

# Business Law Forum 2017

April 28, 2017

TN Bar Center – Nashville, Tenn.



**Producer:** Chris Trump

**Total Credits:** 5.5 General, 1 Dual

The TBA's Business Law Forum provides specialized and practical information on a range of business law topics. This year's forum focuses on indemnification provisions. The day-long program addresses the constituents, structures, functions, and contents of indemnification provisions, as well as, relevant, enforcement and remedies considerations, in a variety of business transactions. Professional ethics and responsibility in this context will also be addressed. Forum participants will have the opportunity to share and gain insights in a more hands-on manner through targeted interactions in breakout sessions focusing on the use of indemnification provisions in the context of mergers and acquisitions.

9 a.m. – 9:30 a.m.



**Registration/Welcome**

9:30 a.m. – 10:30 a.m.

## **Overview of Indemnification**

What is indemnification? Why and when do you need specific indemnification protections? What are the benefits of indemnification? Who are the appropriate parties to it? What are the different types of indemnification provisions? What issues are commonly negotiated in indemnification provisions?

Matt Lyon, *Lincoln Memorial University Duncan School of Law*

10:30 a.m. – 11:30 a.m.

## **Scope of the Indemnification Agreement**

What types of clauses are common to indemnification provisions (using M&A agreements as an example)? What is the extent of indemnity for specific matters (e.g., breaches of representations, warranties, or covenants; certain specified liabilities; D&O indemnification, cross-owner indemnification; negligence; etc.)? What is the procedure for making and defending indemnification claims?

Ward Nelson, *Miller & Martin, PLLC*

Robert Laird, *McKenzie Laird PLLC*

Alex Davie, *Riggs Davie PLC*

11:30 a.m. – 11:45 a.m.



**Lunch Provided**

11:45 a.m. – 12:45 p.m.

**Lunch Panel: “Methods for Resolution of Indemnification Disputes”**

What issues should the parties address in a dispute resolution provision (i.e., the pros and cons of including a mandatory arbitration clause, a jury trial waiver, or a fee-shifting provision)? Which state’s law and which forum should govern? Tips and tactics for resolving indemnification disputes early and efficiently, and best practices for avoiding disputes over representations and warranties in the first place.

Joe Crace, *Bass Berry & Sims*

Britt Latham, *Bass Berry & Sims*

12:45 p.m. – 2 p.m.

**Drafting and Negotiation Breakout Session #1**

**A: General Track – 5<sup>th</sup> Floor Terrace**

Joan Heminway, *The University of Tennessee College of Law*

Tom Norris, *Thomas B. Norris, Jr., Attorney at Law*

**B: M&A Track – 2<sup>nd</sup> Floor Nippert**

What limitations on damages are commonly negotiated (i.e., whether to include or exclude consequential, punitive, or other non-direct damages; mitigation baskets/thresholds; and caps on exposure)?

Lee Harkavy, *Waytt, Tarrant & Combs, LLP*

Allen Roberts, *Baker Donelson*

Howard Herndon, *Frost Brown Todd LLC*

2 p.m. – 2:15 p.m.



**Break**

2:15 p.m. – 3:30 p.m.

**Drafting and Negotiation Breakout Session #2**

**A: General Track – 5<sup>th</sup> Floor Terrace**

Joan Heminway, *The University of Tennessee College of Law*

Tom Norris, *Thomas B. Norris, Jr., Attorney at Law*

**B: M&A Track – 2<sup>nd</sup> Floor Nippert**

What are the effects of sandbagging/anti-sandbagging provisions, escrow provisions, and damages offsets from other moneys due (e.g., insurance or tax savings), and is indemnity the sole or exclusive remedy?

Lee Harkavy, *Waytt, Tarrant & Combs, LLP*

Allen Roberts, *Baker Donelson*

Howard Herndon, *Frost Brown Todd LLC*

3:30 p.m. – 4:30 p.m.

**Dual**

**Conflicts of Interest in the Context of Indemnification**

ELM Video (20 minutes)

Who is the client when there are multiple indemnifying parties? Who owns the attorney-client privilege after a deal closes for confidential communications made between the seller and its counsel while the deal was being negotiated?

Chris Trump, *Egerton, McAfee Armistead & Davis P.C*