interpreted and adapted to each firm's unique culture, risk appetite, industry, and applicable regulatory requirements.

A 2010 global survey on enterprise risk oversight highlighted risk perceptions and ERM implementation between U.S. and non-U.S. firms. The study found that boards of directors at global firms were more likely to formally assign risk oversight to a board committee (54% of global firms, 33% of U.S. firms); of the firms that do make formal board committee assignments, U.S. firms were more likely to assign risk oversight to the audit committee whereas global firms were more likely to delegate risk oversight to multiple committees and also more likely to have a separate risk committee.

When the board of directors formally assigns risk oversight responsibility to one or more board level committees, the following committees receive that delegated responsibility:	U.S.	Global
Audit committee	65%	57%
Executive committee	17%	43%
Risk committee	15%	34%
Governance committee	9%	19%
Compensation committee	2%	3%
Note: Because boards may delegate risk oversight responsibilities to more than one risk committee, the sum of percentages exceeds 100%		
From: Mark S. Beasley, Bruce C. Branson & Bonnie V. Hancock, <i>AICPA & CIMA, Enterprise Risk Oversight: A Global Analysis</i> , at 4 (Sept. 2010).		

The survey also noted lower levels of self-reported “robust” and “systematic” risk reporting in U.S. firms (only 11% of U.S. respondents, as opposed to 46% of global firms). In addition, a greater number of U.S. respondents indicated a complete lack of ERM implementation, both at present or planned for the future (45% U.S. versus 37% globally). On the whole, the study indicates the U.S. lags behind global respondents in each risk management area covered by the survey.

Conclusion & Considerations for Global Economy

Firms operate in a world of growing complexity and interconnected risks. The consequences of a poor decision or unfortunate luck can be detrimental to a large number of stakeholders (e.g., employees, communities, suppliers, buyers further along in the supply chain), and can spill into other industries and across national borders. Due to the factors noted above—regulation, ratings agencies, listing exchanges, global interconnectedness, etc.—ERM is becoming increasingly important for firms worldwide. The similarities in the challenges faced by firms in the global economy and the commonalities among regulatory responses likely will cause an increasing convergence in ERM best practices and norms. Convergence of ERM elements such as risk identification, disclosure and transparency, monitoring, and periodic review could be on the horizon.

References

*Poole College of Management & Protiviti, *Executive Perspectives on Top Risks for 2013: Key Issues Being Discussed in the Boardroom and C-Suite*, at 5 (2013), available at <http://poole.ncsu.edu/vol2/erm/ee/i/weblogs/research-documents/NC-State-Protiviti-Survey-Top-Risks-2013.pdf>.

PROFESSOR HARNER TESTIFIES IN FRONT OF U.S. HOUSE JUDICIARY COMMITTEE

On March 26, 2014, Professor and Business Law Program Director Michelle Harner appeared before the United States House of Representatives to provide testimony to the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Committee on the Judiciary. Professor Harner spoke on “Exploring Chapter 11 Reform: Corporate and Financial Insolvencies; Treatment of Derivatives” in her capacity as Reporter for the American Bankruptcy Institute’s (ABI) Commission to Study the Reform of Chapter 11 (the “Commission”), a working group that was formed in 2012 and comprises 20 of the nation’s leading bankruptcy practitioners, academics, and judges.

“Today’s financial markets, credit and derivative products, and corporate structures are very different than what existed in 1978 when [Chapter 11 of] the Bankruptcy Code was enacted,” Professor Harner explained. She further described how the ABI put together the Commission to conduct a thorough and methodical investigation of business bankruptcies, involving more than 250 participants in the study process, with the aim of including “all perspectives, ideologies, and geographic and industry segments.” At the outset of the study, the Commission formed advisory committees to research particular topics related to Chapter 11; and after eighteen months of work, each advisory committee presented its report to the Commission, which is now integrating and reviewing all of the reports, along with testimony from fifteen different public field hearings held across the U.S.

The Commission expects to generate a comprehensive report of its findings and conclusions in December 2014. Ultimately, whatever the Commission recommends regarding Chapter 11 reform will reflect its mission to “better balance the goals of [accomplishing] the effective reorganization of business debtors – with the attendant preservation and expansion of jobs – and the maximization and realization of asset values for all creditors and stakeholders.”



