



Stanley Wilkes pictured with his wife, Jennie, and daughter, Lois

Law and Business Center Academic Conference Explores Fiduciary Duties in the Closely Held Business: 35 Years after *Wilkes v. Springside Nursing Home*

An all-star cast of legal academics gathered at the Blake Law Center on October 15, 2010, for the Law and Business Center for Advancing Entrepreneurship's annual Academic Conference. This year's conference, "Fiduciary Duties in the Closely Held Business 35 Years after *Wilkes v. Springside Nursing Home*," focused on the current state of the law in the wake of this landmark decision.

"Thirty-five years ago, corporate law jurisprudence imposed fiduciary duties among the shareholders of closely-held businesses as a way to help define those relationships," explained Professor of Law and Director of the Law and Business Center Eric Gouvin. "Between then and now, the limited liability company (LLC) has come to dominate the legal landscape as a business organization for closely-held businesses. LLCs rely on contract—not fiduciary duties—to define the relationships among the principals. With the benefit of 35 years of perspective, the symposium gave us an opportunity to reflect on the continuing impact of the fiduciary duty approach and its prospects in the future."

The day's first panel, "*Wilkes v. Springside Nursing Home: The Backstory*," featured personal commentary and reflection from the Honorable William Simons (ret.), Counsel for Defendant Springside Nursing Home, and David Martel, Esq., of Doherty, Wallace, Pillsbury & Murphy, P.C., Counsel for Plaintiff Stanley Wilkes. Professor Gouvin guided the conversation.

The second panel was the first opportunity for the gathered academics to delve into the intricacies and ramifications of the *Wilkes* decision. Entitled "Putting *Wilkes* into Context," the panel featured Lyman P. Q. Johnson, the Robert O. Bentley Professor of Law at the Washington and Lee University School of Law and the Laurence and Jean LeJeune Distinguished Chair in

Law at the University of St. Thomas School of Law; Mark J. Loewenstein, Monfort Professor of Commercial Law at the University of Colorado Law School; and Robert B. Thompson, Professor of Law at the Georgetown Law Center. Brian JM Quinn, Assistant Professor of Law at Boston College Law School, served as moderator.

"This is a case of creative jurisprudence," explained Professor Loewenstein. "That is, I think it should be studied for the way in which the court used precedents to reach a decision that it thought was equitable and fair under the circumstances. I think it is a nice example of the interplay between academic literature and judicial decisions and finally it has new life in the 21st century."



Spina



(From L to R) Thompson, Johnson, and Ramseyer

The third panel of the day, moderated by Western New England College School of Law Associate Professor of Law René Reich-Graefe, entitled “*Wilkes* and the State of Fiduciary Duties,” featured a trio of the nation’s top business law academics. Daniel S. Kleinberger, Professor of Law at William Mitchell College of Law; Benjamin Means, Assistant Professor of Law at the University of South Carolina School of Law; and Douglas K. Moll, Beirne, Maynard & Parsons, L.L.P. Law Center Professor of Law at the University of Houston Law Center, all presented their scholarly research on the subject of business law.

“Financial and other benefits of employment and management positions may help to offset the high risk of failure associated with investing in a small business and without these benefits, investing in a small business often makes little economic sense,” said Professor Moll. “So when you see majority conduct that affects employment and management benefits, you can view that as impacting the shareholders’ expected return on investment, and in that sense, it harms the shareholder’s rights. In my opinion, that is why fiduciary duty analysis is appropriate; it is responding to harm of the shareholder’s rights.”

The luncheon featured a special treat as the Honorable Francis X. Spina, Associate Justice of the Massachusetts Supreme Judicial Court, gave a speech entitled “The *Amicus*: Friend in Need.”

“The Supreme Court, state appellate courts, and federal courts of appeal, often look to *amicus* briefs from various individuals, organizations, and the government for guidance,” explained Justice Spina. “*Amicus* briefs have the advantage of targeting specific issues actually litigated in the case.

“In light of the possible uses of *amicus* briefs, I encourage students, lawyers, and professors to submit *amicus* briefs, especially to our court. You

have the ability to give much of the information that you would include in a law review article, but in a manner that is targeted to a specific case. This information is very helpful to judges as they analyze the legal issues in cases and make decisions. It’s a way to have an impact on the development of the law in an area that interests you.”

The conference wrapped up with the final panel of the day, “Beyond ‘Corporate’ Law.” Moderated by J. Mark Ramseyer, the Mitsubishi Professor of Japanese Legal Studies at Harvard Law School, the panel featured Deborah A. DeMott, the David E. Cavers Professor of Law at the Duke University School of Law; and Larry E. Ribstein, the Mildred Van Voorhis Jones Chair in Law and the Associate Dean of Research at the University of Illinois College of Law.

Professor DeMott spoke about the effects of the *Wilkes* decision on commonly accepted notions of employment law while Professor Ribstein explained some of the nuances of LLCs and how *Wilkes* has shaped the law of closely held corporations.

This was the fifth year the Law and Business Center has held an annual conference. Each year a new topic is explored during this daylong academic symposium. Check back regularly on the Law and Business Center website for registration information on this year’s exciting program. The event is open to students, alumni, and the general public.



DeMott



Thompson

Means

