

## THE THEORY OF A FEDERAL LAW OF CORPORATE REORGANIZATION

Richard Squire

The federal bankruptcy system is superimposed on a set of state-law remedies for creditors with unpaid debts. These remedies' main virtue is speed: once a debtor defaults, creditors who are agile can obtain quick relief. But the state-law system has drawbacks: its procedures are decentralized and often redundant, and it disrupts production at firms that despite their financial distress can still make valuable goods and services. The federal bankruptcy system reflects an implicit congressional judgment that the drawbacks of the state-law system outweigh its advantages. But the state-law system is not superseded altogether, as several important state-law creditor remedies are honored by, and indeed incorporated into, the federal regime.

### Creditors and Debtors in a World Without Bankruptcy

To use state law to convert an unpaid debt into a cash recovery, a creditor must follow a series of steps. As an illustration, imagine a troubled national bookstore chain, Frontier Corporation. Frontier stocks the shelves of its retail stores with books it buys from various publishers. It buys books on credit, promising to pay publishers no later than 60 days after books have been delivered to its stores. The publishers are thus *trade creditors*: suppliers who deliver, on credit, goods or services that the debtor uses to make the products it sells to customers. Trade creditors are contrasted with *financial creditors*, who lend money. Imagine that Frontier owes one trade creditor, Vail Co., \$150,000 for book deliveries and that the debt is past due. How can Vail collect?

What would usually happen next is that Vail's accounts-receivable clerk would call Frontier's accounting office and ask if a mistake has been made. After all, \$150,000 is not much money to a big corporation like Frontier, and the missed payment might be an oversight. In that case, the phone call will resolve the problem. Many debt disputes end in such an amicable fashion.

Sometimes, however, a collection call is not enough to end the matter. Frontier might dispute Vail's claim by alleging that the shipped books were defective. Or Frontier might be short on cash, perhaps because it is losing sales to new firms that sell books on line. Vail will then have to weigh its legal options.

To obtain relief under state law, Vail's first step would be to bring a lawsuit for nonpayment of debt. Frontier could raise the standard defenses to a breach of contract claim, and the matter will be decided by a judge or jury. If Vail prevails, it becomes a *judgment creditor* and Frontier a *judgment debtor*. What happens next will depend on the reason Frontier failed to pay in the first place. If it thought that Vail's claim was invalid, that question has now been answered by a court, and

# Corporate Reorganization The Federal

**AW Rasmussen**



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