Professor Michelle Harner

NATIONAL INSTITUTE FOR CONSUMER FINANCIAL SERVICES BASICS 2013 AND 2014

by Nicole Frush Munro '00

In October of 2013, the Consumer Financial Services Committee of the ABA's Business Law Section held the fourth annual National Institute on Consumer Financial Services Basics at the University of Maryland Francis King Carey School of Law in Baltimore, Maryland. The Institute's purpose was to expose new practitioners, or more experienced practitioners who are new to consumer financial services, to key areas of consumer financial services law.

The Institute began with a broad overview of the history of financial services law, including discussions of the evolution of consumer financial services law, the purpose of regulation, and the major statutes, regulations, products, and resources available to practitioners. Presenters then turned to more specific discussions of the major topics and trends in consumer financial services law at both the state and federal level: privacy, security breaches, and identity theft; the Fair Credit Report Act; advertising, marketing and sales practices, including the Telemarketing Sales Rule and CAN-SPAM; the Servicemembers Civil Relief Act; debt collection practices; fair lending; unfair and deceptive acts or practices, including a crystal ball view of the new "abusive conduct" standard; small dollar and installment lending; mortgage origination and servicing; and, payments, prepaid cards, and Regulation E. The Institute concluded with presentations by preeminent consumer and industry advocates who detailed their perspectives on the future of consumer financial services laws and regulatory and enforcement priorities.

The speakers included long-time leading experts in the field of consumer financial services law ranging from private practitioners, in-house counsel, and industry advocates to federal regulators, academics, and consumer advocates. Among them were Rick Fischer of Morrison & Foerster, Rebecca Kuhn of CoreLogic, Gail Hillebrand of the CFPB, Malini Mithal of the FTC, Anna-Marie Tabor of the CFPB, Rick Hackett (formerly of the CFPB), Jean Noonan of Hudson Cook, Lynne Barr of Goodwin Procter, Therese Franzen of Franzen & Salzano, Jim Brown of the University of Wisconsin-Milwaukee, Deepak Gupta of Gupta Beck, and Nessa Feddis of the American Bankers Association.

In October of 2014, the Consumer Financial Services Committee will again host the National Institute at the University of Maryland Francis King Carey School of Law. This time, there will be a new "Meet the Regulators" panel, in which representatives from the primary federal and state regulators of consumer financial protection will discuss where each agency fits within the regulatory process, the tools they use, what differentiates one agency from another, and their current focus over the next year. In addition, there will be a lively panel discussion with perspectives on consumer finance from both the consumer advocates' bar and leading industry representatives. Based upon attendee feedback from prior years, the Institute will also feature small break-out sessions to give attendees the opportunity to ask questions and have discussions in an intimate seminar-style setting. Many of the presenters from the 2013 Institute will return this year, joined by new speakers who will provide added insight to a program that is rich in substance and lively in form.

The Consumer Financial Services Committee is chaired by Nicole Frush Munro '00, Partner at Hudson Cook, LLP in Baltimore, Maryland.



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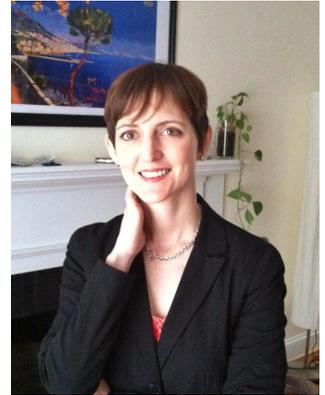
MARYLAND PASSES CONVERSION BILL, JOINING THE MAJORITY OF JURISDICTIONS ALLOWING FOR CONVERSION OF BUSINESS ENTITIES

by Jennifer Ivey-Crickenberger '12

During the 2013 Maryland state legislative session, the Maryland State Bar Association's Business Law Section submitted legislation designed to make certain entity conversions less cumbersome.

The bill (2013 HB 1140) authorizes the conversion of certain entities to certain other entities, including: corporations; limited liability companies (LLCs); real estate investment trusts; partnerships; limited partnerships; and statutory trusts. Both the pre-conversion and post-conversion entities may be either domestic or foreign, although the foreign jurisdiction's entity statutes should be taken into account.

