AMERICAN BANKRUPTCY INSTITUTE

2022 Winter Leadership Conference

1111(b) Wizardry

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CONCURRENT SESSION

2022

Understanding the § 1111(b) Election

Education Materials for the American Bankruptcy Institute's 2022 Winter Leadership Conference

December 9, 2022

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I. Introduction

The Bankruptcy Act governed bankruptcy practice before the more modern Bankruptcy Code became effective in 1979. Under the Act, after the establishment of a creditor's allowed claim and the value of its related security interest, the debtor could eliminate any claim amount above the value of the creditor's security interest in its collateral. In other words, there was no creation of an unsecured claim as now provided for by the Bankruptcy Code - only the secured claim remained.

This allowed, and even encouraged, debtors to file bankruptcy when collateral values were low, reduce their secured debt to the collateral value, satisfy the claim, and then benefit from the potential future appreciation of the collateral at the expense of the lender. Creditors also balked that valuation opinions from a bankruptcy judge were often too low due to error or the challenging nature of valuing some types of security interests. Understandably, secured creditors felt they were being denied the benefit of their bargain to either credit bid or foreclose outside of bankruptcy for the property. Debtors, of course, argued they needed to retain those items of encumbered property necessary for their reorganization.

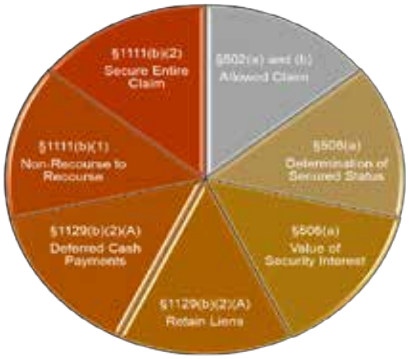
While there were many examples, the *Pinegate* case became the "poster child" for this issue. *See Great Nat'l Life Ins. Co. v. Pine Gate Associates, Ltd.*, 2 B.C.D. 1478 (N.D. Ga. 1976)). In *Pinegate*, the owner of a multi-family apartment complex sought to extinguish the excess claim on its property through bankruptcy at the end of a national recession that had depressed real estate values. The bankruptcy filing occurred as the economic recovery was beginning and values were increasing. This placed the debtor in position to reap a significant windfall because the Act prevented the mortgage lender from any recovery beyond its (depressed) security claim amount.

In order to address these issues, the "new" Bankruptcy Code added sections 506(a) and 1111(b). These two provisions define the amounts of secured and unsecured claims in a bankruptcy proceeding. Section 506(a) redefined the relationship between an undersecured creditor and a debtor in all cases by establishing a repository for the claim amount over the security interest value as an unsecured claim and a method of potential repayment to the secured creditor. Section 1111(b) is triggered only in those cases where a class of a secured creditor(s) elects to use the provision of the Code, which helps preserve the secured creditor's benefit of the bargain.

II. Statutory Review

Understanding the § 1111(b) Election By Franklind Lea, CIRA

To fully understand the legislative effect of the new Bankruptcy Code and section 1111 on the relationship between debtors and secured creditors requires a review of sections 502, 506, and 1129 of the Bankruptcy Code. While many other sections affect the outcome of a bankruptcy case, these sections establish the fundamental process for determining the extent and amounts of a claimant's claim.



The process begins with section 502, which describes the process for allowance of a claim. Section 502(a) and (b) permit a creditor to file its claim, a debtor to object, and if necessary, a court to make a ruling as to the amount of the allowed claim.

> ALLOWANCE OF CLAIMS OR INTERESTS—§ 502
>
> (a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest…objects.
>
> (b) [I]f such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency…as of the date of the filing of the petition…

The process continues with section 506(a), which bifurcates the allowed claim previously determined by section 502 into secured and unsecured portions.

> DETERMINATION OF SECURED STATUS—§ 506(a)(1)
>
> (1) An allowed claim...is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property [*i.e.*, the collateral's value]…and is an unsecured claim to the extent that the value of such creditor's interest…is less than the amount of such allowed claim.

The text of section 506(a) continues by codifying the manner and purpose in which a bankruptcy court should establish value.

