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September 2, 2016

**SUBMITTED ELECTRONICALLY VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: **MEETING SUMMARY PER SECTION 1.1208 OF THE FCC'S RULES**

Request for Review or Waiver of a Decision of the Universal Service Administrator by Sweetwater City Schools et al., Docket No. 02-6

Dear Ms. Dortch:

On August 31, 2016, representatives of Education Networks of America, Inc. and ENA Services, LLC (ENA) and the Sweetwater City Schools Consortium (Sweetwater) met with Philip Verveer, senior counselor, and Stephanie Weiner, senior legal advisor, who are both members of Chairman Wheeler's staff. Present at the meeting for ENA and Sweetwater were Dr. Melanie Miller, director of schools for the Athens (Tenn.) school district; David Pierce, CEO of ENA; Kitty Conrad, general counsel of ENA; Gerald McGowan and Thomas Gutierrez, Lukas, Nace, Gutierrez and Sachs, LLP, counsel for ENA; and the undersigned counsel.

The representatives of ENA and Sweetwater reiterated their requests<sup>1</sup> for the Commission to grant their appeals of the decisions of USAC to deny \$50 million funding to 45 school districts in Tennessee, which serve about one-third of the public school students in the state. Sweetwater and ENA addressed the issues detailed in the attachment to this letter, which was distributed at the meeting.

In addition, Ms. Weiner asked about a filing submitted by AT&T in the docket regarding facts that appear to be in dispute related to AT&T's pricing bid to Sweetwater. ENA and Sweetwater explained that notwithstanding any confusion regarding the scope of AT&T's bid, AT&T received full credit for its bid with respect to cost; that is, the Sweetwater evaluators did not deduct any points regarding the bid response that AT&T now attempts to clarify. As such, these issues were not relevant to the Sweetwater Consortium's evaluation of the pricing component of

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<sup>1</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Request for Review and/or Waiver by Education Networks of America of Funding Decisions of the Universal Service Administrative Company, filed May 13, 2016 (ENA Appeal), and *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Consolidated Request for Review and/or Waiver by Sweetwater City Schools et al. of Funding Decisions by the Universal Service Administrative Company, filed May 10, 2016 (Sweetwater Appeal).

the bid, and made no difference to the outcome of the competitive bidding process.

The reason that Sweetwater included a discussion about installation and the state master contract in its appeal, however, is because they relate to the Commission's analysis as to cost-effectiveness. As detailed further in the Sweetwater appeal, Commission precedent suggests a comparison to "prices available from commercial vendors" as one standard of cost-effectiveness.<sup>2</sup> In the Tennessee market at the time, ENA was serving other districts under a consortium contract and AT&T was offering services under its state master contract. Those rates may be fairly compared to ENA's bid to Sweetwater, and ENA's Sweetwater bid was lower than those rates. The figures listed in AT&T's bid response, by contrast, did not constitute a fair comparison because (1) AT&T's bid response itself said the rates charged were the same as those contained in AT&T's state master contract, and (2) AT&T did not include specific installation charges in its proposal to Sweetwater.

We also provided an expert opinion from Professor George W. Kuney of the University of Tennessee regarding whether a contract existed between Sweetwater and ENA before the Consortium members filed their applications. In Professor Kuney's expert opinion, a "Tennessee court or other adjudicative body applying Tennessee law to these documents should conclude that a valid contract was formed between ENA and Sweetwater on March 1, 2013 - the date of the award letter from Sweetwater to ENA . . ." See attached Letter from Professor George W. Kuney, The University of Tennessee College of Law, to Kitty Conrad, General Counsel of ENA, dated Aug. 15, 2016.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced dockets and sent to attendees. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Gina Spade

Gina Spade  
Counsel for ENA

cc: Philip Verveer  
Stephanie Weiner

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<sup>2</sup> Sweetwater appeal at 29-38. See also *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District El Paso, Texas, et al.*, Federal-State Joint Board, Order, CC Docket No. 96-45, FCC 03-313, 18 FCC Rcd 26407, ¶54 (2003).

## Sweetwater TN Consortium E-rate Briefing

August 2016

Issue: USAC denial of E-rate funding for 45 school districts (Sweetwater Consortium, Tennessee) for the past three funding years (2013, 2014 and 2015).

- Amount at issue is approximately \$50 million.
- The school districts will have to lay off teachers, cancel programs, and cancel technology initiatives to pay for past-due broadband bills in the absence of federal funding.

