Stephen J. Lubben

Harvey Washington Wiley Chair in Corporate Governance & Business Ethics

Seton Hall University School of Law
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Professional Employment

Harvey Washington Wiley Chair in Corporate Governance & Business Ethics, 2002 – present
Seton Hall University School of Law, Newark, New Jersey

Appointments: Associate Professor of Law (2002); Professor of Law (2007); Daniel J. Moore Professor of Law (2008); Harvey Washington Wiley Chair in Corporate Governance & Business Ethics (2012).

Courses Taught: Constitutional Law, Financial Institutions, Bankruptcy and Creditors' Rights, Business Associations, Business Bankruptcy, and Corporate Finance. Advanced Topics in Corporate Finance & Reorganization Seminar.

Service: Member of Honor Council (2012 -). Member of Budget Committee (2010-2012). Member of Appointments Committee (2009-2012). Member of Contract Renewal Committee (2007, 2009). Member of Probation and Grievance Committee (2011-2012). Member of the Curriculum Committee (2002-2009); chair of Curriculum Committee (2006-2009). Chair of Bylaws Committee (2005). Faculty Secretary (2002-2003). Organizer of the Summer Faculty Scholarship Workshop (a.k.a. "Brown Bag Lunch Series") (Summer 2003).

2011 Professor of the Year nominee. 2010-11 Seton Hall University Researcher of the Year. 2005-06 Seton Hall University Researcher of the Year;

Recipient of $346,000 research grant from American Bankruptcy Institute. Member, American Bankruptcy Institute Law Review Advisory Board (2010-present).

Bankruptcy and Debt Columnist for the *New York Times'* Dealbook page (more than 80 columns to date).

Current board memberships: Rudolph Steiner School (New York, New York).

Associate, 1997-1999 (New York) and 2000–2002 (Los Angeles)
Skadden, Arps, Slate, Meagher & Flom LLP

Associate in the Corporate Restructuring department. Represented debtors (e.g., U.S. Airways; Kmart; Owens Corning; Vlasic Foods; Wilshire Center Marketplace-Ambassador Hotel; ZiLOG, American Banknote Corporation, Levitz Furniture; Brazos Sportswear; Home Holdings), creditors (e.g., major creditors in the cases of Pocket Communications Group, Petrie Retail, The Eli Witt Company), and Creditors' Committees (e.g., New Orleans Jazz Casino) in chapter 11 cases throughout the country. Experience with myriad non-bankruptcy law issues implicated by chapter 11 filing, ranging from commercial and corporate law issues to federal constitutional law issues, such as sovereign immunity, eminent domain, and the Twenty-First Amendment. Represented non-bankruptcy clients in their dealings with financially distressed entities. Extensive experience with cases filed in the District of Delaware and the Southern District of New York. Provided research and bankruptcy-law analysis for several corporate finance transactions. Summer associate in the New York office in 1995.

Judicial Law Clerk, Hon. John T. Broderick, Jr., Associate Justice, 1996 - 1997
New Hampshire Supreme Court, Concord, New Hampshire

Law clerk for Justice John T. Broderick, Jr. of the New Hampshire Supreme Court. Prepared first drafts of numerous published opinions (including dissents). Discussed pending cases with the Justice and analyzed draft opinions from other members of the Court. Provided daily advice to the Justice.

Education

Ph.D. *2010*
University of Groningen, Faculty of Law, Department of Law & Economics
Dissertation: *Measuring the Costs of Chapter 11 Cases* (Advisor: Oscar Couwenberg).

LL.M *2000*
Harvard Law School
Teaching Fellow (in connection with the Business Bankruptcy Project)
American Bankruptcy Institute Medal Recipient
Thesis: *The Direct Costs of Corporate Reorganization: An Empirical Examination of Professional Fees in Large Chapter 11 Cases* (Advisor: Elizabeth Warren)

J.D. *1996*
Boston University
Magna Cum Laude
Top 10% of Graduating Class
Boston University Law Review (3rd Year - Editor)
Edward F. Hennessy Scholar (Third Year)
G. Joseph Tauro Distinguished Scholar (First Year)

B.A. *1993*
University of California, Irvine
History Major
Political Science Minor
Dean's List
Internship – Hon. Edward R. Roybal (D-Cal.), United States House of Representatives (Fall 1989, Washington D.C.)