> VALUE OF SECURITY INTEREST—§ 506(a)(1)
>
> Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

While not appearing next in the order of the Code's text, section 1111(b) is easier to understand after establishing the Code's requirements in section1129(b)(2)(A)(i). Section 1129(b)(2)(A)(i) dictates that a court may only confirm a plan that provides that secured creditors retain their liens during the plan or are paid in full on the plan's effective date.

> CONFIRMATION OF PLAN—§ 1129(b)(2)(A)(i)
>
> (A) With respect to a class of secured claims, the plan provides:
>
> (i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims…

The text of section 1129(b)(2)(A)(i) continues by codifying a present value requirement if a creditor's claim is not repaid in full on the effective date. Simply stated, if a debtor is paying a creditor over time, the Code requires a debtor to include interest payments to compensate the creditor for the risk of non-payment and the time value of money.

> CONFIRMATION OF PLAN—§1129(b)(2)(A)(i)
>
> (A) With respect to a class of secured claims, the plan provides:

> (i)(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property…

With that background and Code requirements, § 1111(b) allows a secured creditor to make an "1111(b) election". If the debtor retains the property securing the claim, the bifurcation resulting from section 506(a) is reversed, allowing the secured creditor to have its (entire) *allowed* claim treated as fully secured, rather than bifurcated into secured and unsecured portions. It also adds two fundamental requirements—one to the secured creditor and one to the debtor. First, if a secured creditor intends to make the § 1111(b) election, it must do so by the end of the disclosure statement hearing. And second, a debtor's payments to the electing secured creditor must total at least the amount of the secured creditor's total allowed claim. Section 1111(b)(1)(A) also provides that even nonrecourse claims are to be treated as recourse claims, with a couple exceptions.

> CLAIMS AND INTERESTS—§ 1111(b)(1) and (2)
>
> (1)(A) A claim secured by a lien on property of the estate shall be allowed or disallowed under section 502 of this title the same as if the holder of such claim had recourse against the debtor on account of such claim, whether or not such holder has such recourse, unless—
>
> (i) the class of which such claim is a part elects, by at least two-thirds in amount and more than half in number of allowed claims of such class, application of paragraph (2) of this subsection; or
>
> (ii) such holder does not have such recourse and such property is sold under section 363 of this title or is to be sold under the plan.
>
> (B) A class of claims may not elect application of paragraph (2) of this subsection if—
>
> (i) the interest on account of such claims of the holders of such claims in such property is of inconsequential value; or
>
> (ii) the holder of a claim of such class has recourse against the debtor on account of such claim and such property is sold under section 363 of this title or is to be sold under the plan.

(2) If such an election is made, then notwithstanding section 506(a) of this title, such claim is a secured claim to the extent that such claim is allowed.

III. A Summary of What § 1111(b) Does and How it Works

Section 506(a) bifurcates an allowed claim of an undersecured creditor into two parts: a secured claim equal to the value of the creditor's interest in its collateral, and an unsecured claim for the remaining (deficiency) amount if the value of the creditor's security interest is less than the total amount of the allowed claim.

Section 1111(b)(1) helps reestablish the benefit of the bargain the creditor originally negotiated for as part of its credit extension and allows a non-recourse creditor to take part as a recourse creditor. If the creditor makes the election, it brings the bifurcated allowed claim back together into a single secured claim (albeit the secured claim amount exceeds the collateral value) at the allowed claim amount. The election gives an undersecured creditor the ability to benefit from possible post-confirmation appreciation in the value of its collateral and recover more through plan payments and any payoff at the end of the plan than it would if it did not make the election.

Making the election has some interesting implications. For example, if the debtor should wish to satisfy a secured creditor's claim and liens on the effective date, the payoff amount is the total amount of the allowed claim, not just the claim amount secured by the value of the property. Also, when a secured creditor makes the election, it gives up its unsecured deficiency claim for a larger secured claim equivalent to the amount of its allowed claim. Along with foregoing its unsecured claim, the secured creditor loses its corresponding right to vote its unsecured claim and to receive any distribution on account of such unsecured claim.

