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James B. Heaton, III

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PROFESSIONAL PRACTICE

Bartlit Beck Herman Palenchar & Scott LLP, 1999-Present, Partner (since 2004)

Peterson Consulting (Chicago), 1990-1998, Consultant

Accounting, economic, financial and statistical analysis supporting expert witness testimony in commercial litigation.

EDUCATION & HONORS

University of Chicago Law School, 1999, J.D.

Bradley Fellow in Law and Economics, 1998-1999

University of Chicago Graduate School of Business (financial economics), 1999, Ph.D.

University of Chicago Graduate School of Business, 1999, M.B.A.

University Fellowship (full tuition and stipend), 1992-1996

University of Illinois (liberal arts and finance), 1990, A.B., *magna cum laude*

Phi Beta Kappa

Edmund J. James Scholar

Robert W. Rogers Scholar in Liberal Arts and Sciences

CURRENT AND RECENT LITIGATION

Hedge Fund Litigation Counseling – Residential Mortgage-Backed Securities

Counsel to numerous hedge funds on issues involving rights and remedies of securitization certificate holders and securitization trusts, including review of documentation, design of legal strategies, and negotiation with adverse parties.

Elliott Associates, L.P. v. Porsche SE

Representing hedge funds in securities fraud and manipulation lawsuit against Porsche SE related to Porsche SE's attempted takeover of Volkswagen AG in 2008. Damages in excess of \$1 billion. Case on appeal to Second Circuit. Companion case pending in New York state court.

BAR ADMISSIONS

Illinois

PROFESSIONAL ACTIVITIES AND COMMUNITY SERVICE

Professional Activities

American Bar Association,
Subcommittee Chair,
Accountant Liability
Subcommittee (ABA
Section of Litigation
Outstanding Subcommittee
Chair Award, 2004)

American Finance
Association

American Law and
Economics Association

Teaching

Lecturer, The University of
Chicago Law School, 2008
to 2010.

Teaching responsibility for
seminar titled "Hedge
Fund Litigation."

Adjunct Professor of
Finance, The University of
Chicago Graduate School
of Business, 2005.

Teaching responsibility for
Executive M.B.A. finance
course, "Corporate
Restructuring," covering
the law and corporate
finance of widely used
financial restructuring
techniques and their
implications for corporate
governance, securities
regulation, and
professional/officer/director
liability

Peterson v. Somers Dublin (In re Lancelot Investors Fund, Ltd.)

Representing Pentagon Capital Management PLC and Pentagon Select Ltd. in a \$60 million preferential transfer action brought by the Chapter 7 trustee of Lancelot Investors Fund, Ltd. Case pending in the Bankruptcy Court for the Northern District of Illinois. Obtained dismissal of complaint January 2012. Plaintiff granted leave to replead.

Wachter v. Kim

Representing Karl Wachter in employment-related litigation against Dow Kim, founder of the investment firm Diamond Lake. Trial court dismissed claims and Mr. Wachter appealed to the New York Appellate Division, First Department. The Appellate Division granted Mr. Wachter's appeal, reinstating his claims against Mr. Kim for breach of contract and unpaid wages under the New York Labor Law. Case pending in New York state court.

Amaranth LLC v. J.P. Morgan Chase & Co.

Representing hedge fund and trading advisor in their action for breach of contract and tortious interference with prospective economic advantage against investment bank, commercial bank, and futures commission merchant. Damages in excess of \$1 billion. Trial court dismissed some claims and allowed another to proceed in 2008. Argued appeal to Appellate Division, First Department in 2009. Obtained reversal of trial court dismissal, but lost appeal of other claim in 2009. Case pending in New York state court.

Private Equity Fund Arbitration

Represented private equity fund buyer of company in post-closing and indemnification dispute with private equity fund seller of company. Case settled 2009.

ACP Master, Ltd., et al. v. Bank of America, N.A., et al.

Represented hedge funds in their action for breach of contract against lenders that failed to fund the construction of the Fontainebleau casino in Las Vegas. Case filed in New York 2009.

Ocean Ridge Capital Advisors, LLC, as Litigation Trustee v. Metropolitan Life Insurance Company, et al.

Represented Litigation Trustee against directors and officers for breach of fiduciary duty and against recipients of preferential and fraudulent transfers exceeding \$60 million from Meridian Automotive Systems, Inc. Case settled 2008.

Adjunct Associate
Professor of Finance, Duke
University Fuqua School of
Business and Duke Law
School Global Capital
Markets Center,
2001-2003. Winner,
Excellence in Teaching
Award in the Weekend
Executive M.B.A. Program.

Teaching responsibility for
M.B.A. finance course,
“Corporate
Restructuring,” covering
the law and corporate
finance of widely used
financial restructuring
techniques

Adjunct Assistant Professor
of Finance, The University
of Chicago Graduate
School of Business,
2000-2001.

Teaching responsibility for
M.B.A. finance course,
“The Corporation and its
Legal/Institutional
Environment,” covering
various law and finance
topics including corporate
governance, securities
regulation, and
professional liability

Teaching Assistant, The
University of Chicago
Graduate School of
Business.

Executive/International
Executive M.B.A.
programs, Chicago,
Illinois and Barcelona,
Spain, 1995-1999
(Investments/Corporate
Finance/Financial
Strategies)

Stanfield Offshore Leveraged Assets, Ltd. v. Metropolitan Life Insurance Company, et al.

Represented holders of more than \$190 million of defaulted loans to Meridian Automotive Systems, Inc. in their action for aiding and abetting fraud and aiding and abetting breach of fiduciary duty. Case dismissed by trial court 2008; lost appeal 2009.