An entity that seeks to convert must first approve the conversion in the manner required by its governing document and the laws of the place of its incorporation or organization. Then, properly approved and executed articles of conversion along with the organizational documents of the "new" entity must be filed with the Maryland State Department of Assessments and Taxation. The bill establishes a specified method for executing articles of conversion.



Jennifer Ivey-Crickenberger '12

The Effect of Conversion

A conversion, for example, of a Maryland corporation to another entity has the following effects:

- The Maryland corporation ceases to exist as a corporation and continues to exist as the other entity, and the other entity is deemed to be the same entity as the converting Maryland corporation;
- All the Maryland corporation's assets vest in and devolve on the new entity without further act or deed and are the property of the new entity;
- The title to any real property vested by deed or otherwise in the corporation does not revert or is not in any way impaired by reason of the conversion;
- Any licenses, permits, or registrations granted to the corporation prior to the conversion are not affected, invalidated, terminated, suspended, or otherwise nullified;
- The new entity is liable for all the corporation's debts and obligations;
- The rights of creditors or any liens on the property of the corporation are not impaired;
- Subject to the treatment of the corporation's ownership interest under the articles of conversion and the rights of any objecting stockholder, the ownership interests of the corporation's stockholders cease to exist as stock in the converted corporation and continue to exist as ownership interests in the new entity;
- Any debts, obligations, or liabilities of the corporation or the personal liability of any person incurred before the conversion are not affected; among others.

Prior Law

Prior to the passage and implementation of this conversion bill, conversions from one entity to another were not authorized by state statute. An entity could reach the same result by creating another entity and then merging with it. Mergers, however, require multiple steps and can be complicated. Until the passage of HB 1140, Maryland was one of a handful of states that did not allow business entities to convert from one entity form to another.

Professor Michelle Harner and Fellow Jennifer Ivey-Crickenberger worked with several of the MSBA Business Law Section committees on the conversion statute, assisting with drafting and providing research support.

IN THE ACTIVE VOICE – MAKING WORDS WORK FOR YOU

by Hilary Hansen

When I work with students to improve their business writing skills, I stress the importance of choosing precise words, clearing away clutter, conveying the right tone, and minimizing the effort required by the reader of their letters or emails. It takes more time to craft a message that is the product of thoughtful planning and repeated rewrites, but in making the investment, you can increase the likelihood of achieving the desired result -- with a client, a colleague, or a prospective business partner.

The words and sentences that go into good business writing should be the strong, silent type. That is, you want to make your point rise to the surface on the strength of simple language rather than burying your message in lengthy, complex sentences with flashy vocabulary, technical jargon, or formal legalese. In most cases, less is more.

On occasion, however, a situation calls for more. Sometimes you may be in a tricky spot that requires diplomatic communication, but when you attempt to compose an email, you find it a struggle to make the desired impression. The typed words on the screen look stark and seem to fall short. For instance, what if you are in the position of needing to explain someone else's actions?

Recently a student I will call David asked me how to write a message that required particular finesse. David wanted to contact a practitioner, Ms. Gilmore, who had volunteered to mentor David in a moot court competition.* David had never met Ms. Gilmore, but had specifically requested the chance to work with her because Ms. Gilmore was so accomplished in her practice area. Unfortunately, David's teammate for the competition had withdrawn, leaving David to share the disappointing news with Ms. Gilmore, and he hoped to do so in a way that would still allow him to keep in touch.

David wanted to know how I would advise wording an email to Ms. Gilmore, and I responded that I would not contact her by email. Although we are accustomed to using email for the vast majority of professional communications – with good reason, because emailing has so many advantages -- it also has disadvantages. Most notably, as it applies to David's situation, emailing for business purposes leaves the writer little opportunity for nuances of expression that would be simple to accomplish in person with non-verbal cues, such as making eye contact and smiling, or over the phone with voice inflection and word emphasis. David was not going to have the chance to meet Ms. Gilmore unless he introduced himself, however, and it may have been awkward to do so by phone in this case. (The down side of calling is that it demands another person's time and attention in real time, which can be a lot to ask of a busy professional who does not know you.)

I told David that if I were Ms. Gilmore, the communication that would make the most favorable impression on me would be a hand-written note. A note demonstrates additional thought and effort; it shows that you want to give special priority to getting across your message, and your handwriting adds a personal touch that is similar to a non-verbal cue. Some of your style and personality will come through in a way that email does not allow.

