

## **W. BROOKS STILLWELL**

Hunter, Maclean, Exley & Dunn, P.C.

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### **CURRENT POSITIONS:**

- Partner, Hunter, Maclean, Exley & Dunn, P.C., Attorneys at Law, Savannah, Georgia
- Director, First National Bank and First National Corporation, Savannah, Georgia
- Director, Savannah Economic Development Authority
- Trustee, The 200 Club of the Coastal Empire

### **BACKGROUND AND EDUCATION:**

- Born July 30, 1946. Raised in Savannah, Georgia.
- Savannah Public Schools. Graduated from Jenkins High School, 1964.
- Wake Forest University. B.A., cum laude, 1968. Yearbook editor. President of Omicron Delta Kappa, national leadership honor society.
- University of Georgia School of Law. J.D., 1971. Comments Editor, Georgia Journal of International and Comparative Law, International Law Moot Court Team, Phi Delta Phi Legal Fraternity.

### **PROFESSIONAL HONORS:**

- Fellow, American College of Real Estate Lawyers
- Chairman, Real Property Law Section, State Bar of Georgia, 1992-93
- President, Savannah Bar Association 1999-2000
- Listed in *The Best Lawyers in America* for Real Estate Law for over 10 years
- Selected as one of Georgia's "Legal Elite" by *Georgia Trend* magazine
- Selected as a "Georgia Super Lawyer" in Real Estate Law by *Atlanta Magazine*
- Member, Executive Committee, Real Property Law Section, State Bar of Georgia, 1985-94

### **LEGAL CAREER:**

- Hunter, Maclean, Exley & Dunn, P.C. since 1971. Shareholder since 1974. Managing Partner, 1988-90.

- Concentrates practice in Commercial Real Estate Development, Public Private Partnerships and Economic Development Law, and in the area of Business Reorganizations, Bankruptcy Workouts and Business Litigation.

**Real Estate Development, Public-Private Partnerships and Economic Development:**

- Currently represents Jekyll Island State Park Authority in real estate matters concerning the redevelopment of Jekyll Island, Georgia as Special Assistant Attorney General of Georgia.
- Represented Batson-Cook Development Company and W. B. Barnard Company in developing News Place at Ellis Square on the site of the former Savannah Morning News property in downtown Savannah. The project is a public-private partnership in the historic district which includes the demolition of a parking garage on a city square, the construction of a 1075-space subterranean garage, the restoration of the square, and the redevelopment of surface properties for hotel, residential and retail uses. Negotiated the successful closing of a seven-party simultaneous transaction in which the City contracted to build the garage, its authority issued over \$25 million in bonds, separate hotel, retail and office, and residential developers acquired surface properties and long-term parking rights in the garage.
- Represented Randolph Street Development, LLC, the developer of Trustees' Garden, a major mixed use project on the site of the original gardens planted by the Trustees of the Colony of Georgia. The project was a former manufactured gas facility which was listed on the hazardous site inventory of the State of Georgia. In cooperation with counsel for the seller-utility, obtained "prospective purchaser" limitation of liability certification for the buyer and developer from Georgia Environmental Protection Division.
- Represented the developer of the Westin Savannah Harbor Resort on Hutchinson Island, across the Savannah River from downtown Savannah (with partner Drew Ernst). The project was a \$200 million public-private partnership which included the Savannah International Maritime Trade Center, a 400 room Westin resort hotel, golf course and spa, and over 200 acres of adjacent mixed use development. Negotiated water and sewer agreements to drill utility lines under the Savannah River shipping channel, development agreements for a riverwalk, construction of roads and interchange access by the Georgia DOT, annexation of the project into the City of Savannah, and related governmental contracts. Handled negotiations with the City of Savannah, Chatham County, and the Georgia Department of Transportation.
- Represented Fort Howard Corporation in locating and constructing a \$750 million recycled tissue mill in Effingham County. When announced in 1986, the project was the largest industrial investment in Georgia's history. Negotiated land assembly, including purchase of over 30 separate parcels of land. Handled permit issues, state and local tax and zoning issues, and coordination with various state agencies including the Office of the Governor, Georgia Department of Transportation, Environmental Protection Division, and Department of Community Affairs.

- Represented W.E.T., Inc. (Wetlands Environmental Technology) in obtaining the first permit in the United States from the U.S. Army Corps of Engineers to develop and sell credits from a commercial wetland mitigation bank.
- Represented the owner of a 4,000 acre timber tract which was located on all four quadrants of the intersection of Interstate Highways 16 and 95 in selling the property in phases over a period of several years. Negotiated a development agreement under which the seller obtained a percentage of the retail sales price as the property was developed.
- Represented the owners of Oglethorpe Mall, the largest regional shopping center in South Georgia, for over 25 years.