### ENA Shares the Commission's E-rate Goals

- ENA began providing service to schools and libraries before E-rate began.
- ENA's sole focus has been serving the needs of schools and libraries.
- ENA delivers high-bandwidth broadband to every school it serves in the state of Tennessee, including the Consortium members, consistent with program goals.

### The Sweetwater Consortium Designed a Procurement Process to Meet the Needs of Diverse Districts Across the State.

- Nearly 80 schools participated in the procurement.
- 45 school districts in Tennessee – some rural, some urban, some with a large population eligible for free or reduced-cost lunch – eventually purchased services.
- Designed the RFP to accommodate needs that no one yet knew at that time. Used a broad RFP that included a range of bandwidths to meet needs of all districts that might purchase services.

### The Procurement Process Met Commission and State Rules

- A three-person panel of respected educators conducted an exhaustive review of the bids before awarding a contract to ENA. They compared numerous criteria.

### The Consortium Shares the Commission's Goal of Obtaining the Most Cost-effective Services

#### If the Denial is Upheld, the Schools Will Suffer Severe Harm

- Districts have already made cuts and will make more:
  - Teacher layoffs; program cuts; reductions in capital repairs; reductions in technology purchases.

### USAC's Denials Were Not Consistent With Commission Precedent

- USAC alleges that the schools did not select the most cost-effective services and did not have a contract with ENA.
  - To the contrary, the Consortium used price as a primary factor and met all other E-rate requirements in the competitive bidding process.
  - The school district could not have changed to a different provider at the end of the competitive bidding process. To do so would have been a violation of E-rate rules.
  - The schools had a contract under Tennessee law. The service provider offered its services with its bid response and the Consortium accepted the offer when it awarded the bid.

### Because Commission Rules Were Met and Program Goals Achieved, the Commission Should Reverse USAC's Decision

- The Bureau should grant the appeal in a streamlined public notice.

**Professor George W. Kunev**  
**The University of Tennessee College of Law**  
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**(865) 974-2500**

Via E-mail [kconrad@ena.com](mailto:kconrad@ena.com)

August 15, 2016

Kitty Conrad, Esq., General Counsel  
ENA Educational Networks of America  
618 Grassmere Park Drive, Suite 12  
Nashville, Tennessee 37211

Dear Ms. Conrad:

As you know, I am a professor of law at The University of Tennessee College of Law where I teach contract law courses, among other things, and research and write in that and related areas of law. My curriculum vitae is enclosed for your ease of reference. You have asked me to examine certain documents by and between ENA Education Networks of America/ENA Services, LLC (collectively, "ENA") and the Sweetwater City School District Consortium ("Sweetwater") to determine whether or not a valid and enforceable contract was formed between these entities. That opinion is below and represents my conclusions as to what a Tennessee court or other adjudicative body applying Tennessee law to these documents should conclude. In rendering this opinion, I have assumed that the entities involved are duly organized and in good standing, that all signatures are genuine, and that the documents that you supplied me with are authentic and complete. In rendering this opinion, I am acting as an individual and not as a representative or agent of The University of Tennessee.

The opinion is rendered solely to you and for your benefit and may not be relied upon by any other entity except your successors and assigns, without my prior written consent. You are authorized to provide this opinion to the Federal Communications Commission in any matter relating to this contract.

#### SUMMARY OF OPINION

A Tennessee court or other adjudicative body applying Tennessee law to these documents should conclude that a valid contract was formed between ENA and Sweetwater on March 1, 2013 – the date of the award letter from Sweetwater to ENA regarding Sweetwater's Request for Proposal No. 13, Managed Internet Services, Voiceover IP and Video Conferencing (RFP 13). At that time, all the requirements for the formation of a valid enforceable contract under Tennessee law were satisfied: mutual assent, sufficient consideration, and sufficiently definite terms. *Johnson v. Central Nat'l Ins. Co.*, 356 S.W.2d 277, 281 (Tenn. 1962); *Neilson & Kittle*

*Canning Co. v. F.G. Lowe & Co.*, 260 S.W. 142, 143 (Tenn. 1924). Moreover, ENA performed under this agreement as detailed in its July 31, 2013 invoice to Sweetwater, which further establishes that a valid contract regarding RFP 13 was formed between ENA and Sweetwater. *Gurley v. King*, 183 S.W.3d 30, 41 (Tenn. Ct. App. 2005); *APCO Amusement Co., Inc. v. Wilkins Family Restaurants of America, Inc.*, 673 S.W.2d 523, 527 (Tenn. Ct. App. 1984).

