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# Buying & Selling a Business in Uncertain Times



**New Orleans**

February 4, 2009

**Presented by:**

**Louis S. Nunes III**

*- Jones, Walker, Waechter, Poitevent,  
Carrère & Denègre, L.L.P.*

**Kenneth J. Najder**

*- Jones, Walker, Waechter, Poitevent,  
Carrère & Denègre, L.L.P.*

**Brooke Duncan III**

*- Adams and Reese LLP*

**Michael L. Eckstein**

*- Eckstein Law Firm*

(See complete biographies inside)



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## SEMINAR HIGHLIGHTS

- Valuations and financial data you need to know
- The structure of a basic deal
- Tax considerations
- Letter of intent
- Due diligence
- Overview of the contract
- MBOs, LBS, Bootstraps
- Leveraged acquisitions
- Securities issues in mergers & acquisitions

## MEET THE FACULTY

**MICHAEL L. ECKSTEIN**, a member with the Eckstein Law Firm, A Professional Corporation, practices in mergers and acquisitions, closely held business law, entrepreneurial business law, estate and gift taxation, and professional sports law. He is a certified agent for the National Football League Players Association and the National Basketball Players Association, and a Board Certified Tax Law Specialist and Estate Planning and Administration Specialist by the Louisiana Board of Legal Specialization. Mr. Eckstein has significant experience in the representation of professional athletes, high tech/venture capital concerns, and communication businesses. He has published numerous articles including "Investment Credit and At-Risk Rules for S Corporations," *S Corporations Tax Choices for Business Planning*, Prentice-Hall, October 1985. He is a member of the New Orleans, the Louisiana, and the American Bar Associations, the Sports Lawyers Association, and the New Orleans Estate Planning Council. Mr. Eckstein earned his B.G.S. at the University of Kentucky, his J.D. at Tulane University, and his LL.M. in Taxation at Georgetown University.

**KENNETH J. NAJDER**, a partner in Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P.'s New Orleans office, practices in the areas of mergers and acquisitions, corporate law, and securities law. He represents a wide variety of buyers and sellers of businesses, ranging from small privately-held companies to large publicly-traded companies, in several industries, including the telecommunications, transportation, technology, chemicals, ship construction, food, oil and gas, energy, engineering, television, radio, consulting, banking, financial services, and manufacturing industries. Mr. Najder received his B.A./B.S., *summa cum laude*, and his J.D. from the University of Virginia.

**LOUIS S. NUNES III** (Sonny) is a partner in the law firm of Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P., where he concentrates on federal, state, and local tax matters involving tax and business planning. Working with attorneys in Jones Walkers corporate and business sections, Mr. Nunes has experience in planning, negotiating, and documenting sales and purchases of public companies, private entities, and joint ventures. He is a Board Certified Tax Specialist in Louisiana. Mr. Nunes received his B.B.A., with a concentration in accounting, from the University of Notre Dame, his J.D. from Tulane University Law School, and his Master of Laws in Taxation from New York University School of Law.

**BROOKE DUNCAN III**, with Adams and Reese LLP, practices labor and employment law exclusively with an emphasis on proactive advice and education. Mr. Duncan is a regular participant in seminars for employer groups, and he has authored numerous articles and other publications for employers. His expertise in labor and employment law has been recognized in *Best Lawyers in America*, *Chambers USA*, and *Louisiana Super Lawyers*. Mr. Duncan has been a member of the boards of the Louisiana Children's Museum, the Louisiana Civil Service League, the Metropolitan Area Committee, the Louisiana Nature and Science Center, the Community Service Center, and served as chair of the Louisiana State Police Commission. He currently serves as a trustee of Vassar College and is on the board of the Metropolitan Crime Commission. Prior to becoming a lawyer, Mr. Duncan was in business for ten years, gaining practical experience through managing a factory which produced industrial fabric products. Before entering business, he served as a narcotics detective with the New Orleans Police Department, receiving several awards for outstanding duty. Mr. Duncan received his A.B. from Vassar College and his J.D. from Tulane University School of Law.

# BUYING & SELLING A BUSINESS

New Orleans - February 4, 2009

**Location:** Loews New Orleans Hotel - 300 Poydras Street - New Orleans

**Registration:** 8:00 a.m. **Presentations:** 8:30 a.m. - 4:30 p.m.

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New Orleans - February 4, 2009

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## WHO SHOULD ATTEND

- Attorneys
- Chief executives
- HR Professionals
- Real Estate Professionals
- Real Estate Brokers/Consultants
- Treasurers
- Controllers
- Business Owners
- Business Brokers
- Financial Executives
- Enrolled Agents
- Financial Planners