#### **Business Litigation and Business Disputes:**

- Acted as lead trial counsel in the first successful plaintiff's antitrust case in the United States District Court for the Southern District of Georgia. *Port Terminal & Warehousing Co v. John S. James Co.*, 92 F.R.D. 100 (S.D. Ga. 1981).
- Successfully defended a bank holding company and a community bank in 1998, in litigation brought by a dissident shareholder seeking to block a bank merger. Represented the defendants in three state court suits and a proceeding before the Georgia Securities Commissioner alleging securities fraud.
- Successfully represented several business owners in break-up disputes with partners and other shareholders.
- Represented several individual clients in negotiating settlements concerning family businesses and distribution of estates.
- Acted as lead counsel in many lawsuits in business cases, including construction disputes, franchise terminations, suits seeking the enforcement or avoidance of contracts, dispossessory actions (*Smith v. Hudgens*, 140 Ga. App. 562 (1976)), and suits concerning copyright infringement (*Ford Plantation, LLC v. Black*, 204 F.R.D. 698 (S.D. Ga. 2000)), professional malpractice and wrongful termination of employment.

#### **Bankruptcy and Workouts:**

- Counsel to Debtor Durango Georgia Paper Company in Chapter 11 case in Southern District of Georgia. Liquidating plan has been confirmed. Currently representing the liquidating trustee in numerous adversary proceedings.
- Special litigation counsel to Chapter 7 Trustee in pursuing fraudulent conveyance action against the business partners of the debtor. Successfully obtained substantial recovery for creditors in what was believed to be a no-asset case. *Wessinger v. Spivey (In re Galbreath)*, 286 B.R. 185 (Bankr S.D.Ga. 2002).

#### **Represented secured creditors in several substantial Chapter 11 cases including:**

- ROCOR International, Inc. U.S. Bankruptcy Court in Oklahoma City. Represented a secured creditor in the bankruptcy of a refrigerated trucking company. Our client has recovered approximately \$1.5 million of its claim which was secured by real estate and rolling stock. Case is still pending.

- Printmasters Acquisition Company. U.S. Bankruptcy Court in Atlanta. Debtor owed our client \$1.7 million, which was secured by specialty printing equipment. About half of client's collateral had been transferred to an unauthorized third party. Debtor was seeking to sell part of the equipment in a sale under section 363 of the Bankruptcy Act, free and clear of all liens. This would have forced our client to litigate with the Debtor about the value of its "sold" collateral, and to pursue the owner of the other collateral in a separate proceeding. We filed an objection to the 363 sale, forced the Debtor to restructure the transaction, and facilitated the sale of all of the assets of the Debtor, including client's collateral, to a new buyer. Client successfully restructured the loan, while clearing up title issues concerning its collateral. The buyer agreed to pay the full amount which was owed to our client, including our attorneys' fees, as part of the restructured financing.
- Flooring America, Inc. U.S. Bankruptcy Court in Atlanta. Debtor was the largest retail distributor of carpets and flooring in the United States with over 900 locations. Our client's substantial claim was secured by computerized warehouse sorting equipment. Our client's borrower had been acquired by the Debtor, and its collateral had been spun off to a third party, without the lender's consent. Debtor attempted to abandon the equipment, which would have forced our client to pursue a replevin action against the unauthorized transferee of the equipment, in a rural county in Georgia. We objected, and obtained an order to take a 2004 deposition, which would have enabled us to show that the solvent transferee was liable for the debt through an assumption agreement with the Debtor which had not been disclosed to the client. We successfully negotiated a workout under which client's debt and our attorneys' fees were paid in full.
- Buckeye Foods, Inc. and Restaurant Properties, Inc. Debtor was a Burger King franchisee with 7 locations in the Atlanta suburbs. We successfully moved to obtain dismissal of one of the cases as a bad faith filing, recovered and liquidated the collateral.
- Frame-N-Lens Optical. Debtor was a major retail optical store chain with locations throughout the United States. Our client's claim was secured by equipment located in California and Nevada. We negotiated a turnover of the equipment, facilitated the sale of the collateral to third parties, and recovered a portion of the deficiency in the bankruptcy proceeding.
- Five Star Partners. Debtor was a major real estate developer in mid-town Atlanta, owned by a Swedish investor. Our client, a corporation incorporated in the Isle of Jersey, was owed over \$2 million secured by a motel. Debtor sought to avoid our client's secured claim on the ground that the client was a non-U.S. corporation which had not properly registered under the Georgia RICO Act. We successfully defeated the objections, negotiated a pay-out under the Chapter 11 plan which was confirmed, and eventually obtained a complete payoff of all debt including our attorneys' fees. *Five Star Partners, L.P. v. Vincent Netherlands Properties, N.V.* (In re Five Star Partners), 169 B.R. (Bankr. N.D. Ga. 1994).

