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Foreward Symposium- Old Code, New Code: Views on Bankruptcy from the Bench and Bar

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Old Code, New Code: Views on Bankruptcy from the Bench and Bar*

*Margit Livingston***

PROFESSOR LIVINGSTON: Good morning. I would like to welcome all of you to the Fourth Annual DePaul Business and Commercial Law Journal Symposium. Those of us at DePaul are extremely grateful for our ongoing affiliation with the Commercial Law League of America in publishing the Journal and in sponsoring this annual symposium. The title of this year's symposium is "Old Code, New Code: Views on Bankruptcy from the Bench and Bar." Given the tremendous expertise of our various speakers, we expect the discussions today to be far-reaching and illuminating.

The symposium proceedings will be published in the summer issue of the DePaul Business and Commercial Law Journal, which is in its fourth year as the successor to the former DePaul Business Law Journal and the former Commercial Law Journal, published by the Commercial Law League of America. Four years ago, DePaul University College of Law entered into a cooperative arrangement with the Commercial Law League of America for the publication of the new DePaul Business and Commercial Law Journal. Max Moses and Elliot Levin of the Commercial Law League of America worked with me and former Dean Wayne Lewis in bringing about this affiliation.

Through this affiliation, DePaul has been able to produce a high-quality journal devoted to in-depth analysis of theoretical and practical issues in the fast-changing arena of corporate, antitrust, commercial, and bankruptcy law. The Journal is published four times a year and is distributed to almost 5,000 subscribers in the United States and around the world; the typical law review subscription is perhaps 800 subscribers. We are very fortunate to be able to reach so many people.

DePaul University College of Law is honored to be co-hosting, with the Commercial Law League of America, this Fourth Annual Symposi-

* This is an edited version of the transcript from Professor Margit Livingston's opening remarks at the DePaul Business and Commercial Law Journal Symposium, *Old Code New Code: Views on Bankruptcy from the Bench and Bar*, held on April 27, 2006.

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sium of the Journal, and I am delighted to welcome the Commercial Law League members who are here attending the League's Midwest Regional meeting as well as Chicago area practitioners, professors, and law students.

As you know, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005¹ represents the most comprehensive overhaul of the nation's bankruptcy laws in 25 years. The first antecedents of the Act appeared over ten years ago and grew out of the recommendations of the National Bankruptcy Review Commission. After a long and bumpy legislative ride, President George W. Bush signed the bankruptcy reform bill into law about a year ago on April 20, 2005. The stated purpose of the new law, which applies to bankruptcies filed after October 17, 2005, is to, "improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system and ensure that the system is fair both for debtors and creditors."²

The centerpiece of the new legislation is the "means test," an elaborate formula to determine whether or not a consumer debtor is entitled to file a Chapter 7 proceeding.³ The old law essentially created a presumption that debtors are entitled to relief under Chapter 7, except upon a showing of substantial abuse. The new law reverses that presumption and presumes that abuse exists in the case of individual debtors with primarily consumer debts.⁴ The debtor may then rebut the presumption by satisfying the "means test."⁵ Debtors who do not satisfy the means test will have their petitions dismissed or converted into Chapter 11 or 13 proceedings.⁶

There is no question that the Bankruptcy Abuse Prevention and Consumer Protection Act is long, complex, and highly technical. Many have criticized it as a poorly drafted and ambiguous piece of legislation. Some have questioned whether Congress went too far in its attempt to reduce so called "bankruptcy abuse," and has turned consumer bankruptcy into an unnecessarily lengthy, expensive, and cumbersome process. And, as we will see, although the consumer provisions of the new law have received the most media attention, Congress enacted significant changes to the business bankruptcy provisions as well, some of which have engendered their own set of controversies.

1. 11 U.S.C. §§ 101-1532 (2006).

2. H.R. REP. NO. 109-31, pt. 1 (2005).

3. See 11 U.S.C. § 707.

4. *Id.*

5. *Id.*

6. *Id.*

We are enormously pleased to have with us today an extraordinarily impressive group of speakers. They represent some of the country's most prominent and experienced bankruptcy practitioners, judges, and scholars. We are sure that their insights into some of the changes wrought by last year's extensive amendments to the Bankruptcy Code as well as other topics, such as the developing tort of deepening insolvency, will be interesting and informative.

Before we get to the first speakers, I would like to thank some individuals who have contributed to the success of the DePaul Business and Commercial Law Journal this year, and to the planning and creation of this Symposium. None of this could have happened without the unfailing support of my dean, Dean Glen Weissenberger of DePaul University College of Law. In addition, the Commercial Law League of America has provided invaluable financial and editorial assistance to us. In particular, the CLLA Fund for Public Education and the CLLA Patron Fund were most generous in their support of the symposium. In addition, several other sponsors, which are listed in your program, provided significant support.

And finally, I want to thank the student Editorial Board for the Journal. They really run the Journal. The student editors as well as their staff members have put in many long hours to guarantee the continuing high quality of the Journal. And if you would, please, stand if you are in the room as I mention your name. This year's editors included Devon Eggert, Anna Panchenko, Hilary Goehausen, Jamie Pfeiffer, Ryan Kuzel, Tiffany Seeman, and Edward Yonter. And I would like to acknowledge in particular the outgoing Editor-in-Chief, David Fletcher, who has done an outstanding job this year at the helm of the Journal, and, of course, the Symposium Editor, Michelle Miller, who has worked tirelessly with the Commercial Law League over a period of many months to put together this program. I want to thank you.