## FACTS

In January 2013 Sweetwater issued RFP 13 to solicit bids for the provision of internet services for the consortium member schools and school districts listed in Exhibit C to RFP 13. (Ex. 3). The RFP is a comprehensive document, totaling 40 pages with attachments. ENA provided Sweetwater with a detailed, 154-page Proposal and Response that was organized as prescribed in RFP 13. Sweetwater undertook a nine-hour evaluation process of the responses to RFP 13 that were submitted by ENA and AT & T. The evaluation process and procedure are described in paragraphs 18-27 of the Affidavit of Melanie R. Miller, Director of Schools for the Sweetwater School System, dated May 3, 2016; and in paragraphs 9-13 of the Affidavit of Thomas Bayersdorfer, the District E-Rate Coordinator for the Metropolitan Nashville Public Schools, dated May 4, 2016. In this process, the evaluation panel reviewed each of ENA's and AT & T's responses category by category, focusing on one section at a time. The panel members first reviewed and scored each section in a category individually. Then the panel convened to compare their scores and responses for that category. After discussing a category as a group, the panel arrived on a consensus score for each section of that category, and these scores were recorded on a Consensus Score Sheet. Then the panel members moved on to the next category, repeating this process until all categories were evaluated and a consensus score for each section in each category was reached and recorded. (See Ex. 15, Consensus Score Shee). After this evaluation process, Sweetwater decided to accept ENA's Proposal and Response to RFP 13, and issued its award letter for RFP 13 to ENA on March 1, 2013. (Ex. 8). ENA began performance under this agreement as shown in its July 31, 2013 invoice to Sweetwater. (Ex. 9).

## DISCUSSION

Under Tennessee law, the essential elements for formation of a valid, enforceable contract are mutual assent of the parties, sufficient consideration, and sufficiently definite terms. *Johnson v. Central Nat'l Ins. Co.*, 356 S.W.2d 277, 281 (Tenn. 1962) (“While a contract may be either expressed or implied, or written or oral, it must result from a meeting of the minds of the parties in mutual assent to the terms, must be based upon a sufficient consideration, free from fraud or undue influence, not against public policy, and sufficiently definite to be enforced”).

“It is well settled that a binding contract may be entered into through the medium of correspondence by letter or telegraph [,]” after which no further formal signed, written contract is

required. *Neilson & Kittle Canning Co. v. F.G. Lowe & Co.*, 260 S.W. 142, 143 (Tenn. 1924) (holding a valid contract was formed when the seller accepted the buyer's order for a rail car of canned fish by letter and telegram, and that the request of seller, following the telegraphic and mail correspondence, for a signed contract, did not “constitute a practical construction on the part of [the buyer] his part that no contract had, up to that time and until the signing of the contract by buyer, been completed”); *see also Waddle v. Elrod*, 367 S.W.2d 217, 226-28 (Tenn. 2012) (holding that a series of emails between attorneys confirming a settlement in which one party would “convey her interest in the property” to the other was a sufficient writing that formed a valid contract satisfying the statute of frauds).

Further, “[i]f the correspondence and other communications establish with reasonable clearness a contract, . . . [s]uch a construction should be adopted, if possible, as to constitute an agreement rather than defeat an agreement.” *Neilson & Kittle Canning Co. v. F.G. Lowe & Co.*, 260 S.W. 142, 143 (Tenn. 1924). Indeed, “[t]he determination that an agreement is sufficiently definite is favored. Therefore, the courts will, if possible so construe the agreement as to carry into effect the reasonable intention of the parties, if that can be ascertained.” *APCO Amusement Co., Inc. v. Wilkins Family Restaurants of America, Inc.*, 673 S.W.2d 523, 527-28 (Tenn. Ct. App. 1984) (holding that a letter of intent regarding the operation of a coin operated amusement center in restaurant was sufficiently definite to form a valid contract despite omitting “such matters as the store hours, the tax and insurance responsibility, and the contract duration.”)

In addition, “the law leans against the destruction of contracts for uncertainty, particularly where one of the parties has performed his part of the contract.” *APCO Amusement Co., Inc. v. Wilkins Family Restaurants of America, Inc.*, 673 S.W.2d 523, 527 (Tenn. Ct. App.) (fact that the parties began fulfilling their obligations as set out in a letter of intent indicated a valid contract had been formed); *see also Gurley v. King*, 183 S.W.3d 30, 41 (Tenn. Ct. App. 2005). Therefore, “in determining whether certain correspondence, in the form of letters sent between the parties, constituted a contract or was merely a part of the negotiations leading to a potential contract, . . . the practical interpretation of a contract by the parties thereto is entitled to great, if not controlling influence, and will be adopted by the courts.” *APCO Amusement Co., Inc. v. Wilkins Family Restaurants of America, Inc.*, 673 S.W.2d 523, 527 (Tenn. Ct. App. 1984). Moreover, “[t]he interpretation given by the parties themselves to the contract as shown by their acts will be adopted by the court, and to this end not only acts but the declarations of the parties may be considered.” *Id.* (quoting Williston on Contracts, § 623).

