A generation ago, alone and in collaboration with Douglas Baird, Tom Jackson developed the first complete normative theory of bankruptcy, the “creditors’ bargain model,” which argues that bankruptcy’s principal role is to provide a collective forum for resolving financial distress, and that bankruptcy should not otherwise alter the parties’ nonbankruptcy entitlements. The creditors’ bargain theory assumed that troubled companies would invariably use the traditional Chapter 11 reorganization process, and that the absolute priority rule (which requires the higher priority creditors be paid before lower priority creditor receive any recovery) would and should govern distributions to creditors.

All of these assumptions are now up for grabs. Chapter 11 bankruptcy is a different place. There are new parties in interest. Existing members of the cast of characters — issuers and secured and unsecured creditors—face new problems and challenges. Standing fact patterns and assumptions no longer obtain. Finally, and critically, the creditors’ bargain is itself changing. Debt contracts have made adjustments and whole new categories of agreement have appeared. Out-of-court workouts have returned to salience for the first time in three-quarters of a century, reviving old policy questions and raising new ones.

In this symposium, which will be memorialized in an issue of the University of Pennsylvania Law Review and in the University of Pennsylvania Law Review Online, the nation’s leading bankruptcy and financial distress experts will take stock of the new landscape. In keeping with the Law Review’s long tradition of publishing much of the classic literature, “Bankruptcy’s New Frontiers” will, we hope, chart the course for the next generation of scholarly inquiry.
Bankruptcy’s New Frontiers

FRI  DAY, OCTOBER 20
1:00 - 2:00 PM
Registration (Fitts Auditorium)

2:15 PM
Welcome (Fitts Auditorium)

2:30 PM
Introductory Remarks (Fitts Auditorium)
Judge Majorie Rendell (United States Court of Appeals for the Third Circuit)

3:00 - 4:45 PM
Panel 1 – Composition Out of Court and Valuation in Court (Fitts Auditorium)
MODERATOR: Judge Kevin Carey
(United States Bankruptcy Court, District of Delaware)

PAPER PRESENTERS:
William Bratton (Penn) & Adam Levin (Georgetown), The New Bond Workouts
Kenneth Ayotte (Berkley) & Edward Morrison (Columbia), Valuation Disputes in Chapter 11

COMMENTS: Mark Tise (Harvard), Richard Schifter (TPS Capital), Alan Schwartz (Yale), Jason Feinich (Houlihan Lokey)

6:00 - 7:00 PM
Reception (The Goat)

7:00 - 9:00 PM
Dinner and Keynote* (Levy Conference Center)
*7:30 - 8:30 PM
Keynote: Thomas Jackson
(Rochester)

SATURDAY, OCTOBER 21
8:00 - 9:00 AM
Registration and Breakfast (Fitts Auditorium)

9:00 - 10:30 AM
Panel 2 – Contracting In and Around Bankruptcy (Fitts Auditorium)
MODERATOR: Stephen Hessler (Kirkland & Ellis LLP)

PANELISTS:
Peter Fauliner (P. Schoenfeld Asset Management), Brian Ford (Kirkland & Ellis LLP), Taro Torens (Capital Research and Management Co.), Marc Pachuta (Centerview Partners)

10:45 - 11:45 AM
Panel 3 – Bankruptcy’s Distribution Rules (Fitts Auditorium)
MODERATOR: Judge Shelia Cherry (United States Bankruptcy Court, Southern District of New York)

PAPER PRESENTERS:
Douglas Baird, Anthony Casey, & Randal Picker (Chicago), The Bankruptcy Paradox

COMMENTARIES:
Vincent Buccella (Wheaton), Jane Vis (Birnstein & Co.)

11:45 AM - 12:15 PM
Remarks on Bankruptcy Interpretation (Fitts Auditorium)
Troy McKenzie (NYU)

12:30 - 1:15 PM
Lunch (Levy Conference Center)

1:30 - 3:15 PM
Panel 4: A New Creditors’ Bargain? (Fitts Auditorium)
MODERATOR: Chief Judge Cecelia Morris (United States Bankruptcy Court, Southern District of New York)

PAPER PRESENTERS:
David Sisak (Penn) & George Trantis (Stanford), Synthetic Collective Action Problems and Bankruptcy’s New Contract Paradigm

COMMENTARIES:
Judge Michelle Herman (United States Bankruptcy Court, District of Maryland), Patrick Bilson (Columbia Business School), Ted Janger (Brooklyn Law School), Richard Levin (Jenner & Block)

3:30 - 5:15 PM
Panel 5: Accountability and Control in Bankruptcy (Fitts Auditorium)
MODERATOR: Judge Christopher Sontchi (United States Bankruptcy Court, District of Delaware)

PAPER PRESENTERS:
Melissa Jacobs (UNC), Corporate Bankruptcy Hybridity

COMMENTARIES:
Frederick Tung (BU), Martin Bienenstock (Proskauer Rose LLP), Charles Mooney (Penn), Marc Halmovitz (Coda Advisory Group LLC)