Dan Glosband Remarks on III Outstanding Contributions Award

September 6, 2022

Congratulations to Thomas Felsberg on receiving the Founder's Award. I have known, liked and admired Thomas for more than 20 years and was chair of the American College of Bankruptcy's International Fellows Nominating committee in 2003 when Thomas became a Fellow. When I saw Thomas last year, he was talking about retiring. He has made great progress by cutting back to six days a week.

I am honored to have been chosen to receive the Outstanding Contributions award. I very much appreciate the award and thank my friend Jay for his remarks – even though they included a large dose of hyperbole. I am fortunate to know each of the prior recipients of this award and am humbled to join them. They clearly deserve to be in the pantheon and I am a bit insecure about being elevated to their level.

I could not have predicted when I started in practice that I would be an insolvency lawyer – I was hired to do securities work but a recession snuffed out that practice area and created a need for bankruptcy lawyers. I also could not have predicted that I would still be involved in international insolvency matters. When I began working in 1969:

- there was no Bankruptcy Code; instead there was the Bankruptcy Act of 1898 and the 1938 Chandler Act amendments that added the reorganization chapters;

- there were no rules of bankruptcy procedure until Congress authorized the Supreme Court to promulgate rules in 1964 and they went into effect in 1973;

- there were referees in bankruptcy not bankruptcy judges until the 1973 rules deigned to denominate them bankruptcy judges – some referees were part time and I remember a referee in New Hampshire pausing a hearing so that he could go across the street to meet with a divorce client;

- there was no FedEx, there were no personal computers, Xerox machines were replacing wet copiers and there was a lot of white out and carbon paper –the ribbon copy of a pleading went to the court; the barely legible final carbon copy went to your adversary.

- few insolvency cases were truly international and most did not even have a single non-U.S. creditor.

In 1983, I had my first international case. The Canadian Atlantic fishing industry faced excess plant capacity, declining fish stocks, a recession and bankruptcy. The

Canadian government was trying to consolidate and restructure the principal companies - in part by forcing exchanges of debt for equity. To gain negotiating leverage over a government-appointed receiver who was implementing the restructuring, one of the fishery owners filed a chapter 11 case in Massachusetts where it had a processing plant and I was engaged to represent the receiver. I quickly learned that no one knew much about cross-border insolvency and that it was an interesting area. I pursued that interest in part by becoming active in the International Bar Association and its then Committee J on insolvency. There I met several of you and I worked with a succession of Chairs, including Richard Gitlin, John Barrett, Bruce Leonard and Richard Broude. I also handled several cases under §304 of the Bankruptcy Code; §304 was the predecessor to chapter 15.

When Bruce Leonard's term as the Chair of Committee J expired, he began casting about for a new organization that he could lead and he asked me (and probably several of you) "What do you think about starting an international equivalent of the American College of Bankruptcy?" The rest, as they say, is history.

Along the way, in 1994, I was invited to the INSOL/UNCITRAL Colloquium that led to consideration and adoption of the Model Law on Cross-Border Insolvency. In 1995, UNCITRAL decided to develop "a legal instrument relating to cross-border insolvency" and delegated the project to an insolvency working group. The

working group chose a model law as the form of legal instrument. I became the IBA's lead delegate to that working group and spent much of the next two years working with a "small drafting group" that included Jay Westbrook, who was the head of the U.S. delegation. We spent hours during coffee and lunch breaks and after and between Working Group sessions trying to capture and mediate the often meandering deliberations of the Working Group. The process worked and in May 1997, UNCITRAL and then the U.N. General Assembly approved the Model Law.

The UNCITRAL timing was auspicious since the National Bankruptcy Review Commission of 1994 was completing its work and invited us to make a presentation on the Model Law. Liking what it heard, the Commission suggested that we adapt the Model Law for addition to the Bankruptcy Code. The U.S. State Department organized a group that included late Judge Burton Lifland, representatives of the Justice and Commerce Departments, the Office of U.S. Trustee and the organization of states' attorneys general. Jay and I worked with that group and became the draftsmen of chapter 15. The draft legislation was promptly completed, but it was frozen while Congress haggled with the consumer credit industry over consumer bankruptcy issues that culminated in the deceptively named Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Once the last predation on consumer debtors had been drafted and BAPCPA was

presented to Congress, chapter 15 became the caboose on the legislative train and was adopted in 2005. And again, as they say, the rest is history.

I am grateful to still be dabbling in this area, am grateful for the many friendships that I developed and am especially grateful that III chose me for this recognition.

Thank you all again.