David wrote the note to Ms. Gilmore, and she followed up by reaching out to him and offering to meet. They now have a professional relationship that may lead to future opportunities for David. It may not, of course, but it never hurts expand your network.



* Names and situations changed for the purpose of example.

WANT TO GET INVOLVED?

Host a “brown bag” on a topic of Business Law that interests you. Mentor a Business Law Society student. Sponsor a Business Law symposium. We're always looking for ideas and suggestions to enrich our experiences at UM Carey Law. Contact Hilary Hansen at 410-706-3146 or hhansen@law.umaryland.edu.

PROGRAM NEWS

ON THE DOCKET: *IN RE AMERICAN REALTY CAPITAL TRUST, INCORPORATED SHAREHOLDER LITIGATION*

by 2L Anitra Washington

On October 24, 2013, the University of Maryland Carey Law School students were given the opportunity to attend a class action hearing before the Honorable Audrey J.S. Carrion. The hearing was related to the case captioned, *In Re American Realty Capital Trust, Inc. Shareholder Litigation*. To prepare for this hearing, students reviewed short background materials, which allowed the students to gain a basic understanding of the case and the issues at stake. Further reading of the materials (through the plaintiff's motions and affidavits) provided the students with a guideline of what to expect from the hearing and their visit with Judge Carrion. The plaintiffs in the case sued American Realty Capital Trust (ARCT) concerning a stock-for-stock exchange. Under the terms of the exchange, Realty Income Corp. and its wholly-owned subsidiary would acquire ARCT. As part of the exchange, ARCT Shareholders would receive Realty Income common stock in exchange for their shares of ARCT stock. Several ARCT shareholders sued, alleging among other things, that the proposed merger was not in the best interest of ARCT or ARCT's shareholders and that the ARCT executives inadequately negotiated the merger.



Upon the Maryland Carey Law School students' arrivals to the Baltimore City Circuit Court, the students met with Judge Carrion in her chambers. This visit was not only a great educational experience, but it also served as an exceptional networking opportunity for the students. While visiting with Judge Carrion, students had a brief roundtable discussion about the case, and they received a debriefing and update on the case's current status prior to the hearing. Judge Carrion offered the students phenomenal advice about career expectations and succeeding in law school. This roundtable discussion allowed the students to ask questions about Judge Carrion's experiences as a circuit court judge in the city of Baltimore.

This educational experience concluded with watching the class action hearing. The students were able to put everything they learned from the case readings and meeting with Judge Carrion into perspective. The students were able to see how practical measures work hand in hand with the theoretical learning received in the classroom. Judge Carrion invited the attorneys involved in the hearing to reserve a few moments after the hearing to speak with the students. The students had an informative, informal discussion with the attorneys about *In Re American Realty Capital Trust, Incorporated Shareholder Litigation* and their experiences as corporate attorneys.

The opportunity to watch the class action hearing was a privilege for the students of the University of Maryland Francis King Carey Law School. It also was an educational experience unlike any other and left the students grateful for the knowledge they had gained from Judge Carrion and participating counsel.

KEYS TO SUCCESS IN CONTRACTS: AVOIDING LAND MINES IN TRANSACTIONAL LAW

by 2L Jillian Chavis

Transactional lawyers and litigators approach contracts from very different perspectives. On the one hand, transactional lawyers work in a cooperative manner to set the framework for the deal to be successful, and on the other, litigators work in an adversarial manner to pick up the pieces when the deal falls apart. At a Lunch-and-Learn Drafting Session by the Business Law Track, attorney David Rosenbaum presented keys to success in drafting contracts based on a more comprehensive understanding of the relationship between transactional lawyers and litigators, and how the work of each affects the other.

There are fundamental differences between litigators and transactional lawyers – while litigators work against their adversaries to fight for the best outcome for their clients, transactional lawyers work with the other parties to reach a mutually beneficial deal and set the foundation for a strong relationship moving forward. Coming from a litigation background and moving into transactional work, Mr. Rosenbaum noted “I was under the misimpression that transactional lawyers really are adversarial, but they just kind of hide it. So I started by drafting agreements that had all sorts of little land mines in them. And that’s not the right way to do transactions.” Mr. Rosenbaum soon recognized that while the adversarial way he learned to approach contracts as a litigator was not transferable to his new transactional work, his litigation experience allowed him to anticipate problems others may not see when crafting agreements. Inversely, he realized the cooperative approach he was applying in transactional work might be effective for some circumstances of litigation. There is an interesting relationship between the different styles for litigation and transactional law, and understanding where they overlap and how they complement each other creates more insightful lawyers on both sides of the transaction.



