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391 SEC Debarment of Officers and Directors After Sarbanes-Oxley
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    The Sarbanes-Oxley Act provides that a securities law violator may be suspended or barred from serving as an officer or director of a public company, provided the violator is found to be “unfit.” Suspension and bar orders may be entered by a federal district court at the conclusion of a litigated proceeding. Under Sarbanes-Oxley, a suspension or bar order may now also be issued by the Commission at the conclusion of a cease-and-desist proceeding. In either case, the standard is the same—“unfitness.” This Article examines the new suspension and bar regime established under the Act. It suggests some arguments that might be made in opposition to the threat of a suspension or bar order, and also proposes some procedural guidelines to govern suspension and bar cases.

421 Composing a Balanced and Effective Board to Meet New Governance Mandates
    John F. Olson and Michael T. Adams
    The enactment of the Sarbanes-Oxley Act of 2002 and the recent adoption of new corporate governance listing standards by the major American securities markets have resulted in a number of prescriptions that influence the selection of directors of U.S. public companies. These requirements are in some respects inconsistent with the traditional agency role of the monitoring board and, more important, may conflict with optimal functioning of the board as a group. The authors survey the literature on the role of the board and board dynamics, examine the new constraints and their impact on director qualification and selection, and offer ten practical suggestions for director selection that will help nominating and governance committees of public companies to assemble boards of directors that will effectively perform their critical monitoring functions in the new regulatory environment.

453 Cash Balance Plans Reassessed in Light of Discrimination and Funding Litigation
    Craig C. Martin and Amanda S. Amert
    Although cash balance plans are attractive to employers, they also pose greater litigation risks than traditional plans. Minimum funding requirements, complicated conversion transactions, and allegations of discrimination have emerged as prominent features in ERISA litigation over cash balance plans in recent years. In addition, in the post-Enron environment, Congress and regulatory agencies have shown renewed interest in
cash balance and other non-traditional ERISA plans. Nonetheless, prudent employers can employ cash balance plans to their benefit, so long as they are mindful of and manage the risks involved.

475 Section 363 Sales Free and Clear of Interests: Why the Seventh Circuit Erred in Precision Industries v. Qualitech Steel
Michael St. Patrick Baxter

Rarely does a bankruptcy case have the potential to profoundly impact the non-bankruptcy world. In Precision Industries v. Qualitech Steel, the Seventh Circuit allowed a debtor to sell land free and clear of an unexpired ground lease in apparent disregard of the lessee's rights to retain possession of the leased premises. This case will have profound implications on bankruptcy sales, real estate leasing, and real estate lease financing. This Article examines the decision in Precision Industries and its effect on the rights afforded to lessees by § 365(h) of the Bankruptcy Code. The author contends that the case is wrongly decided. The author discusses some of the practical problems created by Precision Industries and suggests some strategies that can be employed to avoid its perils.

503 Extension of Section 524(g) of the Bankruptcy Code to Nondebtor Parents, Affiliates, and Transaction Parties
Susan Power Johnston and Katherine Porter

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Adhere Resolutely to a Mistake: The Florida Taxpayer-Standing Cases

Thomas C. Marks, Jr.

In 1917, the Florida Supreme Court decided *Rickman v. Whitehurst*, which formed the basis for Florida's current taxpayer-standing rule. If read correctly, the "Rickman Rule" provides that, only in the absence of showing pecuniary injury, a taxpayer must show some injury different in kind, not merely in degree, from the rest of the public. In this Article, Thomas C. Marks, Jr., Professor of Law at Stetson University College of Law, expresses his belief that the Florida Supreme Court has since misread *Rickman* to mean that a taxpayer must show special injury whether or not he suffered a monetary injury from governmental illegal acts. Professor Marks begins by describing the history of taxpayer standing and related issues in Florida until *Rickman*. Then, he examines the taxpayer-standing cases that occurred between *Rickman* and "the mistake." Finally, Professor Marks discusses Florida's current taxpayer-standing rule and suggests the need to resolve confusion in the law.

COMMENTS

Florida's "Blaine Amendment" and Its Effect on Educational Opportunities

J. Scott Slater

In 1875, Congressman James G. Blaine proposed an amendment to the United States Constitution that would have expressly prohibited the transfer of public funds to religious organizations and institutions. Although the proposal failed, many state legislatures incorporated Congressman Blaine's language into their constitutions. Today, approximately thirty-six states, including Florida, have "Blaine Amendments" that limit the transfer of state money to religious institutions. After providing a history of the original Blaine Amendment, this Comment examines the effect Florida's Blaine Amendment has on numerous educational programs offered in Florida. This Comment addresses *Holmes v. Bush*, a case where a Florida circuit court struck down Florida's school voucher program as unconstitutional under Florida's Blaine Amendment, which expressly prohibits both direct and indirect transfers of public money to religious institutions. Next, this Comment examines the broader implications of Florida's Blaine Amendment in light of the *Holmes* decision, and concludes that the Amendment brings into question the constitutionality of several educational programs, including many of the State's college-level scholarships. Finally, this Comment suggests different ways to eliminate the detrimental effects of Florida's Blaine Amendment, and concludes that the most effective way to do so would be to remove, or at least alter, the Blaine-like language from the Florida Constitution.
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In 2000, the Florida Department of Motor Vehicles began issuing a “Choose Life” specialty license plate. Since its introduction to Florida highways, a number of organizations and individuals have challenged the plate’s constitutionality. However, past plaintiffs have had considerable difficulties in satisfying the judicial requirements necessary for a case to be heard in court. As a result, plaintiffs have not had a chance to fully explore the plate’s constitutionality. This Comment addresses the difficulties that past plaintiffs have encountered, outlines how to overcome those difficulties, and offers specific arguments a potential litigant may use to challenge the constitutionality of the “Choose Life” plate.

A LAST WORD ON RECENT DEVELOPMENTS

Agency E-mail and the Public Records Laws—Is the Fox Now Guarding the Henhouse? Penelope Thurman Bryan 649
Thomas E. Reynolds

It has long been established in Florida that the public has a statutory and state constitutional right to inspect and copy all records in the custody of a state or local governmental agency. Nonetheless, agencies and their employees have attempted on numerous occasions to withhold access to “nonexempt” agency records on the ground that they contain “private” or “personal” information. To support their assertions, objecting employees—and in some cases, the agencies themselves—argue that e-mail messages containing “personal” information do not fall within Florida’s statutory definition of “public records.” In State v. City of Clearwater, the Florida Supreme Court held that “personal” e-mail messages were, indeed, not “public records.” This Article discusses how the Court’s reasoning conflicts with decades of caselaw as well as the Florida Legislature’s 1995 amendment to the Public Records Act. Additionally, this Article explores the potential changes the decision may bring to the conduct of day-to-day business operations of Florida’s agencies, considering that the Court’s opinion allows the very employees who generate e-mail messages to make the final decision about who may have access to them.

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