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Corporate Governance: The Ins and Outs for Ds and Os*

Margit Livingston**

PROFESSOR LIVINGSTON: Good morning. It's my pleasure to welcome all of you to the Fifth Annual DePaul Business and Commercial Law Journal Symposium. We, at DePaul University College of Law, are exceedingly grateful for our ongoing affiliation with the Commercial Law League of America in publishing the Journal and in sponsoring this Symposium. This year, our Symposium panelists will discuss a wide range of legal issues affecting corporate directors and officers, including compliance with Sarbanes-Oxley,1 fiduciary duties to creditors, and other issues.

The Symposium proceedings will be published in the summer issue of the DePaul Business and Commercial Law Journal, which is in its fifth 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.

Five 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.

And through this affiliation, DePaul has been able to produce a scholarly law review 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 five thousand subscribers in the United States and around the world.

DePaul University College of Law is fortunate to be co-hosting with the Commercial Law League of America the Fifth Annual Symposium.

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* This is an edited version of the transcript from Professor Margit Livingston's opening remarks at the DePaul Business and Commercial Law Journal Symposium, Corporate Governance: The Ins and Outs for Ds and Os, held on April 19, 2007.

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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.

Almost five years ago, the Sarbanes-Oxley Act was enacted on July 30, 2002. A response to the corporate scandals involving Enron and WorldCom, Sarbanes-Oxley was overwhelmingly passed by both Houses of Congress as a means to increase corporate accountability and to reduce fraud.

The bill's proponents hoped that tighter regulation would shore up investor confidence in the U.S. securities markets. Policymakers were concerned that charges of corporate wrongdoing at the highest level would deter investment in American companies. As an adjunct to Sarbanes-Oxley, both the Securities and Exchange Commission and the Department of Justice stepped up their enforcement of existing laws designed to protect shareholders and the public.

Our first panelist speakers will explore, among other issues, whether the benefits associated with stricter regulation justify the considerable costs associated with it.

Our second panel will delve into the extent of the fiduciary duties owed to creditors by officers and directors as a company drifts into what is called a zone of insolvency. The case law in this issue, which has come to the fore in the last few years, remains deeply divided. Courts disagree on whether the concept of deepening insolvency represents an independent tort or whether it is just another name for traditional cause of action or perhaps even a measure of damages.

And our final panel this afternoon will address a variety of additional legal issues facing officers and directors in the increasingly complex corporate world.

We're tremendously pleased and honored to have with us today an outstanding group of speakers. They represent some of the country's most prominent and experienced corporate legal practitioners and scholars; and I know that their discussion of the latest issues regarding corporate governance, liability, and regulation will be stimulating 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

2. id.
3. id.
4. id.
and Commercial Law Journal this year and to the planning and the creation of this Symposium.

None of this could have happened without the unstinting 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.

We are also grateful to our other sponsors: Development Specialists, Inc.; Jaffe, Raitt, Heuer, and Weiss, P.C.; LexisNexis; Westlaw; and Cooper, White, and Cooper, L.L.P.

And, finally, I want to thank the student editorial board for the Journal. The student editors, as well as their staff members, are directly responsible for the Journal’s continued success, and I am most appreciative of their efforts. If you would please stand or wave as I call your name. This year’s editors include Alexis Bettis, Heath Brewer, Igor Dubinsky, Ian Flanagan, Steven Frankel, and Joshua Greene.

I would like to acknowledge in particular the outgoing Editor-in-Chief, Jeffrey Apel, who has continued the Journal’s tradition of putting out a high quality product in a timely fashion; and, of course, the Symposium editor, Brandon Hubbard, who has devoted himself, heart and soul, to bringing this year’s Symposium to fruition. Thank you very much, Brandon.