Bar Memberships & Professional Affiliations

- *State bar memberships*: New York (Third Department), California
- *Federal courts*: S.D.N.Y.; E.D.N.Y.; C.D. Cal.; N.D. Cal.; E.D. Cal.; S.D. Cal.

- American Law and Economics Association
- European Association of Law and Economics
- American Bankruptcy Institute
- American Finance Association
- International Insolvency Institute

Publications and Working Papers

Reconceptualizing Lehman, 49 Tex. Int'l L.J. – (forthcoming 2014) (co-written with Sarah P. Woo).

The Bankruptcy Clause, 64 Case W. Res. L. Rev. – (forthcoming 2014).

CORPORATE FINANCE (Wolters Kluwer Law & Business 2014).

Separation and Dependence: Explaining Modern Corporate Governance, 43 Seton Hall L. Rev. 893 (2013) (Wiley chair lecture).

Solving Creditor Problems in the Twilight Zone: Superfluous Law and Inadequate Private Solutions, 34 Int'l Rev. L. & Econ. 61 (2013) (co-authored with O. Couwenberg).

Resolution, Orderly and Otherwise: B of A in OLA, 81 U. Cin. L. Rev. 485 (2012) (solicited).

Do Empirical Bankruptcy Studies Matter?, 20 ABI L. Rev. 715 (2012) (solicited).

CDS and the Resolution of Financial Distress, 24 J. Applied Corp. Fin. 129 (2012) (co-written with Rajesh P. Narayanan)

The Chapter 11 Attorneys, 86 Am. Bankr. L.J. 447 (2012).

Transaction Simplicity, 112 Colum. L. Rev. Sidebar 194 (2012) (solicited).

Involuntary Creditors and Corporate Bankruptcy, 45 U.B.C. L. Rev. 253 (2012) (co-authored with Stephanie Ben-Ishai).

Chapter 11 as Intrigue: A Review of LoPucki and Doherty's Professional Fees in Corporate Bankruptcies, 28 Banking and Finance Law Review (Canada) 171 (2012) (solicited).

What We "Know" About Chapter 11 Cost is Wrong, 17 Fordham J. of Corp. & Fin. L.141 (2012).

The Chapter 11 Financial Advisors, 28 Emory Bankr. Dev. J. 11 (2011).

Bankruptcy as Bailout, 6 Brook. J. Corp., Fin. & Com. Law 1 (2011) (solicited) (co-authored with Stephanie Ben-Ishai).

Financial Institutions in Bankruptcy, 34 Seattle L. Rev. 1259 (2011) (solicited).

Sales or Plans: A Comparative Account of the "New" Corporate Reorganization, 56 McGill L.J. 591 (2011) (co-authored with Stephanie Ben-Ishai).

Chapter 11 in Context: American and Dutch Business Bankruptcy, 85 Am. Bankr. L.J. 63 (2011) (co-authored with O. Couwenberg).

The Types of Chapter 11 Cases, 84 Am. Bankr. L.J 233 (2010).

The Bankruptcy Code Without Safe Harbors, 84 Am. Bankr. L.J 123 (2010).

Repeal the Safe Harbors, 18 A.B.I. L. Rev. 319 (2010).

Accidental Convergence: Corporate Reorganization in Two Federal Systems, 26 Emory Bankr. Dev. J. 33 (2009).

No Big Deal: The GM and Chrysler Cases In Context, 83 Am. Bankr. L.J. 531 (2009).

Chapter 11 "Failure", 2009 Working Paper (available on SSRN).

