

# **The Commercial Law League of America**

## **Position Paper Submitted to the United States Congress by the Commercial Law League of America and its Bankruptcy Section**

### **Additional Bankruptcy Judges**

**November 21, 2003**

The Commercial Law League of America (“CLLA”), founded in 1895, is the nation’s oldest organization of attorneys and other experts in credit and finance actively engaged in the field of commercial law, bankruptcy and reorganization. Its membership exceeds 3,900 individuals. The CLLA has long been associated with the representation of creditor interests, while at the same time seeking fair, equitable and efficient administration of bankruptcy cases for all parties in interest.

The Bankruptcy Section of the CLLA is made up of approximately 1200 bankruptcy lawyers and bankruptcy judges from virtually every state in the United States. Its members include practitioners with both small and large practices, who represent divergent interests in bankruptcy cases. The CLLA has testified on numerous occasions before Congress as experts in the bankruptcy and reorganization fields.

The CLLA supports efforts by Congress to increase the number of bankruptcy judgeships nationwide, specifically the proposals contained in S. 878, H.R. 1428 and S. 1061.

S.878 provides for the appointment of: (1) permanent additional bankruptcy judges in New York (two), Delaware (four), New Jersey (one), Pennsylvania (one), Maryland (three), North Carolina (one), South Carolina (one), Virginia (one), Michigan (two), Tennessee (two), Arkansas (one), Nevada (two), Utah (one), Florida (four), and Georgia (three); and (2) temporary bankruptcy judges in Puerto Rico (one), New York (one), Pennsylvania (one), Maryland (one), Mississippi (two), and Georgia (one). The Bill also sets forth provisions regarding filling vacancies in such offices and extending existing temporary bankruptcy judgeships in Alabama and Tennessee.

The Bill also converts: (1) a bankruptcy judgeship currently shared by the Southern and Middle Districts of Georgia to a bankruptcy judgeship for the Middle District of Georgia; and (2) temporary bankruptcy judgeships authorized for Delaware and Puerto Rico to permanent bankruptcy judgeships.

Additional judgeships are critical to ensure that the bankruptcy courts have sufficient judicial resources to effectively and efficiently adjudicate the rights and responsibilities of parties in bankruptcy cases and proceedings. New bankruptcy judgeships have not been authorized by Congress since 1992. The Bankruptcy Judgeship Act of 1992 created 35 new bankruptcy judgeships, including ten temporary bankruptcy judgeships, increasing the number of authorized bankruptcy judgeships to 326 nationally. Since enactment of that law, the temporary bankruptcy judgeships in the District of Colorado and the District of South Carolina have expired under the terms of the authorizing statute. The bankruptcy system has operated since 2000 with only 324 judgeship positions - fewer than authorized by Congress 11 years ago. Since that time, case filings have increased nationally overall by over 66 percent. To put this into real numbers, filings have increased from approximately 950,000 for calendar year 1992 to 1,667,520 for the 12 months ending September 30, 2003. In response to this continued increase, the Judicial Conference - as part of its process of reviewing bankruptcy judgeship needs every two years - has made recommendations to Congress for additional bankruptcy judgeships in 1993, 1995, 1997, 1999, 2001 and this year.

To analyze the current condition of bankruptcy judges another way, as of December 31, 2002, the average weighted filings per bankruptcy judgeship nationally was 1,744, substantially above the threshold level of 1,500 weighted filings that the Judicial Conference uses to consider additional judgeships for a district. However, many districts were substantially higher. A review of the weighted filings per judge data for the 12 months ending March 31, 2003, shows that in 20 of the 22 districts that qualify for judgeships, the weighted filings are over 2000 per judgeship. For example, in the District of Utah, the weighted caseload per judge is 2,115. In the District of Delaware, the weighted caseload per judge is 12,566, per the statement of Honorable Paul Mannes, Judge U.S. Bankruptcy Court for the District of Maryland on behalf of the National Conference of Bankruptcy Judges to the House Committee of the Judiciary Subcommittee on Commercial and Administrative Law (May 22, 2003).