Here, ENA and Sweetwater formed a valid enforceable contract in March 2013 when Sweetwater issued its award regarding RFP 13 to ENA. The correspondence between the parties – in the form of RFP 13, ENA’s Proposal and Response to RFP 13, and Sweetwater’s award letter were comprehensive, contained detailed, definite terms, and demonstrated mutual assent. *Johnson v. Central Nat’l Ins. Co.*, 356 S.W.2d 277, 281 (Tenn. 1962); *Neilson & Kittle Canning*

*Co. v. F.G. Lowe & Co.*, 260 S.W. 142, 143 (Tenn. 1924); *APCO Amusement Co., Inc. v. Wilkins Family Restaurants of America, Inc.*, 673 S.W.2d 523, 527 (Tenn. Ct. App. 1984). Consideration was also sufficient. *Pearson v. Garrett Fin. Serv.*, 849 S.W.2d 776, 779 (Tenn. Ct. App.1992) (“A promise by one party to an agreement is a sufficient consideration for a promise by the other party.”). Therefore, the requirements for the formation of a valid contract: mutual assent, sufficient consideration, and sufficiently definite terms were all present. *Johnson v. Central Nat'l Ins. Co.*, 356 S.W.2d 277, 281 (Tenn. 1962).; *Neilson & Kittle Canning Co. v. F.G. Lowe & Co.*, 260 S.W. 142, 143 (Tenn.1924).

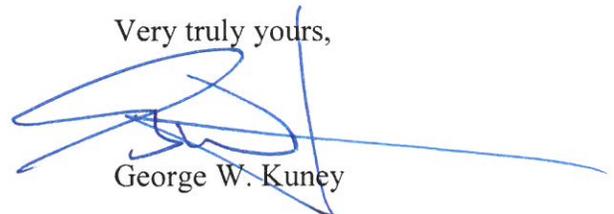
Sweetwater’s review and evaluation of ENA’s Proposal and Response as detailed in Sweetwater’s Consensus Score Sheet (Ex. 15) and described in paragraphs 18-27 of the Affidavit of Melanie R. Miller and paragraphs 9-13 of the Affidavit of Thomas Bayersdorfer further demonstrate the definiteness of the contract terms and Sweetwater’s manifest assent to those terms. *Neilson & Kittle Canning Co. v. F.G. Lowe & Co.*, 149 Tenn. 561, 260 S.W. 142, 143 (Tenn.1924). Moreover, ENA began to perform under the terms of its Proposal and Response, which is another significant factor showing a valid contract had been formed. *APCO Amusement Co., Inc. v. Wilkins Family Restaurants of America, Inc.*, 673 S.W.2d 523, 527 (Tenn. Ct. App. 1984); *see also Gurley v. King*, 183 S.W.3d 30, 41 (Tenn. Ct. App. 2005).

In sum, a valid contract was formed by RFP 13, ENA’s Proposal and Response to RFP 13, and Sweetwater’s March 2013 award letter; no further formal, signed document was required. *Neilson & Kittle Canning Co. v. F.G. Lowe & Co.*, 260 S.W. 142, 143 (Tenn.1924); *see also Waddle v. Elrod*, 367 S.W.2d 217, 226-28 (Tenn. 2012).

#### CONCLUSION

A Tennessee court or other adjudicative body applying Tennessee law to these documents should conclude that a valid contract was formed between ENA and Sweetwater on March 1, 2013 – the date of the award letter from Sweetwater to ENA regarding Sweetwater’s Request for Proposal No. 13, Managed Internet Services, Voiceover IP and Video Conferencing (RFP 13).