## SEMINAR AGENDA

### I. Structuring the Deal

- A. Overview of basic choices and other structural elements
- B. Choosing the structure: non-tax considerations
- C. Tax considerations in a cash purchase
- D. Tax free reorganizations
- E. Employment contracts and non-compete agreements
- F. Security and other devices to assure payment
- G. Contingent considerations
- H. Complying with state law
- I. Brokers and finders
- J. Liability issues
- K. Representations, warranties and indemnifications

### II. Drafting Asset Purchase Agreements

- A. Initial concerns and considerations
- B. Organization of a typical asset purchase agreement
- C. Contents of an asset purchase agreement
- D. Due diligence

### III. Taxation Issues

- A. Seller's tax considerations
- B. Buyer's tax considerations
- C. Intangible assets
- D. IRS form 8594
- E. Summary schedule
- F. Personal goodwill
- G. Contingent price sales "earn-outs"
- H. Installment sales
- I. Liquidation issues for C and S corporations
- J. Using tax attributes after change in ownership
- K. Terminating qualified retirement plans

### IV. Drafting Ancillary Documents

- A. Promissory notes
- B. Pledge and security agreements
- C. Escrow agreements
- D. Non-compete agreements
- E. Employment and consulting agreements
- F. Other ancillary documents

### V. Employment Law Issues

- A. Acquiring company's obligations and liabilities under various employment laws
- B. Limiting buyer's employment related liability
- C. Limiting seller's employment related liability
- D. Employee benefits issues
- E. WARN act issues
- F. Employment agreement

### VI. Ethical Issues in Buying and Selling a Business

*Sterling Education Services may alter the agenda due to circumstances beyond our control.*

## OTHER OPPORTUNITIES

- **Landlord-Tenant Law**

New Orleans, LA – January 7, 2009

Baton Rouge, LA – February 4, 2009

- **Employment Law Update**

Bossier City, LA – January 21, 2009

*Check our website or call us for more info!*

## REFERENCE MATERIALS

### Seminar Manual

The faculty has prepared a substantial reference work to accompany its presentation. This manual will serve as a valuable tool for future reference. You will receive the manual upon checking in at the seminar site. Its price is included in the registration fee.

### Audio Recording

This seminar will be recorded, so if you cannot attend, or if you want to apply for home study credit (where available), you can order the audio recording and/or a reference manual from this program. Please use the registration form to order.

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**FUNDAMENTALS OF LANDLORD-TENANT LAW:** Lease Provisions and Issues – Planning Ahead to Avoid Problems; Landlord and Tenant Obligations; The Eviction and Judicial Process; When the Tenant Files Bankruptcy and the Effect of the Bankruptcy Reform Act on the Landlord and the Tenant; and Ethical Considerations in Landlord-Tenant Law

**PRESENTERS:** Henry M. Bernstein with Attorney at Law; and Mary E. Winchell with The Malone Law Firm L.L.C.

**Seminar #7LA07178**  Audio & Manual Set \$155  Audio only \$95  Manual only \$75

**LANDLORD-TENANT LAW BEYOND THE BASICS:** An Ounce of Prevention; Problem Tenants; Landlord Rights and Options When the Deal Goes Bad; When the Tenant Files Bankruptcy and the Effect of the Bankruptcy Reform Act on Landlords and Tenants; and Ethics in Landlord-Tenant Law

**PRESENTERS:** Claude Rivet with Claude Rivet, A PLC; David M. Kerth with Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P.; and James M. Garner and Adam J. Swensek with Sher Garner Cahill Richter Klein & Hilbert, LLC

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**EMPLOYMENT LAW UPDATE:** Compensation Issues Under Revised FLSA Regulations; Hot Topics: The Latest Interpretations of Current Employment Law; Coping With Leave Laws; Negotiating Separation Agreements in Difficult Termination Situations; Employment Issues in the Paperless Workplace; and Avoid Liability in Hiring and Terminating Foreign Nationals

**PRESENTERS:** Terrel J. Broussard with Montgomery, Barnett, Brown, Read, Hammond & Mintz, L.L.P.; Vicki M. Crochet with Taylor, Porter, Brooks & Phillips, L.L.P.; Magdalen Blessey Bickford with Milling Benson Woodward L.L.P.; Jennifer A. Fiore with Milling Benson Woodward L.L.P.; Raul V. Esquivel III with Fisher & Phillips LLP; and David A.M. Ware of David Ware & Associates

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#### WHAT ATTENDEES HAVE TO SAY ABOUT OUR SEMINARS

It was a great class...Send us info on new classes! Thank you!

*-L.K., Corporate Operations Director, Marietta, GA*

Excellent seminar overall. This seminar had knowledgeable presenters and the materials were good; excellent agenda.

*-M.J., Real Estate Development Attorney, Boston, MA*

Excellent seminar, Excellent presenters-Clear & Interesting;  
Seminar agenda and manual also excellent.

*-T.M., Litigation Partner, 100 attorney law firm*

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