Building on the understanding of the role of transactional lawyers, Mr. Rosenbaum outlined important keys to success in drafting contracts. The first key is to know when to say “no.” Attorneys need to be up front with their clients in terms of both the scope of their expertise and in setting realistic expectations. The second key is to know the client and the industry. Attorneys need to understand their client’s position relative to the industry, and perform due diligence for the transaction with the client to anticipate legal issues. Third, attorneys must understand the client’s goals and the role the client wants them to take. While there are additional keys to success, the underlying theme is to understand the client and expectations, and to balance those expectations against your legal knowledge to create a satisfactory agreement. Mr. Rosenbaum’s presentation provided both great insight into the world of legal drafting and valuable advice for future lawyers.

THE NEW AGE OF BUSINESS NEGOTIATIONS: THE BENEFITS OF EMAIL

by 3L Zina Makar

Sharing unfavorable news can be difficult, even more so when it has to be conveyed in-person. Sending an email, as opposed to making a phone call, may result in misunderstandings, turning a two-minute message into a twenty-minute ordeal. This is one example of the consequences that may occur due to certain modes of communication. Such potential consequences should be carefully considered before initiating the interaction.

While at my previous internship I was exposed to the new age of business negotiations. This exposure has made me contemplate how the use of technology in the business realm impacts communication practices. This piece will shed light on the interplay of technology in the business setting and how it has transformed the types of negotiation practices that would have been commonly accepted when conducting in-person negotiations.

When everything is written down in black and white, there is little room for negotiation traps to go unnoticed. Conducting negotiations over email requires putting a significant amount of trust in what often happens to be a complete stranger. In an email negotiation, establishing a rapport with the counter-party can be difficult because of the uncertainty created through a lack of physical and social interaction.

Some commentators note the timeline of in-person and electronic negotiations often differ. For example, Lynn Epstein, author of *Cyber E-mail Negotiation v. Traditional Negotiation: Will Cyber Technology Supplant Traditional Means of Settling Litigation?*, discusses how email negotiations “constitutes practice at leisure,” whereas face-to-face negotiation requires that “time is often of the essence.” Though there is likely still truth to her statement, times have changed since her



Zina Makar

article was published in 2001. Smartphones have become the predominate medium of communication. When an email is sent, one almost expects to receive a reply within two to three hours of delivery. A reply may be considered overdue if it has not been returned within 24 hours of receipt. While email still has its leisurely aspects (i.e. allowing for a reasonable amount of reflection time to prepare a strategy), today's culture is so accustomed to smartphones that one is expected to be constantly and consistently available.

With this in mind, and if done correctly, utilizing time in email exchanges can be an appropriate negotiation tactic. The lean nature of emails may reduce available negotiation tactics, but identifying when a delay in response may irritate the counter-party or when it might be used to the negotiator's advantage is an important point to distinguish.

Contrasted against email negotiations, social interactions are most authentic when individuals can experience one another's identity and access credibility to form connections to another. I previously conducted extensive research and analyzed the constitutionality of videoconference based bail review hearings (Cimino et al., Section 4). Through my research I found a scholarly article equally relevant to this discussion as it analyzed perceptual influences, understanding, and measures of credibility in human interaction through a computerized medium (Bengtsson et al. HICSS-32m at 5). The article concluded that face-to-face interactions lead to more credibility with interactants. Such studies are highly relevant and should be considered more widely in the business setting where face-to-face contact is declining and email becomes the primary mode of communication.

Since social interaction best facilitates the presentation and subsequent determination of credibility, the ability to see the humanity of one another as well as form personal connections is central to this process (Bengtsson et al., supra note 2, at 6). Eye contact is therefore one of the most important nonverbal gestures that can foster feelings of connectedness (Bengtsson et al., supra note 2, at 6). Social interactions allow one party to reassure themselves that their perception of their counter-party and the current state of negotiations is accurate. When social interaction is not an option, perceptions become muddled; thus, candor in information sharing over email is a way to peel back the onion and accurately perceive the counter-party's positions and interests.