Very truly yours,



George W. Kuney

## George W. Kuney

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### LEGAL CAREER

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Allen, Matkins, Leck, Gamble & Mallory  
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University of San Diego  
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J.D., *cum laude*, 1989  
HASTINGS LAW JOURNAL, 1987-1988  
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Milton T. Green Top Ten Award  
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B.A., Economics, 1986, Honors in the Major

## George W. Kuney

### COURSES TAUGHT

Business Associations, Commercial Law, Contracts I, Contracts II, Contract Drafting, Commercial Leasing, Consumer Bankruptcy and Finance Seminar, Debtor-Creditor Law, Mergers & Acquisitions, Introduction to Business Transactions, Property, Remedies, Representing Enterprises, and Workouts & Reorganizations.

### BOOKS AND TREATISES

Co-author, *Corporate Finance* (forthcoming Lexis 2017, with Joan Heminway).

Co-author, *Legal Drafting in a Nutshell 4<sup>th</sup> Ed.* (forthcoming West 2017, with Donna C. Looper).

Co-author, *Legal Drafting: Processes, Techniques, and Exercises* (forthcoming West 2017, with Donna C. Looper).

Co-author, *A Criminal Matter* (forthcoming West 2017, with Donna C. Looper).

Co-author, *A Transactional Matter* (forthcoming West 2016, with Brian K. Krumm).

Author, *Experiencing Remedies* (West 2015).

Co-author, *Bankruptcy in Practice 5<sup>th</sup> Ed.* (2015, with Michael Bernstein).

Author, *The Elements of Contract Drafting with Questions and Clauses for Consideration* 4th ed. (text and teachers manual, West 2014).

Co-author, *A Civil Matter: A Guide to Civil Procedure and Litigation* (West 2013, with Donna C. Looper).

Author, *Judgment Collection in Tennessee* (Amazon/Center for Entrepreneurial Law 2013).

Co-author, *Business Reorganizations* 3d ed. (Lexis 2013, with Michael Gerber).

Co-author, *The Entrepreneurial Law Clinic Handbook* (West 2012, with Brian K. Krumm).

Author, *Bamboozled? Bowers v. Baystate and Its Aftermath* (West 2012).

Co-author, *Contracts: Transactions and Litigation* 3d ed. (text and teachers manual, West 2011, with Robert M. Lloyd).

Co-author, *Mastering Appellate Process* (with Donna C. Looper, Carolina Academic Press 2011).

Co-author, *Mastering Legal Analysis and Drafting* (Carolina Academic Press 2009, with Donna C. Looper).

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Co-author, *Sales, Negotiable Instruments, and Payment Systems: UCC Articles 2, 3, 4, 4A and 5* (text and teachers manual, Center for Entrepreneurial Law 2009, with Robert M. Lloyd).

Co-author, *Secured Transactions: UCC Article 9 and the Bankruptcy Code* (text and teacher's manual, Center for Entrepreneurial Law 2008, with Robert M. Lloyd).

Co-author, *Contracts: Transactions and Litigation* 2d ed. (text and teachers manual, West 2008, with Robert M. Lloyd).

Co-Author, *Mastering Intellectual Property Law* (Carolina Academic Press 2008, with Donna C. Looper).

Author, *Mastering Bankruptcy* 2d ed. (Carolina Academic Press 2008).

Co-author, *Legal Drafting: Process, Techniques, and Exercises* (text and teacher's manual, West 2007, with Thomas Haggard).

Co-author, *Legal Drafting in a Nutshell*, 3d ed. (West 2007, with Thomas Haggard).

Author, *Norton Bankruptcy Practice and Proceedings, Chapters 28* (Meeting of Creditors—Section 341), *29* (Notice—Section 342), and *30* (Examination of Debtors—Sections 343/344) (West 2007).

Co-author, *Chapter 11-101: The Essentials of Chapter 11 Practice* (ABI 2007, with Jonathan Friedland, Michael Bernstein, and John Ayer,).

Author, *The Elements of Contract Drafting with Questions and Clauses for Consideration*, 2d ed. (text and teacher's manual, West 2007).

Co-author, *California Law of Contracts* (University of California CEB Treatise 2007, with Donna C. Looper, updated annually).

### **ARTICLES**

*All Writs in Bankruptcy and District Courts: A Story of Differing Scope*, 34 *Litigation Review* 255 (2015).

*Cram Down: An Impaired Class of Claims Says "No" But the Plan is Confirmed Anyway*, *Commercial Bankruptcy Litigation*, (March 12, 2014).

*Leases and Licenses, Sections 363(f) and 365(h)*, 2014 *Annual Survey of Bankruptcy Law* 95 (West).

*Legal Form, Style, and Etiquette for Email*, 15 *Transactions* 59 (2013).