The Truth About Detroit's Bankruptcies, Forbes, July 26, 2009 (op-ed piece) (http://www.forbes.com/2009/07/26/chrysler-gm-bankruptcy-opinions-contributors-chapter-11-tarp.html).

Chapter 11 and Systemic Risk, 82 Temp. L. Rev. 433 (2009) (solicited).

Derivatives and Bankruptcy: The Flawed Case for Special Treatment, 12 U. Pa. J. Bus. L. 61 (2009).

The Sale of the Century and Its Impact on Asset Securitization: Lehman Brothers, 27 Am. Bankr. Inst. Journal Vol. 10, page 1 (2009).

Financial Distress in Emerging Markets, in EMERGING MARKETS: PERFORMANCE, ANALYSIS AND INNOVATION (Greg N. Gregoriou ed. Chapman-Hall /Taylor and Francis 2009).

Corporate Reorganization & Professional Fees, 82 Am. Bankr. L.J. 77 (2008).

Credit Derivatives and the Resolution Of Financial Distress, in THE CREDIT DERIVATIVES HANDBOOK (Greg N. Gregoriou & Paul U. Ali eds. McGraw-Hill 2008).

Delaware's Irrelevance, 16 A.B.I. L. Rev. 267 (2008).

ABI CHAPTER 11 FEE STUDY (2007).

Credit Derivatives & The Future of Chapter 11, 81 Am. Bankr. L.J. 405 (2007).
Business Liquidation, 81 Am. Bankr. L.J. 65 (2007).

The Microeconomics of Chapter 11, Part 2, 4 Int'l. Corp. Rescue 87 (2007).

The Microeconomics of Chapter 11, Part 1, 4 Int'l. Corp. Rescue 31 (2007).

Choosing Corporate Bankruptcy Counsel, 12 A.B.I. L. Rev. 391 (2006).

Delaware's Duty of Care, 31 Del. J. Corp. L. 589 (2006), co-written with Alana J. Darnell.

The "New and Improved" Chapter 11, 93 Ky. L.J. 839 (2005) (special, peer-reviewed AALS Section on Creditors' and Debtors' Rights issue).

Out of the Past: Railroads & Sovereign Debt Restructuring, 35 Geo. J. Int'l L. 845 (2004) (solicited).

Railroad Receiverships and Modern Bankruptcy Theory, 89 Cornell L. Rev. 1420 (2004).

Beyond True Sales – Securitization and Chapter 11, 1 N.Y.U. J.L. & Bus. 89 (2004).

Some Realism About Reorganization: Explaining the Failure of Chapter 11 Theory, 106 Dick. L. Rev. 267 (2001).

LLM Thesis:
The Direct Costs of Corporate Reorganization: An Empirical Examination of Professional Fees in Large Chapter 11 Cases, 74 Am. Bankr. L.J. 509 (2000).

JD Student Note:
Chief Justice Traynor's Contract Jurisprudence and the Free Law Dilemma: Nazism, the Judiciary, and California's Contract Law, 7 S. Cal. Interdisc. L.J. 81 (1998) (unpublished by BU L. Rev.)

Presentations & Testimony

OLA After Single Point of Entry: Has Anything Changed?, at Americans For Financial Reform And The Roosevelt Institute's Symposium: An Unfinished Mission: Making Wall Street Work for Us, Washington, D.C. (Nov. 12, 2013).

Chapter 11 Professional Issues: Proper Disclosure And Retention And Addressing The New Rules Of The Road On Compensation, at National Conference of Bankruptcy Judges Annual Conference, Atlanta, Georgia (Nov. 1, 2013).

Essential Corporate Bankruptcy, European Law and Economics Annual Meeting, at University of Warsaw, Warsaw, Poland (September 27, 2013).

Dodd-Frank's Orderly Liquidation Authority, at Resolution Authority and Structural Reform Conference, NYU Stern School of Business, New York, New York (April 11, 2013).

