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Bankruptcy is back. The use of Chapter 11 by large, publicly held firms was a subject of much debate in the academic and popular press in the late 1980s and the early 1990s. Firms such as Texaco, Revco, LTV, Federated Department Stores, Maxwell Communications, TWA, and Eastern Airlines all filed for bankruptcy during that time. The economic boom of the mid- and late 1990s, however, resulted in a relative dearth of high-profile bankruptcy cases. The recent economic downturn has moved corporate reorganizations back into the spotlight. The Chapter 11 filings by firms such as Enron, Global Crossing, the Loewen Group, US Airways, United Airlines, and WorldCom have focused attention once again on Chapter 11. Yet today's bankruptcy practice has changed notably since our last wave of major bankruptcies.

The most visible change in the reorganization of large, publicly held companies in the past fifteen years has been the rise of the Delaware bankruptcy court. As of 1990, a firm looking to reorganize under Chapter 11 would most likely file its bankruptcy petition in the

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Southern District of New York. Today, such firms look first and foremost to Delaware. Indeed, other courts are changing their practices to mirror those of Delaware. This switch in the lead venue of reorganization practice raises two sets of questions. The first set of questions focuses directly on this trend. Delaware's prominence in corporate law has spawned a decades-old debate over why firms choose Delaware and whether the forces that drive firms to Delaware create a body of corporate law that advances or impedes societal interests. The rise of the Delaware bankruptcy court raises similar inquiries. In short, we need to explore why firms now choose to file for reorganization in Delaware, and whether the switch to Delaware is one that should be applauded or condemned.

The stampede to Delaware raises a second set of questions as well. Delaware now seems to be the home of both corporate law and corporate bankruptcy law. This overlap fuels speculation about the appropriate relationship between bankruptcy law and corporate governance. The questions that implicate both corporate law and bankruptcy law include whether primary regulation should come from the federal government or from the states, whether law should be mandatory or not, and what the appropriate allocation of decisionmaking authority is for the future of the firm.

The Vanderbilt University Law and Business Program, the Center for Corporate Governance at the University of Delaware, and the *Vanderbilt Law Review* organized this Symposium, "Convergence on Delaware: Corporate Bankruptcy and Corporate Governance," to address these issues. The Symposium, held at the Vanderbilt University Law School on February 22 and 23, 2002, brought together leading bankruptcy academics and practitioners to discuss the various issues raised by the convergence on Delaware.

Three articles in this Symposium issue directly address the rise of Delaware as the bankruptcy forum of choice. Marcus Cole's contribution recounts the story of Delaware's rise to prominence. Drawing on interviews with practitioners and bankruptcy judges, Cole explains the factors that affect how the managers of a firm select the venue in which to file. Based on these interviews, he concludes that there is a subset of bankruptcy judges who are in competition with each other for high-profile cases. He notes that there are potential gains from such competition and considers two reforms of extant law that could engender even more competition.

Lynn LoPucki and Joseph Doherty attempt to assess the efficacy of the Delaware and Southern District of New York bankruptcy courts. Earlier work by LoPucki and Sara Kalin suggested that firms that file in Delaware and the Southern District of New York and subsequently emerge from bankruptcy tend to file a second reorganization more often than firms that file for reorganization in other courts. LoPucki and Doherty confirm and extend those results here. They reject many of the benign explanations offered for the difference in refiling rates and conclude that the difference can be attributed to lax practices by these two courts.

Harvey Miller, one of the nation's leading bankruptcy attorneys, takes issue with these conclusions. He argues that Delaware offers significant advantages as a venue for the reorganization of large, complex firms. To the extent that firms that file for bankruptcy and reorganize tend to file for bankruptcy again, this choice stems in large part from dynamics over which the court has no control.

The remaining articles in the Symposium issue address the increasing convergence of bankruptcy law and corporate law. One of us (Elson) shows how ideas developed from corporate governance literature can improve bankruptcy law. Modern corporate scholarship and practice is concerned with structuring a company's board of directors so as to align their interests with maximizing firm value. Elson offers a case study of the bankruptcy reorganization of the Loewen Group to show how these interests can be translated to the bankruptcy forum.

Alon Chaver and Jesse Fried also borrow from the corporate governance literature to suggest ways to improve bankruptcy law. They focus on the fiduciary duties of directors, long a staple of corporate law. They argue that managers' fiduciary duties should extend to creditors who are owed performance, as opposed to cash, by the debtor. This expanded notion of fiduciary duties would lead the firm to make decisions that increase overall social welfare.

John Armour, Brian Cheffins, and David Skeel extend this thinking about the relationship of corporate law and bankruptcy law to the English context. Professor Skeel, in prior work, has argued that corporate law and bankruptcy law work in tandem. England presents a challenge to this thesis. In response to the pattern of corporate reorganization practiced in England, Armour, Cheffins, and Skeel argue that the role of debt in both corporate governance and the resolution of financial distress needs to receive more attention than it has in the past.

Barry Adler's contribution challenges us to think even more broadly about bankruptcy law. Adler calls into question the practice of viewing corporate reorganization law solely as a subset of corporate law. Rather, Adler argues that bankruptcy law is best viewed as part and parcel of each area of law that it touches. Contracts, torts, and property, just to name a few areas, cannot be fully grasped without a proper understanding of how bankruptcy law interacts with these areas. In all areas of private law, parties can plan their actions in the light of how their legal entitlements will be affected down the road by a bankruptcy petition. It is these strategic issues, and not a concern with a collective-action problem, that Adler argues should be front and center when focusing on bankruptcy policy.

Douglas Baird and one of us (Rasmussen) explore the recent bankruptcy of Enron to demonstrate how bankruptcy practice has changed. Bankruptcy law historically has been premised on the notion of preserving going-concern value through negotiations among the various creditors and shareholders. Such negotiations never took place in the Enron case. As is increasingly the case in large Chapter 11s, Enron's assets were sold quickly, leaving the asset-deployment decision in the hands of the new owners. The bankruptcy court is left with the task of sorting out complex and perhaps conflicting legal claims to the funds generated by the sale of the assets. This development suggests that we should no longer think of Chapter 11 as a collective forum in which the interested parties gather to bargain over the fate of the firm.

We hope that the readers of this Symposium issue will learn as much from the articles here as we did.