## George W. Kuney

*A Taxonomy and Evaluation of Successor Liability (Revisited)* (August 7, 2013). Available at SSRN: <http://ssrn.com/abstract=2307190>

*Contracting on the Internet*, Vol. 34, Cal. Bus. L. Rptr. (September 2013).

*Section 363 Sales and Successor Liability*, 2012 Annual Survey of Bankruptcy Law 1 (West).

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*Stern v. Marshall: A Likely return to the Bankruptcy Act's Summary/Plenary Distinction in Article III Terms*, 21 J. Bankr. L. and Pract. 1 (2012).

*Implied-in-Fact Contracts and Idea Submission in California*, 33 CAL. BUS. L. RPTR. 4 (July 2011).

*Contractual Mechanics: Covenants, Conditions, Representations, Warranties, Guaranties, and Indemnities*, Vol. 25, No. 4 CAL. BUS. PRACT. 124 (Fall 2010).

*Don't Mistake the Proxy for the Rule: Alter Ego Liability in Tennessee*, 11 TRANSACT. 131 (2010).

*Vacating Chrysler*, 19 J. BANKR. LAW & PRACT. 123 (West 2010).

*Non-Debtor Releases and Travelers v. Bailey: A Circuit Split that is Likely to Remain*, 201 NORTON ANNUAL SURVEY OF BANKRUPTCY LAW 201 (West 2010).

*Unethical Protection? Model Rule 1.8(h) and Plan Releases of Professional Liability*, 83 AM. BANKRUPTCY L.J. 481 (2009).

*Contractual Arbitration in California*, 24 CAL. BUS. L. PRACT. No. 3, p. 113 (Fall 2009).

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*A Proposal for Chapter 10: Reorganization for "Too Big to Fail" Companies*, XXVIII, No. 2, AMERICAN BANKR. INST. J. 1 (March 2009, with Michael St. James).

*Transactional Skills Training: Contract Drafting — the Basics*, 10 TRANSACTIONS 139 (Special Report 2009, with Tina Stark).

*Pedagogic Techniques — Multidisciplinary Courses, Annotated Document Review, Collaborative Work, and Large Groups*, 10 TRANSACTIONS 73 (Special Report 2009 with Anthony J. Luppino and Jamison Wilcox).

*Material Adverse Change Clauses*, 23 CAL. BUS. L. PRACT. 101 (2008).

*How Fast is Promptly?*, 23 CAL. BUS. L. PRACT. 98 (2008).

## George W. Kuney

*What Your Lender and Mortgage Broker Didn't Tell You: A Call for Disclosure of Loss of the Section 580b Antideficiency Protection Upon Refinancing*, 4 HASTINGS BUS. L. J. 209 (2008).

*Slipping into Mootness*, NORTON ANN. SURV. BANKR. LAW Part 1, § 3 (West 2007).

*To the Best of Whose Knowledge?*, 22 CAL. BUS. L. PRACT. 2 (2007).

*A Taxonomy and Evaluation of Successor Liability*, 6 FLA. ST. U. BUS. L. REV. 9 (2007).

*Successor Liability in Illinois*, 96 ILLINOIS BAR J. 148 (2008).

*Successor Liability in Maryland*, Volume XXXX MARYLAND BAR J. 4 (2007).

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*Where We are and Where We Think We are: An Empirical Examination of Bankruptcy Precedent*, 28 CAL. BANK. L.J. 71 (2005).

*Successor Liability in California*, 20 CAL. BUS. L. PRACT. 50 (2005)(co-authored with Donna C. Looper).

*Boards Must Reduce Their Exposure to Creditor Suits*, SAN FRANCISCO DAILY JOURNAL (May 7, 2004)(co-author).

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*Let's Make It Official: Adding an Explicit Pre-Plan Sale Process as an Alternative Exit from Chapter 11*, 40 HOUSTON L. REV. 1265 (2004).

*Bankruptcy Law and Recovery of Tort Damages*, 71 TENN. LAW REV. 81 (2003).

## George W. Kuney

*Selling a Business in Bankruptcy Court Without a Plan of Reorganization*, 18 CAL. BUS. L. PRACT. 57 (Summer 2003).

*Further Misinterpretation of Bankruptcy Code § 363(f): Elevating In Rem Interests and Promoting the Use of Property Law in Bankruptcy-Proof Real Estate Developments*, 76 AM. BANKR. L.J. 288 (2002).

*Misinterpreting Bankruptcy Code § 363(f) and Undermining in the Chapter 11 Process*, 76 AM. BANKR. L.J. 235 (2002).