Invited discussant, GAO/National Academy of Sciences meeting on Treatment Of Financial Contracts During Bankruptcy, Washington, D.C. (April 10, 2013).

Resolving Financial Institutions, at 9th Annual Wharton Restructuring and Distressed Investing Conference, Philadelphia, Pennsylvania (Feb. 22, 2013).

Reconceptualizing Lehman, at the 2013 Texas International Law Journal Symposium, University of Texas, School of Law, Austin, Texas (Feb. 7, 2013).

Do Empirical Bankruptcy Studies Matter? at Bankruptcy and Race: Is there a Relation? Symposium, St. John's University School of Law, Queens, New York (October 19, 2012).

Separation and Dependence: Explaining Modern Corporate Governance, Inaugural Harvey Washington Wiley Lecture, Seton Hall Law School, Newark, New Jersey (October 2, 2012).

The Government's Role in Recent Litigation (Argentina and the Automakers), testimony before the U.S. House Financial Services Subcommittee on Subcommittee on Capital Markets and Government Sponsored Enterprises, Washington D.C. (June 7, 2012).

International Insolvency Institute Delegate, at UNCITRAL Insolvency Working Group Meeting, New York, New York (April 30, 2012 to May 4, 2012).

What Counterparties to Financial Contracts Deserve Special Treatment?, at World Bank/ABI Working Group on Financial Contracts in Bankruptcy workshop, Washington, D.C. (April 20, 2012).

Resolution, Orderly and Otherwise: B of A in OLA, at 25th Annual Corporate Law Center Symposium, University of Cincinnati College of Law, Cincinnati, Ohio (March 30, 2012). Available at: http://www.youtube.com/watch?v=y-Def3btxVw

Institutional Investor Educational Foundation, Bankruptcy Round Table, New York, New York (March 12, 2012).

Keynote Address (Resolution, Orderly and Otherwise), at American Bankruptcy Institute 8th Annual Corporate Restructuring Competition, The Wharton School, University of Pennsylvania, Philadelphia, Pennsylvania (November 3, 2011).

Involuntary Creditors and Corporate Bankruptcy, European Law and Economics Annual Meeting, at University of Hamburg School of Business, Economics and Social Sciences, Hamburg, Germany (Sept. 22, 2011).

Dodd-Frank Orderly Liquidation Authority and Ending "Too Big to Fail," testimony before the U.S. House Financial Services Subcommittee on Financial Institutions and Consumer Credit, Washington D.C. (June 14, 2011).

Dodd-Frank's New Resolution Authority, at Association Française en Faveur de l'Institution Consulaire (AFFIC 91) & Clifford Chance's "Learning The Lessons From The Crisis: Improvement Of National And European Insolvency Laws" Symposium, Paris, France (April 18th, 2011).

Bankruptcy as Bailout, at Comparative Approaches to Systemic Risk and Resolution Symposium, Brooklyn Law School, Brooklyn, New York (February 25, 2011).

Examining Chapter 11 Cost, at Big-Case Bankruptcy Empirical Research Agenda, UCLA School of Law, Los Angeles, California (February 11, 2011).

The Risks Of Fractured Resolution – Finance And Bankruptcy, at Adolf A. Berle, Jr. Center on Corporations, Law and Society Annual Symposium, Seattle University School of Law, Seattle, Washington (January 21, 2011).

Professional Fees in Mega-Chapter 11 Cases: Reasonable or Out of Control? at Winter Leadership Meeting, American Bankruptcy Institute, Scottsdale, Arizona (December 11, 2010).

Bankruptcy, the Constitution, and Government Controlled Corporations, at The Constitution in the Financial Crisis Symposium, Constitutional Law Center, Stanford Law School, Stanford, California (November 11, 2010). Available at: http://www.c-spanvideo.org/program/296541-2

Sales or Plans: A Comparative Account of the "New" Corporate Reorganization, at The Canadian Law and Economics Association, University of Toronto, Toronto, Ontario. (October 2, 2010).

