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Margit Livingston

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Foreword: Emerging Trends in Commercial Law: Surviving Tomorrow's Challenges

*Margit Livingston**

MS. LIVINGSTON: Thank you, Vicky. And thank you, Paul, for those very kind words. The DePaul University College of Law (“DePaul”) has benefited enormously from our partnership with the Commercial Law League of America (“CLLA” or “the League”) in producing a journal and also in putting on a symposium. And I could not have imagined two years ago that it would be such a fruitful association, but it has been, and we have been very pleased.

The topic today is “Emerging Trends in Commercial Law: Surviving Tomorrow’s Challenges.” We hope that you will find today’s discussion of these trends interesting, useful and provocative. Professor Karl Llewellyn, as you all know, was the Chief Reporter for the Uniform Commercial Code (“UCC” or “the Code”) project several decades ago. As one of the foremost advocates of Legal Realism, Professor Llewellyn endeavored to engineer the Code to reflect the actual practices of reasonable business people. Commercial law, he believed, should not represent an artificial construct springing from the imagination of some legal academic with a utopian view of what commercial law should be. He thought that commercial law should be grounded in real-life business mores and customs. One of Llewellyn’s greatest concerns was that the Code would become woefully outmoded in a relatively short period of time as new practices arose and old ones vanished. He believed that mercantile law, more than other legal areas, ran the risk of being outstripped by societal and economic changes. He once said, “nowhere does the eternal legal problem lie closer, of making clumsy words and concepts do more delicate and modern work.” One might hope that Llewellyn would be pleased with the efforts of the National Conference of Commissioners on Uniform State Laws and the American Law Institute to keep the UCC and other uniform laws current with the changing landscape of commercial practices.

* This is an edited version of the transcript from Professor Margit Livingston’s opening remarks at the DEPAUL BUSINESS AND COMMERCIAL LAW JOURNAL SYMPOSIUM, *Emerging Trends in Commercial Law: Surviving Tomorrow’s Challenges*, held on April 15, 2004 in Chicago, Illinois.

Article 9 on Secured Transactions was significantly revised a few years ago. The new law seeks to accommodate contemporary issues raised by the use of electronic media for filing, security agreements, chattel paper, and the like. It also attempts to resolve problematic areas that have been troubling the courts for years, such as the cumbersome choice-of-law rules and the proper penalty for creditor misbehavior in the foreclosure process. In addition, new versions of Articles 1, 2, 2A and 7 have also been recently approved. These new laws also try to modernize the law to reflect developments in electronic commerce. Finally, the Uniform Computer Information Transactions Act (“UCITA”) represented a strong effort to bring the law surrounding the licensing of software into the twenty-first century.

Our speakers today will be addressing these topics along with other cutting-edge issues of importance to commercial practitioners. The symposium proceedings will be published this summer in the *DePaul Business & Commercial Law Journal* (“*Journal*”). The *Journal* is in its second year as the successor to the former *DePaul Business Law Journal* and the former *Commercial Law Journal*, published by the CLLA. Two years ago DePaul entered into a cooperative arrangement with the CLLA for the publication of the new *DePaul Business & Commercial Law Journal*. Max Moses and Elliott Levin of the CLLA 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 landscape of corporate, antitrust, commercial, and bankruptcy law. The new journal is published four times a year and is distributed to over 4500 subscribers in the United States and around the world. DePaul is fortunate to be co-hosting with the CLLA the Second Annual Symposium of the *DePaul Business & Commercial Law Journal*. 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. We are extremely pleased to have with us today an extraordinarily impressive group of speakers. They represent some of the most prominent and experienced commercial law practitioners and scholars. We hope that you will be informed and engaged by their insights into the rapidly changing world of commercial law.

Before we get to the first speakers, I would like to thank some individuals who contributed to the success of the *Journal* this year and to the planning and to the creation of this symposium. None of this could have happened without the unfailing support of Dean Glen

Weissenberger of DePaul. In addition, the CLLA has provided invaluable financial and editorial assistance to us. Most especially, I want to thank the student Editorial Board of 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*. This year's editors include Suzana Gadzo, Robert Edesess, Timothy Halbach, Emily Novak, Kimberly Sherman, and Matthew Poplawski. I would like to especially acknowledge the outgoing Editor-in-Chief, Paige Barr, who has done an extraordinary job this year in running the *Journal*, and, of course, the Symposium Editor, Vicky Dizik Teremenko, who has worked tirelessly to bring the symposium to fruition.