Based on experiences and research, people generally prefer to negotiate with others who have a similar negotiation style. I believe that the similarities in style promote a form of trust when social interaction is not an option, and moreover, it increases predictability, which adds a level of comfort to the exchange. When one negotiator acts capriciously, it can often lead to frustration because the pre-established trust relies upon the predictability in the relationship.

Email negotiations require a new breed of negotiator: one that can utilize every second purposefully and form an accurate picture of his adversary without having met him. I have come to learn that the best negotiator is one with a great deal of flexibility in foresight. The ability to read a situation accurately, adapt to different people, technologies, time frames, and cultures will make or break a negotiator's effectiveness. There is still much to be learned about email negotiations and how they should be utilized when face-to-face communication is inconvenient or impossible; however, it is important to note that even though an aspect of humanity may be removed from the equation, every second longer and every word typed has some meaning beyond the email's text.

References

Edie Cimino, Zina Makar, & Natalie Novak, *Charm City Televised and Dehumanized: How CCTV Bail Reviews Violate Due Process of Law* (Aug. 26, 2013) (unpublished manuscript) (on file with author).) (Section IV of this article provides an in-depth discussion on the interplay of video conference technology and its impact on bail review determinations).

Bjorn Bengtsson et al., *The Impact of Anthropomorphic Interfaces on Influence, Understanding, and Credibility*, Proceedings of the 32nd Annual Hawaii International Conference on Systems Sciences, 1999. HICSS-32, at 5

BUSINESS LAW PROGRAM POINTS OF PRIDE

3L Colin Grigg will clerk for the Honorable Judge Althea Handy in the Circuit Court for Baltimore City after sitting for the Maryland Bar this summer. Judge Handy is assigned to Maryland's Business and Technology Case Management Program, presiding over complex civil cases involving business or technology issues. Colin will also compete in the Federal Bar Association's Thurgood A. Marshall Memorial Moot Court Competition in March.

3L Chris Haboian will join the Cordish Company's Office of the General Counsel as an attorney this fall. The Cordish Company is a real estate development and entertainment company headquartered in Baltimore.

2L Brett Burka will be joining Cahill, Gordon & Reindel's NYC office as a Summer Associate, where Brett hopes to work in their corporate department which specializes in capital market transactions. Brett currently serves as a Law Clerk at Brown Advisory Inc., an investment firm headquartered in Baltimore.

2L Christopher Chaulk will be joining Neuberger, Quinn, Gielen, Rubin & Gibber's Baltimore office this summer as a Summer Associate.

2L Cameron Jordan will be joining Skadden, Arps, Slate, Meagher & Flom's Chicago office this summer as a Summer Associate.

2L Jackie Togno is currently interning for the Center for Clinical Trials and Corporate Contracts at UMB's Office of Research and Development, where she works with experienced attorneys, drafting and negotiating contracts between UMB and its research and education partners.

Scott Forney '12 is practicing in-house at Transamerica Life and Protection, where he helps support Transamerica's affinity insurance business, focusing primarily on contract development, compliance, and litigation management.

Daniel Davis '13, is practicing in Miami, Florida and currently working on a case in front of the Eleventh Circuit. Dan also recently co-chaired a jury trial involving an eminent domain case.

Leanne Fryer '13, is working as an Associate with The Wright Firm, an estate planning and administration firm in Annapolis.

Christine Hein '13, is currently clerking for the Honorable Judge Robert A. Zarnoch of the Maryland Court of Special Appeals in Annapolis.

We would be delighted to hear any news that you want to share in a future 'Points of Pride' announcement. Please feel free to email Associate Director Hilary Hansen at hhansen@law.umaryland.edu to let us know about your job placements, awards, publications, or other achievements.

ALUMNI SPOTLIGHT

Tamika Langley Tremaglio '95, a member of UM Carey Law's Board of Visitors, has experience in litigation, forensic investigations, accounting, tax, finance, economics, and business consulting covering a broad spectrum of industries. Tamika serves as Deloitte Financial Advisory Services LLP's office managing partner for Greater Washington D.C. area. As office managing partner, Tamika is both the Greater Washington market leader for Deloitte FAS and the local market liaison to the Regional Managing Partner.