What We "Know" About Chapter 11 Cost is Wrong, European Law and Economics Annual Meeting, at Université Paris 2 Pathèon-Assas, Paris, France (Sept. 24, 2010).

Sales or Plans: A Comparative Account of the "New" Corporate Reorganization, at European Law and Economics Annual Meeting, Université Paris 2 Pathèon-Assas, Paris, France (Sept. 23, 2010).

Sales or Plans: A Comparative Account of the "New" Corporate Reorganization, American Law and Economics Association (ALEA) Annual Meeting, Princeton University, Princeton, New Jersey (May 7, 2010).

Too Big To Fail: How Should The U.S. Handle The Collapse Of Systemically Important Firms?, 2010 Dow Jones Daily Bankruptcy Review Restructuring & Turnaround Summit, New York, New York (March 10, 2010).

Repeal the Safe Harbors, Chapter 11 at the Crossroads: Does Reorganization Need Reform?, Georgetown Law School, Washington, D.C. (Nov. 16, 2009).

Chapter 11 in Context: American and Dutch Business Bankruptcy, Advanced Bankruptcy Colloquium, Brooklyn Law School, Brooklyn, New York (Oct. 14, 2009).

Chapter 11 in Context: American and Dutch Business Bankruptcy, European Law and Economics Annual Meeting, at Università Luiss Guido Carli, Rome, Italy (Sept. 18, 2009).

Testimony on Automotive Bankruptcy Cases, TARP Congressional Oversight Panel field hearing, Detroit, Michigan (July 27, 2009).

Chapter 11 in Context: American and Dutch Business Bankruptcy, INSOL Eight World Congress, Academic Meeting, Vancouver, Canada (June 20, 2009).

Derivatives and Bankruptcy: The Flawed Case for Special Treatment at American Law and Economics Association (ALEA) Annual Meeting, University of San Diego School of Law, San Diego, California (May 16, 2009).

Complexity in Chapter 11 Reorganizations, at Complexity and Collapse: The Credit Crisis Symposium, Temple Law School, Philadelphia, Pennsylvania (April 28, 2009).

Credit Derivatives and Chapter 11, at 11th Annual Hon. William H. Gindin Bankruptcy Bench-Bar Conference, New Brunswick, New Jersey (April 17, 2009).

Chapter 11 and Systemic Risk, at Temple Law Review Symposium, Temple Law School, Philadelphia, Pennsylvania (April 16, 2009) .

Chapter 11 "Failure" at the Cornell Law School-University of Tel Aviv Faculty of Law's International Empirical Legal Studies Conference, at the University of Tel Aviv, Tel Aviv, Israel (March 26, 2009).

The Uncertain Future of Asset Securitization (and Credit Derivatives), at New York City Bar Associations Structure Finance Committee Meeting, New York, New York (January 9, 2009).

Credit Default Swaps – What Are They? -- The Bankruptcy Process and Impact, at AIRA Advanced Restructuring and Plan of Reorganization Conference, New York, New York (October 21, 2008).

Professional Fees in Chapter 11 (The ABI Chapter 11 Fee Study), at National Conference of Bankruptcy Judges Annual Meeting, Scottsdale, Arizona (September 24-27, 2008).

The Types of Chapter 11 Cases, at Third Annual Conference on Empirical Legal Studies, Cornell Law School, Ithaca, New York (September 12-13, 2008).

Corporate Reorganization & Professional Fees, at American Law and Economics Association (ALEA) Annual Meeting, Columbia Law School, New York, New York (May 16-17, 2008).

ABI Landmark Fee Study: Moving-Forward Analysis, at 10th Annual New York City Bankruptcy Conference, New York, New York (May 12, 2008).

Credit Default Swaps: A Critical Risk Transfer Tool in Volatile Markets, at 2008 Distressed & Turnaround Investment Forum, New York, New York (May 15, 2008).

Cross-boarder Restructuring: An American Perspective, at Advanced Bankruptcy Law Seminar, University of Toronto Faculty of Law, Toronto, Ontario (March 28, 2008).

