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.
This Symposium has been made possible in part by the generosity of the Institute for Law and Economics and the Institute for Restructuring Studies. Law Review extends its greatest thanks for their co-sponsorship of this year’s Symposium.

FRIDAY, OCTOBER 20

1:00 - 2:00 PM
Registration (Fitzs Auditorium)

2:15 PM
Welcome (Fitzs Auditorium)

2:30 PM
Introductory Remarks (Fitzs 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 (Fitzs Auditorium)
MODERATOR: Judge Kevin Carey (United States Bankruptcy Court, District of Delaware)

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

COMMENTATORS: Mark Tise (Harvard), Richard Schifter (TPG Capital)
Alan Schwartz (Yale), Jason Feinman (Houlihan Lokey)

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

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

SATURDAY, OCTOBER 21

8:00 - 9:00 AM
Registration and Breakfast (Fitzs Auditorium)

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

PANELISTS: Peter Faulkner (Georgetown Asset Management)
Brian Ford (Kirkland & Ellis LLP)
Tara Torres (Capital Research and Management Co.)
Marc Purna (Canterview Partners)

10:45 - 11:45 AM
Panel 3 – Bankruptcy’s Distribution Rules (Fitzs Auditorium)
MODERATOR: Judge Sheryl A. Partin (United States Bankruptcy Court, Southern District of New York)

PAPER PRESENTERS: Douglas Bard, Anthony Casey, & Randal Picker (Chicago), The Bankruptcy Partition

COMMENTATORS: Vincent Bucciola (Northfield Bank)
Jane Vis (Vitale & Co.)

11:45 AM - 12:15 PM
Remarks on Bankruptcy Interpretation (Fitzs Auditorium)
Troy McKenzie (NYU)
12:30 - 1:15 PM
Lunch (Levy Conference Center)

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

PAPER PRESENTERS: David Skeel (Penn) & George Trantis (Stanford), Synthetic Collective Action Problems and Bankruptcy’s New Contract Paradigm
Bryan Adler (NYU), The Creditors’ Bargain Revisited

COMMENTATORS: Judge Michelle Herter (United States Bankruptcy Court, District of Maryland)
Patrick Bottin (Columbia Business School) for Ted Janger (Brook Law School)
Richard Levin (Jenner & Block)

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

PAPER PRESENTERS: Melissa Jacoby (UNCG), Corporate Bankruptcy Hybrids
Robert Rasmussen (UCI), Tying Control Rights Seriously

COMMENTATORS: Frederick Tung (BU)
Martin Bienenstein (Proskauer Rose LLP)
Charles Mooney (Penn)
Marc Helmrath (Coda Advisory Group LLC)