

Book Notes: Courting Failure: How Competition for Big Cases is Corrupting Bankruptcy Courts, by Lynn M. Lopucki

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COURTING FAILURE: HOW COMPETITION FOR BIG CASES IS CORRUPTING BANKRUPTCY COURTS. BY LYNN M. LOPUCKI. MICHIGAN: MICHIGAN UNIVERSITY PRESS, 2005. Pp. 322. Index, references, glossary. USD \$27.95 cloth.

BY EVAN VANDYK

In *Courting Failure*, Lynn M. LoPucki demonstrates how the process of competing for large—and lucrative—bankruptcy cases is corrupting America's bankruptcy courts. Although bankruptcy law is federally regulated and the laws applied by courts across the country are the same, LoPucki identifies several differences between jurisdictions attracting the bankruptcy filings of large corporations and those that have not seen these cases. These differences, as noted by LoPucki, shift bankruptcy regulation to the benefit of those in case-placing positions (managers and their lawyers), often to the detriment of creditors.

Bankruptcy professionals often justify this process by pointing to the speed and flexibility offered by the bankruptcy courts in Delaware and New York, arguing that the efficiency of their process is attracting cases. However, LoPucki outlines several more insidious effects of the competition, including: escalation of professional fees approved by the courts; rubber-stamping of pre-packaged restructuring plans; increasing priority of critical vendors over other unsecured creditors; undervalued selling of companies by managers for personal profit; and retention of control by the managers who oversaw the decline of the companies (and often, awards of large retention bonuses to these same failed managers). These changes favour case-placers while harming creditors, who have little opportunity to influence the choice of venue.

LoPucki also demonstrates that the competition is reducing the effectiveness of the bankruptcy process: a study of the post-restructuring fate of bankruptcies filed between 1983 and 1996 demonstrates that New York

and Delaware had re-filing rates three times higher than those in the rest of the country.

In closing, LoPucki argues that recent progress in the international harmonization of bankruptcy rules are in danger of encouraging a similar process of competition on a worldwide scale. This process would be far more damaging than the American competition; rather than involving different (and sometimes creative) application of the same substantive bankruptcy rules, countries would compete by reforming their rules to meet the demands of case-placers.