Chapter 11 & Professional Fees, at Seton Hall Faculty Scholarship Retreat, New York, New York (January 2008).

ABI Chapter 11 Fee Study, at Winter Leadership Meeting, American Bankruptcy Institute, Rancho Mirage California (December 2007).

Delaware's Irrelevance, at 2007 Meetings of The Canadian Law and Economics Association, University of Toronto, Toronto, Ontario. (September 28-29, 2007).

Delaware's Irrelevance, at 24th Annual European Association of Law and Economics Conference, Copenhagen Business School, Copenhagen, Denmark (September 13-15, 2007).

Credit Derivatives & The Future of Chapter 11, at 24th Annual European Association of Law and Economics Conference, Copenhagen Business School, Copenhagen, Denmark (September 13-15, 2007).

Delaware's Irrelevance, at Workshop on Private and Public Resolution of Financial Distress, Institute for Advances Studies, Vienna, Austria (June 1-2, 2007).

Credit Derivatives & The Future of Chapter 11, at American Law and Economics Association (ALEA) Annual Meeting, Harvard Law School, Cambridge, Massachusetts (May 5-6, 2007).

The Microeconomics of Chapter 11, at the 2006 Meetings of The Canadian Law and Economics Association, University of Toronto, Toronto, Ontario. (September 29-30, 2006).

The Microeconomics of Chapter 11, at the 23rd Annual European Association of Law and Economics Conference, Instituto de Empresa Business School, Madrid, Spain (September 14-19, 2006).

Credit Derivatives & The Future of Chapter 11, at Summer Faculty Scholarship Workshop, Seton Hall University School of Law, Newark, N.J. (June 7, 2005).

The Microeconomics of Chapter 11, at Harvard-University of Texas Conference on Commercial Law Realities, Harvard Law School, Cambridge, Massachusetts (April 28, 2006).

Professional Compensation in the Post-BAPCPA Environment, at American Bankruptcy Institute Annual Meeting, Washington, D.C. (April 22, 2006).

The Microeconomics of Chapter 11 and the Irrelevance of Ex Ante Costs, at Law and Economics Seminar, Boston University Law School, Boston, Massachusetts ((January 23, 2006).

Real Options and the Other Liquidation Decision, at Faculty Colloquium, Seton Hall University School of Law, Newark, N.J. (November 14, 2005).

The Microeconomics of Chapter 11, at New York Junior Faculty Forum, Fordham Law School, New York, New York (October 21, 2005).

Real Options and the Other Liquidation Decision, at the 2005 Meetings of The Canadian Law and Economics Association, University of Toronto, Toronto, Ontario. (September 24, 2005).

The Microeconomics of Chapter 11, at Summer Faculty Scholarship Workshop, Seton Hall University School of Law, Newark, N.J. (July 12, 2005)

Real Options and the Other Liquidation Decision, at the 4th Annual Conference of the Israeli Law and Economics Association, University of Haifa, Haifa, Israel. (May 26, 2005).

Real Options and the Other Liquidation Decision, at the Harvard-University of Texas Conference on Commercial Law Realities, University of Texas School of Law, Austin, Texas (April 8, 2005).

The "New and Improved" Chapter 11, at the AALS Section on Creditors' and Debtors' Rights, American Association of Law Schools Annual Meeting, San Francisco, C.A. (January 8, 2005). *Responses presented by Profs. Douglas G. Baird, Robert K. Rasmussen, and Jay Lawrence Westbrook.*

Out of the Past: Railroads & Sovereign Debt Restructuring, at Sovereign Debt Restructuring: The View From the Legal Academy symposium, Georgetown University Law Center, Washington, D.C. (February 26, 2004).

Railroad Receiverships and Modern Bankruptcy Theory, at the Sloan Interdisciplinary Workshop, Georgetown University Law Center, Washington, D.C. (November 21, 2003).