*The Fiduciary Duties of Officers and Directors of Insolvent Corporations*, 17 CAL. BUS. L. PRACT. 73 (Summer 2002).

Co-author, *Single Asset Real Estate Under 11 U.S.C. § 362(d)(3): A Narrower Construction Than You Might Expect*, 26 CAL. BANK. J. 130 (2002).

*Intellectual Property Licenses in Bankruptcy*, 16 CAL. BUS. L. PRACT. 33 (Spring 2001).

*Qualified Settlement Funds: A Tool to Shelter Gains and Taxable Income with Payments on Account of Disputed Claims*, 24 CAL. BANKR. J. 137 (1999).

Co-author, *The Allowed Secured Claim: Accounting for Payment of Net Rents*, 23 CAL. BANKR. J. 111 (1996).

*11 U.S.C. Sections 1125(a) and 1145: Going Public Via Chapter 11*, 23 CAL. BANKR. J. 3 (1996).

*Financial Reporting By Chapter 11 Debtors: A Limited Critique of SOP 90-7*, 5 J. BANKR. AND PRAC. 311 (1996).

*New Value Questions Remain, Whatever the Decision in Bonner Mall*, 112 BANK. L.J. 383 (1995).

*Claims for Attorney's Fees Under the Bankruptcy Code*, 4 J. BANKR. L. AND PRAC. 203 (1995).

*Interest on Nothing?*, 9 COMM. L. BULL. 30 (1994).

### **SPEAKING AND OTHER ENGAGEMENTS**

“Transactional Drafting,” Jones Day LLP, Washington D.C., December 9, 2015.

“Teaching Using the Case Study/Report Approach,” Legal Writing Institute Annual Conference, Knoxville, Tennessee, April 18, 2015.

“Risk Management: A Conversation,” and “Risk Management: Continuing the Conversation,” Scripps Interactive Network, Knoxville, Tennessee, November 2014 & January 2015.

## George W. Kuney

“Capstone Courses,” American Association of Law Schools Conference, New Orleans, La., January 5, 2013.

“The Winds of Change in Civil Law Practice,” Miller & Martin, Chattanooga, TN, September 20, 2013.

“Transactional Drafting,” Miller & Martin, Chattanooga, TN, July 29, 2010.

“Ethical Issues” and “363 Sales,” Norton Bankruptcy Institute, Las Vegas, Nevada, March 26, 2010.

“Morality and Contract Law,” Spring Conference on Contracts, UNLV, Las Vegas, Nevada, February 27, 2010.

“The Present and Future of ‘One Size Fits All’: Do We Need a Chapter for Those ‘Too Big to Fail’”, American Bankruptcy Institute 2009 Legislative Symposium, Chapter 11 at the Crossroads, Does Reorganization Need Reform? A Symposium on the Past, Present, and Future of U.S. Corporate Restructuring, Georgetown University Law Center, Washington, D.C., November 16-17, 2009.

“Transactional Drafting Workshop: Venture Capital,” DLA Piper, Palo Alto, CA, July 22-23, 2008.

“Papering the Deal: Writing for Transactional Attorneys,” The New Lawyer Experience: Bridging the Gap Between Preparation and Practice, Tennessee Bar Association, Knoxville, Tennessee, February 15, 2008.

Amicus counsel in support of the plaintiff/appellant in *Shultz v. United States*, 369 B.R. 349 (E.D. Tn. 2007) and *Shultz v. United States*, 529 F.3d 343 (6<sup>th</sup> Cir 2008) (challenge to constitutionality of Bankruptcy Code’s “means test”).

Pro se appellant in *Kuney v. Bean*, 2008 U.S. App. Lexis 14686 (Fed. Cir 2008) (dissolving lower court protective order on grounds of over breadth to allow access to sealed documents for research purposes).

Member, Steering Committee, Contract Drafting Conference, Emory University Transactional Practice Center, May 2-3, 2008.

“Transactional Drafting,” Jones Day, Cleveland, OH, October 19, 2007; Chicago, IL, November 2, 2007; Dallas, TX, November 9, 2007.

“Advanced Contract Drafting,” DLA Piper US LLP, Chicago, IL, August 13, 2007.

“Drafting Concrete Contracts & Writing Better Brief,” Tennessee Bar Association Young Lawyers Division, Knoxville, TN, July 11, 2007.

## **George W. Kuney**

“Transactional Drafting,” Jones Day, New York, NY, March 14, 2007.

“Transactional Drafting Workshop,” Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, Nashville, TN, March 1, 2007.