**Represented several debtors and creditors in real estate litigation and work-outs including:**

- Successfully defended the former owner of a motel in Tennessee in a suit by a lender seeking a \$4 million deficiency judgment pursuant to a 10-year-old guaranty. Client had sold the motel and the buyer had assumed the loan and then filed for Chapter 11. The buyer and lender had restructured the loan in bankruptcy without giving notice to our client.
- Successfully obtained an injunction to stop a foreclosure against the DeSoto Hilton Hotel in Savannah because the lender's unauthorized disclosure of client's confidential financial information to potential bidders at the sale may have violated bank secrecy laws. The ruling enabled the client to sell the hotel and to avoid a multi-million dollar deficiency.
- Successfully defended a developer of resort real estate who was being sued by his lender after the lender was closed down by Canadian officials for securities fraud, and had failed to fund a loan commitment to the client. After the client filed for Chapter 11 protection, we filed an adversary proceeding against the lender in the Southern District of Georgia. Adversary filing enabled the client to maintain venue in Georgia instead of in the lender's separate Chapter 11 in California, and enabled the client to settle the case and retain ownership of his property.

**COMMUNITY INVOLVEMENT:**

- Alderman, City of Savannah, 1974-91. Mayor Pro-tem, 1990-91.
- Chairman, Chatham County Board of Elections 2000-2003.
- Chairman, Campaign Committee to Pass the Consolidation Charter for Savannah and Chatham County, 1973. Member, Consolidation Study Commission, 1984. Drafted 1984 Consolidation Charter.
- Chairman of Vision 20/20, Inc., 1992-93. Successfully lead community effort to fund over \$20 million in leisure services capital improvements using special purpose local option sales tax ("SPLOST") proceeds.
- Founding Board Member, First City Club. Chairman, 1992-1996.
- Former Board Member, Governor's Advisory Council on Coastal Zone Management, Historic Savannah Foundation, Coastal Empire Council, Boy Scouts of America, and The Savannah Country Day School.
- Graduate of Leadership Savannah and Leadership Georgia.
- Awarded Desboullions Trophy as Savannah's Outstanding Young Man of the Year in 1980. Named one of Five Outstanding Young Men in Georgia by the Georgia Jaycees, 1981.
- Named to Savannah's Business Hall of Fame in 2009.

**PUBLISHED ARTICLES AND SPEECHES:**

- "Public-Private Development in Historic Savannah- News Place at Ellis Square," International Municipal Lawyers Association, Savannah, Ga., September, 2005.
- "The Development of Hutchinson Island: Savannah-Chatham County's Public-Private Partnership," Real Property Law Institute, Amelia Island, Florida, April, 2001.
- "Achieving No Net Loss– The Future of National Wetlands Policy," American College of Real Estate Lawyers, Washington, D.C., October, 1998, and Terrene Institute National Mitigation Banking Conference, Atlanta, Georgia, June, 1999.
- "Case Study: Millhaven Mitigation Bank", in *Mitigation Banking, Theory and Practice*, Edited by Lindell L. Marsh, Douglas R. Porter, and David A. Salvesen (Island Press, 1996).
- "The Future of Wetland Mitigation," Association of State Wetland Managers, St. Paul, Minnesota, June, 1994.
- "Navigating in the Environmental Minefield: Identifying Risks and Limiting Liabilities for the Commercial Real Estate Investor," Institute for Continuing Legal Education in Georgia, November, 1988.
- "Recent Developments in Georgia Real Estate Law," ICLE in Georgia, October, 1984.
- "Georgia Real Estate Practice Tomorrow - An Agenda for Change," Real Property Law Institute, ICLE in Georgia, May, 1984.
- "Recent Developments in Georgia Real Estate Law: Interest, Usury and Materialman's Liens," ICLE in Georgia, September, 1983.
- "Basic Commercial Leasing," ICLE in Georgia, January, 1983.
- "Comment - Standing to Represent Corporate Claims in the International Court of Justice: The Barcelona Traction Case," 1 *Ga. J. Int'l & Comp. Law* 179 (1970).
- "Recent Decision - Civil Procedure - Long Arm Statute - Foreign Corporation Not Doing Business in Georgia Which Commits Negligent Act Outside State Causing Injury Within State Not Subject to Jurisdiction of Georgia Courts," *Ga. St. Bar J.*, Nov., 1969, p. 202.

**PERSONAL:**

- Married to Carolyn Laws Stillwell. Two children: Walter, 35, and Haviland, 28.