DK Acquisition Partners, L.P., et al. v. J.P. Morgan Chase & Co., et al.

Represented holders of more than \$1 billion in Enron bank debt in their action against J.P. Morgan Chase & Co., Citigroup and affiliates, alleging fraud and other wrongdoing based on defendants’ knowledge of and participation in scheme to conceal Enron’s true financial condition. Case settled 2009.

Racepoint Partners LLC v. JPMorgan Chase Bank

Represented holders of more than \$1 billion in Enron bonds in their action against JPMorgan Chase Bank as indenture trustee, alleging breach of contract, breach of implied duty of good faith and fair dealing, and breach of fiduciary duty. Argued appeal to New York Court of Appeals (state’s highest court) February 2010. Lost appeal.

ACKNOWLEDGEMENTS, PRESENTATIONS, AND PUBLICATIONS

Publications

Overconfidence, Compensation Contracts, and Capital Budgeting, *Journal of Finance*, vol. 66, no. 5, 1725-77 (2011) (with Simon Gervais and Terry Odean)..

Returns, Risk, and Financial Due Diligence, chapter 5 in *Finance Ethics: Critical Issues in Theory and Practice*, J. Boatright, ed. (Robert W. Kolb Series) (Wiley, 2010) (with Christopher L. Culp).

The Limits of the Limits of Arbitrage, *Review of Finance*, 14(1):157-187 (2010) (with Alon Brav and Si Li), runner-up for the 2010 Deutsche Bank Prize in Financial Economics for Best Paper in the Review of Finance.

CSX Corporation v. The Children’s Investment Fund: Total Return Swaps as Evasions of Section 13(d) Reporting, *Securities Litigation Journal*, Summer 2009, 16-18.

Naked Short Selling, *Regulation*, Vol. 31, No. 1, 46-51 (2008) (with Christopher L. Culp).

BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP

Solvency Tests, *Business Lawyer*, Vol. 62, No. 3, 983-1006 (2007). Cited in *Teleglobe USA, Inc. v. BCE Inc. (In re Teleglobe Communs. Corp.)*, 392 B.R. 561, 602 (Bankr. D. Del. 2008) (Walrath, J.).

The Uses and Abuses of Finite Risk Reinsurance, *Journal of Applied Corporate Finance*, Vol. 17, No. 3, pp. 18-31 (2005) (with Christopher L. Culp).

Deepening Insolvency, *The Journal of Corporation Law*, Vol. 30, No. 3, pp. 465-500 (2005). Cited in *In re Citx Corp.*, 448 F.3d 672 (3d Cir. 2006); *In re Parmalat Sec. Litig.*, 501 F. Supp. 2d 560 (S.D.N.Y. 2007); *Schnelling v. Crawford (In re James River Coal Co.)*, 360 B.R. 139 (Bankr. E.D. Va. 2007); *Official Comm. of Unsecured Creditors of Verestar, Inc. v. Am. Tower Corp.*

(*In re Verestar, Inc.*), 343 B.R. 444 (S.D.N.Y. 2006); *OHC Liquidation Trust v. Credit Suisse First Boston (In re Oakwood Homes Corp.)*, 340 B.R. 510 (Bankr. D. Del. 2006); *Christians v. Grant Thornton, LLP*, 733 N.W.2d 803 (Minn. Ap. 2007).

Settlement Pressure, *International Review of Law and Economics*, Vol. 25, pp. 264-275 (2005).

No Place for Innocents: Alleged Innocence in Professional Liability Litigation Involving Imputation Defenses, *Professional Liability Litigation Alert (Professional Liability Litigation Committee, ABA Section of Litigation)*, Vol. 2, No. 1, Winter 2004.

The Rational-Behavioral Debate in Financial Economics, *Journal of Economic Methodology*, 11(4) 2004 (Lead Article) (with Alon Brav and Alexander Rosenberg).

Market Indeterminacy, *The Journal of Corporation Law*, Vol. 28, No. 4, pp. 517-539 (2003) (with Alon Brav, Duke University). Cited in *Teamsters Local 445 Freight Division Pension Fund v. Bombardier Inc.*, 2006 U.S. Dist. LEXIS 52991 (S.D.N.Y. August 1, 2006).

The real questions about market efficiency, *Financial Times*, August 27, 2003 (with Alon Brav, Duke University).

The Risk Finance of Class Action Settlement Pressure, *The Journal of Risk Finance*, Spring 2003, pp. 75-81.

Legal Solvency Tests and Financial Economics, *The Journal of Risk Finance*, Fall 2002, pp. 57-62.

Managerial Optimism and Corporate Finance, *Financial Management*, Summer 2002, Vol. 31, pp. 33-45.

Competing Theories of Financial Anomalies, *The Review of Financial Studies*, Vol. 15, No. 2, pp. 475-506 (2002) (with Alon Brav, Duke University). Winner, Barclays Global Investors (BGI) Michael Brennan Award for the best paper published in *The Review of Financial Studies*.

The Emerging Role of Patent Law in Risk Finance, *The Journal of Risk Finance*, Winter 2001 (reprinted in Christopher L. Culp, *The A.R.T. of Risk Management* (Wiley: 2002)).

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Patent Law and Financial Engineering, *Derivatives Quarterly*, Winter 2000.

Incomplete Financial Contracts and Non-Contractual Legal Rules: The Case of Debt Capacity and Fraudulent Conveyance Law, *Journal of Financial Intermediation*, Vol. 9, pp. 169-183 (2000).

NEWS

John Byars and J.B. Heaton Win Appeal of Claim Against Investment Firm Founder Dow Kim

J.B. Heaton and Kaspar Stoffelmayr Lead Fraud and Market Manipulation Case Against Porsche SE