Even if the creditor makes the § 1111(b) election, it does not give up its right to object to the plan on other grounds, including feasibility, which is often a motivating factor for the creditor to make the election. Here are some other key § 1111(b) "rules":

1. The 1111(b) election allows a secured creditor to elect to have its entire allowed claim treated as a single secured claim;
2. The 1111(b) election must be made by plan class, not by an individual creditor (practically, however, it is common to see a major secured creditor in its own class), *see* 11 U.S.C. § 1111(b)(1)(A)(i);
3. A secured creditor cannot make the election if it has no unsecured claim (it already holds those same rights);
4. The secured creditor (class) must make the election no later than the conclusion of the disclosure statement hearing unless the court establishes otherwise (such as when value of the collateral has not been established), *see* Fed. R. Bankr. Pro. 3014;
5. A secured creditor must make the election in whole, not in part. In other words, a creditor may not retain part of its unsecured claim and have the remainder treated as secured under § 1111(b);
6. The debtor may not make the election for the secured creditor or file a plan requiring the secured creditor to make the election;
7. The election cannot be made if the property securing the claim is being sold as part of a 363 sale or under a plan (because a creditor retains its credit bid rights), *see* 11 U.S.C. § 1111(b)(1)(B)(ii);
8. The election cannot be made if the claim is of "inconsequential value," *see* 11 U.S.C. § 1111(b)(1)(B)(i);
9. If the election is made, it does not apply to a property sold via a § 363 sale or a plan;
10. All liens must remain intact except in the case of collateral liens, which may be permitted to attach to substitute collateral;
11. The debtor must satisfy the obligations under both § 1129(b)(2)(A)(i) and § 1111(b). The obligation under § 1111(b) is an add-on requirement, not a substitution;
12. The payoff of the secured creditor's claim is the higher of the two obligations calculated under § 1129(b)(2)(A)(i) and § 1111(b). In all cases, the payoff obligation on the plan's effective date is higher under § 1111(b) since the allowed secured claim under 1111(b) is higher than the allowed secured claim under section 506(a); and
13. Gerrymandering any electing creditor into its own class is not allowed simply because a creditor has made the § 1111(b) election.

IV. Visualizing § 1111(b) and § 1129(b)(2)(A)(i) at Work

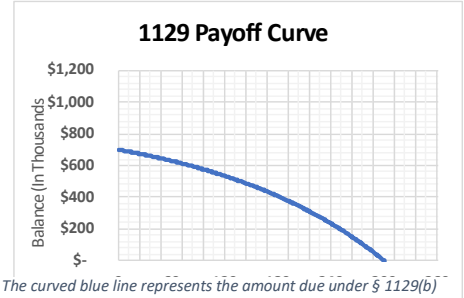
Understanding the § 1111(b) Election By Franklind Lea, CIRA

Making the § 1111(b) election has no effect on the always-existent § 1129(b)(2)(A)(i) requirement of repaying the creditor the present value of its collateral interest. Once a secured creditor makes the election, a second confirmation requirement is added (not substituted for) to the § 1129(b)(2)(A)(i) requirement—the debtor must provide a stream of payments totaling at least the amount of the creditor's allowed claim. Because the election is additive, both tests need to be passed for a plan's confirmation: the "original" present value test and the "new" aggregate payment test. These tests are described in the following text and associated example graphs:[1]

Section 1129(b) Present Value Test: The present value of the payments paid to the secured creditor by the debtor must equal or exceed the value of the creditor's security interest in its collateral.

Section 1129(b) Balance Calculation: The beginning balance is the present value of the creditor's security interest. Section 1129(b)(2)(A)(i) differentiates between principal and interest and applies only the principal portion of the payment to the outstanding balance. The payoff is determined by subtracting the total amount of principal payments from its beginning balance. From one period to the next, the difference in the amount owed is the amount of *principal* paid to the creditor during that period.

Under a traditional amortization schedule, the repayment of the loan's principal under section 1129 (the outstanding principal balance) will resemble the shape of the line in the neighboring graph. The shape of the curve is downward convex because interest is higher in the earlier periods, causing less



The curved blue line represents the amount due under § 1129(b) (starting at the value of the security interest of $700,000)

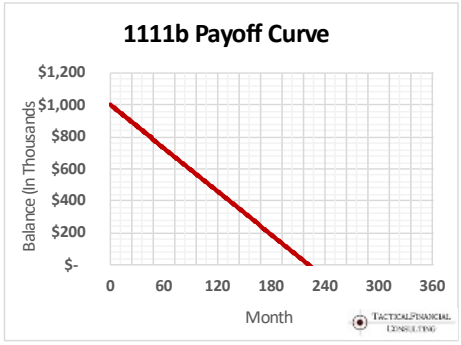
[1] These examples use an allowed claim of $1,000,000, a security interest (and secured claim under 506(a)) of $700,000, repaid over a 300-month amortization with a 6.0% interest rate. The monthly payment is $4,510.

principal to apply to the balance. As periodic payments are made, each payment contains more principal, making the line decline at a faster rate than before (if the line declined at the same rate throughout the payoff period the line would be straight).