Tamika's litigation consulting experience includes participating in matters such as breach of contract, franchise disputes, lost profits, business interruption, intellectual property disputes, professional malpractice, health care and government contract compliance matters, personal injury, wrongful death, wrongful termination and bankruptcies, including claims relating to fraudulent conveyances and insolvency.

She has significant experience in forensic accounting investigations and corporate governance matters in a broad spectrum of industries including SEC investigations where issues surrounding executive conduct and whistle-blower allegations have been called into question. In addition, she has spent considerable time investigating executive conduct, vendor relationships and similar issues. Specifically, she has led internal and external investigations of suspected improper and fraudulent behavior by employees, vendors, contractors, executive directors and trustees of not-for-profit organizations, institutions, foundations and estates. Tamika has an MBA and a JD and has been a frequent lecturer on corporate governance and Sarbanes Oxley matters.



Tamika Tremaglio

FACULTY NOTES

Martha Ertman's Contract Drafting course received mention at the AALS Annual Meeting on January 3-5, 2014 in New York City. Jamieenne Studley, former Associate Dean at Yale School of Law, cited the course during the keynote address as an example of curricular reforms that answer calls for improving law school curricula to teach students about reading, negotiating, and drafting contracts.

Michael Greenberger served as a panelist for, "Americans and the Financial System," at the Atlantic Media and the National Journal Roundtable in Washington, DC on November 21, 2013 and as a guest lecturer for, "The Financial Crisis, Dodd-Frank, and the Future of Financial Regulation" at Marist College Autumn Lecture Series in Poughkeepsie, NY on November 13, 2013. Michael was also recently appointed to serve on the Faculty Board of the Center for the Study of Business Ethics, Regulation, & Crime (C-BERC) at the Robert H. Smith School of Business at the University of Maryland.

Michelle M. Harner recently published two articles, "A More Realistic Approach to Directors' Duties," 15 *TRANSACTIONS: TENN. J. BUS. L.* 15 (Fall 2013), and "Deal Deconstructions, Case Studies, and Case Simulations: Toward Practice Readiness with New Pedagogies in Teaching Business and Transactional Law," 3 *AM. U. BUS. L. REV.* 81 (2014) (with Robert Rhee). She will publish several articles this spring, including "Facilitating Successful Failures," 66 *FLA. L. REV.* (forthcoming 2014) (with Jamie Marincic Griffin); "Teaching LLCs Through a Problem-Based Approach," 71 *WASH. & LEE L. REV.* (forthcoming 2014) (with Robert Rhee) (symposium piece); and "Activist Investors, Distressed Companies, and Value Uncertainty," *AM. BANKR. INST. L. REV.* (forthcoming 2014) (with Jamie Marincic Griffin & Jennifer Ivey-Crickenberger). Prof. Harner also testified on the topic, "Exploring Chapter 11 Reform: Corporate and Financial Institution Insolvencies; Treatment of Derivatives," in front of the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Regulatory Reform, Commercial and Antitrust Law on March 26, 2014.

Shruti Rana presented "A Comparative Case Study of Law & Development in the Chinese Business Arena" on January 28, 2014 at the University of Pittsburgh Faculty Colloquium, Pittsburgh, PA. She also presented "Comparative Corporate Governance in the U.S. and Japan," at the Enterprise Law Conference on January 11, 2014 at Hitotsubashi University, Tokyo, Japan (Sponsored by the Government of Japan). She was an invited participant for, "Comparative Corporate Social Responsibility," a Corporate Philanthropy Panel at the UC Davis Business Law Symposium, UC Davis Law School, Davis, CA on November 21, 2013 and a panelist for, "A Global Perspective on Human Trafficking," Panel on The Case Against Human Trafficking: What Everyone Should Know, sponsored and organized by the International Women's Insolvency & Restructuring Confederation (IWIRC), University of Maryland, Francis King Carey School of Law, Baltimore, MD on November 14, 2013. On October 3, 2013, she moderated "US Participation in Human Rights Treaties: Inexcusable Exceptionalism or Much Ado About Nothing?" at the International and Comparative Law Colloquium, University of Maryland, Francis King Carey School of Law, Baltimore, MD.