In addition to record case filings over the past ten years, bankruptcy courts now face cases that are more complex and time-consuming than anything previously handled. Cases such as Enron, Global Crossing, and K-Mart consume a tremendous amount of a bankruptcy court's time. Complex airline industry cases, cases involving debtor's mass tort liabilities, and cases with hundreds of subsidiary filings or adversary proceedings are overwhelming certain judges and courts.

The shortfall in judges means delay to all the constituent parties in a bankruptcy case. For example, creditors cannot gain timely adjudication of motions and adversary proceedings. Confirmation of Chapter 11 and Chapter 13 Debtors' plans are delayed and, hence, distributions to creditors cannot occur until the hearings can be concluded.

Some have argued that only reforms of certain rules need to be effected. We believe that this is commonly misstated justification. We are firmly convinced, due to our members involvement in the bankruptcy forum and their comments to us, that it is not the rules that are in need of repair but that there is a desperate need to enable those who apply the rules. Judges of districts with extra-heavy caseloads do not have the time to sift through files and find those inconsistencies that are the tip of the iceberg of a fraudulent filing. Such courts also do not have the time to prepare and try motions pursuant to § 707(b) of the Bankruptcy Code to dismiss abusive filings, or the time to draw out the position of the pro se debtor.

In conclusion, the continued efficient operation of the United States bankruptcy system is dependant upon the passage of legislation authorizing additional bankruptcy judges.

Respectfully submitted,

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# **The Commercial Law League of America**

## **Position Paper Submitted to the United States Congress by the Commercial Law League of America and its Bankruptcy Section**

### **Opposition of HR 975 as rider to Omnibus Bill**

**November 24, 2003**

This letter, on behalf of the Commercial Law League of America (“CLLA”), is in opposition to any attempt in Congress to attach major bankruptcy reform legislation (H.R. 975, or any similar proposal) to an Omnibus Appropriations Bill or any other legislative vehicle in the closing hours of the First Session of the 108<sup>th</sup> Congress. We take this position primarily because of the inability of the Senate to consider the matter according to proper procedures and protocol.

The CLLA, founded in 1895, is the nation’s oldest organization of attorneys and other experts in credit and finance actively engaged in the field of commercial law, bankruptcy and reorganization. Its membership exceeds 3,900 individuals. The CLLA has long been associated with the representation of creditor interests, while at the same time seeking fair, equitable and efficient administration of bankruptcy cases for all parties in interest.

The Bankruptcy Section of the CLLA is made up of approximately 900 bankruptcy lawyers and bankruptcy judges from virtually every state in the United States. Its members include practitioners with both small and large practices, who represent divergent interests in bankruptcy cases. The CLLA has testified on numerous occasions before Congress as experts in the bankruptcy and reorganization fields.

The CLLA opposes attaching the current bankruptcy reform bill, H.R. 975, to any moving legislation with the purpose of passing it out of Congress prior to adjourning the First Session of the 108<sup>th</sup> Congress. The Bankruptcy Code is an intricate set of laws, arguably the most-broad reaching in the country. The numerous substantive changes contemplated by H.R. 975 should be properly considered and debated. The debate surrounding it in previous Congresses in fact signals its complex nature. Add to this the fact that to date no credible bankruptcy organization (representing the interests of those parties intimately involved in the process: judges, attorneys, trustees) has endorsed the bill, thereby suggesting the need for further consideration. The current bill has not yet had the opportunity to be heard in an open forum in the United States Senate. The bill, since referral

from the House in May, has not seen Committee nor Subcommittee action to date. Furthermore, the changing environment in the United States, e.g., the economy, the war overseas (with U.S. military personnel out of the country for extended time not being able to address financial matters), as well as the emergence of business bankruptcies of increased size and sophistication, warrant the full consideration of the Senate and its Committee/hearing process.

The CLLA appreciates this opportunity to set forth and discuss these significant concerns regarding problems in modern-day business bankruptcy practice. To this end we are attaching a copy of our “Critical Issues in Bankruptcy” position paper. The CLLA is committed to working with members of the United States House of Representatives and the United States Senate to ensure the Bankruptcy Code remains fair and equitable for all parties involved.

Respectfully submitted,

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