“Recent Developments in State Law Issues Affecting Commercial Transactions that Every Bankruptcy Lawyer Ought to Know,” Mid-South Commercial Law Institute, Nashville, TN, November 16, 2006.

“Bankruptcy Proofing Techniques: Substantive Consolidation Opinions and Bankruptcy Remote Entities,” Mid-South Commercial Law Institute, Nashville, TN, November 17, 2006.

“Contract Law and Teaching: Transactions and Litigation,” panelist, SEALS, July 21, 2006.

Author and Publisher of “Living Off Campus: A Quick Guide to Town Living for University of Tennessee Students” (1<sup>st</sup> Edition 2005, 2<sup>nd</sup> Edition 2006).

“The Nuts and Bolts of Contract Drafting,” workshop speaker and “Drafting Rules, Adding Value to the Deal, and Ethical Issues in Contract Drafting,” speaker, Teaching Contract Drafting, Northwestern University School of Law, July 20-21, 2005.

“Transactional Training Clinic: Simulation of \$50,000,000 Asset Acquisition and \$40,000,000 Senior Secured Term Loan,” lead instructor, Sheppard, Mullen, Richter & Hampton LLP, June 8-22, 2005.

“Putting ‘Business’ Back Into the Education of Business Lawyers,” panelist, American Bar Association, Business Law Section Spring meeting, Nashville, TN, March 31, 2005.

“U.S.C. Section 363(f): What Can You Sell Free and Clear Of?,” panelist, American Bar Association, Business Law Section Spring meeting, Nashville, TN, March 31, 2005.

“Collaboration,” panelist, Pedagogy to Practice: Maximizing Legal Education with Technology Conference, American Bar Association, Newark, NJ, October 15, 2005.

“Ethical Considerations in the Formation and Representation of Entities,” Partnerships, LLCs and LLPs: Organization and Operation in Tennessee, October 8, 2005.

“Teaching Contract Drafting: The Whereases and Wherefores,” Legal Writing Institute, annual conference, Seattle, WA, July 23, 2004.

“The Intersection of Law and Business,” panelist, Southeastern Association of Law Schools Annual Meeting, August 1, 2004.

“Ethical Considerations in the Formation and Representation of Entities,” panelist, Partnerships, LLCs and LLPs: Organization and Operation in Tennessee, Knoxville, TN, October 9, 2003.

## **George W. Kuney**

“Bankruptcy and the Tort Lawyer: What You Need to Know,” Damages in Tort Law Symposium speaker, University of Tennessee College of Law, Knoxville, TN, April 3, 2003.

“Contract Drafting: Fundamentals, Plain English & Papering the Deal,” sole instructor, United States Department of Energy BWXT Y-12, LLC, December 4, 2002.

“Teaching Entrepreneurship,” panelist, Southeastern Conference AALS Annual Meeting, July-August 2002.

“Combining Academic and Practical Training Through an Entrepreneurship Program,” Co-Lead Panelist, Kaufman Center for Entrepreneurial Leadership, April 2002.

“Legal Issues, Problems and Guidelines for Small Businesses: What You Don’t Know Can Hurt You!,” coordinator and designer of curriculum and visual aids, co-sponsored by the Knoxville Bar Association, Clayton Center for Entrepreneurial Law, the Pellissippi State Small Business Development Center, and the Knoxville Area Chamber Partnership, Knoxville, TN, October 2001 and March 2002.

“Doing Business on the Internet,” panelist, sponsored by the Business Law Section of the State Bar of California, June 1998.

“Attorney vs. Client: Working Toward Better Client Relations,” panelist, sponsored by the Business Law Section of the State Bar of California, June 1996.

### **SELECTED AFFILIATIONS AND AWARDS**

Faculty Advisor to *Transactions: The Tennessee Journal of Business Law*.

Carden Award for Outstanding Achievement in Scholarship (2007, 2016).

Harold C. Warner Outstanding Teacher Award (2005).

Carden Award for Outstanding Service to the Institution (2004, 2010).

W. Allen Separk Faculty Scholarship Award (2003)

Research Fellow, Center for Corporate Governance, University of Tennessee.

American Bar Association, Member.

American Bankruptcy Institute, Member.

California Bankruptcy Forum; CALIFORNIA BANKRUPTCY JOURNAL, Editor Emeritus, Editor in Chief (1999-2003), Managing Editor (1997-1998), Contributing Editor (1996).

Admitted to the bar and state and federal courts of California and Tennessee and the Federal District Court for the District of Arizona, as well as Supreme Court of the United States.