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Book Review: The Winding-Up of Insolvent Companies in England and France

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BOOK REVIEW

THE WINDING-UP OF INSOLVENT COMPANIES IN ENGLAND AND FRANCE. By Christopher Livadas. Kluwer, 1983.

*Reviewed by Keith M. Lundin**

The good news is that this book contains everything that anyone would ever want to know about winding-up insolvent companies in England and France. The bad news is that the author's thorough examination exhausts the reader as well as subject matter. An analysis of the law related to winding-up insolvent companies in either England or France is not a simple subject for practitioners or scholars. Comparing the legal treatment of this aspect of insolvency in two countries with admittedly irreconcilable legal traditions, structures, and philosophies compounds the basic complexity of the undertaking. To attempt such a project in the first place required the utmost courage; but, Livadas' result is a challenging work that will rightfully find its way into the libraries of major law schools and onto the "wish I had read" shelves of international commercial law practitioners.

In the preface Livadas reveals that his intended audience is the "English reader," and that his book places special emphasis on the French law of winding-up because it is "more interesting" to his expected audience. Nothing in this book, however, ties the European insolvency material to concepts and doctrines familiar to United States insolvency scholars and practitioners. Although such a comparison of Livadas' topic with United States insolvency laws is purposefully beyond the stated scope of the work, its absence presents tremendous obstacles of language and understanding to readers most familiar with United States bankruptcy law. Because the only possible comparison of winding-up in France and England is in relation to "traders," this book provides

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little discussion of the insolvency law or practice for nontraders or individuals not engaged in buying and selling. Winding-up in France and England necessarily precludes any discussion of reorganization, so familiar to United States bankruptcy lawyers. Furthermore, Livadas' failure to discuss the strategic aspects of winding-up in either country renders his work useful for practitioners only as a reference text.

The book, organized topically, includes chapters on jurisdiction; the grounds for winding-up; the procedure before and after a winding-up order; and the effects of winding-up on a company's assets, secured and unsecured creditors, employees, preferential claims, liabilities of officers and directors, and priorities for distribution of assets. The author divides each chapter into the following four sections: the law in England; the law in France; a comparison of the two countries; and the position of the Draft Convention on Bankruptcy, Schemes of Arrangement and Other Analogous Procedures of the European Economic Community. Livadas apologizes endlessly for the inevitable minor deviations from this basic organizational scheme. The rigor of the scheme, which he establishes from the first pages forward, is totally justified because it keeps this compendium from flying apart in every direction. The careful compartmentalization, however, requires the reader to refer from subsection to subsection for definitions or principles explained elsewhere. A detailed table of contents assists in this cross-referencing and compensates for the absence of an index.

Approaching this text in the reverse of the author's format may be the best way to digest the material in this book. The comparative subtopics within each chapter contain by far the most readable, useful, and understandable information. It is within these comparative parts that Livadas demonstrates moments of narrative insight that stand out from the austere technology of the rest of the book. The comparative synopses provide a meaningful and manageable taste of this work and should be read first. The separate explanations of English and French law preceding each comparison contain ample detail and exposition.

The end of each chapter contains an interesting, albeit repetitive, description of the Draft Convention of the European Economic Community's treatment of that chapter's subject. These commentaries become repetitive because the EEC Draft adds little substance to the topics that Livadas addresses.

The most troublesome aspect of the book for the English reader

is the author's almost reverential adherence to the language of the country on which he focuses at the time. Even if one accepts the author's belief that "translation cannot be exact," his failure to translate the significant legal principles from their original French does little to enhance communication. To understand this book, a reader who is not fluent in French must endure the constant frustration of cross-referencing the glossary and table of contents at least twice in every textual paragraph. Only the most dedicated readers and book reviewers will undertake this task.

This text does contain a profoundly detailed comparison of the law and procedure for the liquidation of insolvent companies in France and England. Throughout the discussion of the structure of the respective court systems and through each step in the rough chronological comparison of the English winding-up and the French *liquidation des biens* or *reglement judiciaire*, the book's depth of detail is staggering, if not suffocating. For example, Livadas not only explains that a French company must file a declaration that it has ceased paying its debts within fifteen days of the day of the cessation, but also expounds that, in counting days, the company should exclude the first day and proceed to the next working day if the fifteenth day falls on a weekend. Further, unconvinced that this explanation will suffice, the author explains the methods of counting when the fifteenth day is a non-working day "because of a strike." This encyclopedic treatment of the law can easily lead a casual reader to lose sight of the forest for the trees.

The chapter that lays out the statutory grounds for compulsory winding-up in England is the most straightforward and best documented. The author makes a valiant but unsuccessful attempt to explain the elusive French concept of *cessation des paiements*—"a spectrum of other facts indicating a desperate financial situation." After briefly contrasting voluntary and compulsory proceedings in England, Livadas undertakes a step-by-step description of the French practice for initiating *liquidation des biens* in an almost "how to" fashion—even including names and addresses that must appear on the petition.

Livadas also explores the availability of a "stay" of actions against a company in English winding-up, the effect of a petition on a company's contracts and leases, and the right to set-off of mutual debts. He carefully explains the French notion of *masse*, or the body of creditors that is represented by the *syndic*, and contrasts the English stay with the more limited stay available

under French law. The chapter dealing with the effects of a winding-up or a *liquidation des biens* order appropriately catalogues and compares the acts and transfers of companies antecedent to winding-up that are void or voidable.

Livadas warns that the "French law on secured creditors is somewhat complicated," but the warning pales beside the web of explanations he spins to capture the complexities. The chapter on the treatment of secured creditors in a *liquidation des biens* proceeding is especially difficult to understand without a familiarity of French and exposure to the continental concepts of *nantissement* and *privileges*. This text fails to provide the material necessary to reach this understanding.

Livadas provides an especially adept analysis and comparison of the treatment of employees of insolvent companies in the two countries. The author convincingly demonstrates that a French *liquidation des biens* protects employee wages, benefits, and claims more extensively than an English winding-up proceeding. The French requirement of compulsory insurance to protect the wages of employees and the special *privilege* afforded employees against the immovable assets of a French company are without analogy in English winding-up law. Livadas punctuates the chapters on the liabilities of officers and directors, which are generally more strict in France than in England, and the priorities of distribution of assets with incomprehensible mathematical examples, complete to two decimal places.

The author's "conclusion," contained in a scant one and one-half pages at the end of this 400-page text, cry out for expansion. Several of his conclusory points have been previously mentioned only in passing, and at obscure junctures of the text. The reader senses that this author may have had many interesting observations to share but failed to present them. Livadas obviously has developed an intimate and profound understanding of his subject, but has cluttered the broad framework of this work with so much minutiae that the finished product is almost impenetrable.