Section 1111(b) Aggregate Payment Test: The total aggregate payments paid to the secured creditor by the debtor must equal or exceed the amount of the allowed claim.

Section 1111(b) Balance Calculation: The beginning balance is the allowed claim of the creditor. Section 1111(b) does not differentiate between interest and principal and applies the total payment to the outstanding balance. The payoff is determined by subtracting the total amount of payments from its beginning balance. From one period to the next, the difference in the amount owed is the amount of *payment* to the creditor during that period.

Under a traditional amortization schedule, the repayment of the loan's principal under 1111(b) (the outstanding principal balance) will resemble the shape of the line in the neighboring graph. The line's shape is a straight downward line because the prior period's balance is reduced by the same payment amount in each period.

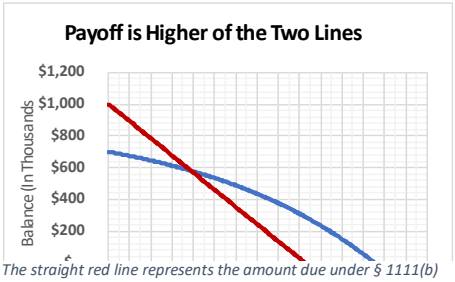


The straight red line represents the amount due under § 1111(b) (starting at the amount of the allowed claim of $1,000,000)

Determining the Amount Owed: How to determine a creditor's payoff amount is often a source of confusion among insolvency practitioners, but it need not be as online software is now available to perform the calculations. (For example, *see* www.1111banalysis.com). Practitioners' angst often arises from their lack of

opportunity to work with the conceptual issues involved with the § 1111(b) election, and for many, their inexperience with mathematical formulas and spreadsheet software.

The mathematical concept of determining the amount owed as required by the Code is straightforward—satisfy both § 1111(b) and § 1129(b)(2)(A)(i). It is accomplished by comparing the obligations due under each section of the Code and choosing the higher amount owed between the two obligations.



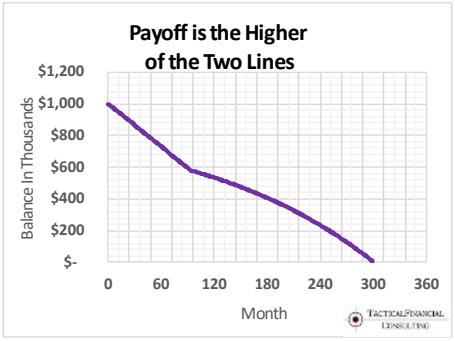
The straight red line represents the amount due under § 1111(b) (starting at the amount of the allowed secured claim under 1111(b) of $1,000,000) and the curved blue line represents the amount due under § 1129(b) (starting at the amount of the allowed secured claim under 506(a) of $700,000)

The Balance Inflexion Point and the 1111(b) Premium: The point where the two lines cross is the "Balance Inflexion Point". This is the point where the § 1111(b) and § 1129(b)(2)(A)(i) balances are the same amount. In this example, this occurs at about the 90th month with a balance of approximately $600,000. Prior to reaching the inflexion point, the payoff amount is the red section 1111(b) line, and after reaching the inflexion point, the payoff amount is the blue section1129 line.

The gap area between the two lines before the balance inflexion point represents the so-called "1111(b) premium". The 1111(b) premium is the additional amount the creditor would collect at a particular point in time if the outstanding amount is paid off. It is determined by subtracting the balance due under § 1129(b)(2)(A)(i) from the balance due under § 1111(b). Once the balances owed reach the balance inflexion point, an 1111(b) premium is no longer due. The premium amount is part of the compromise Congress developed when moving from the Bankruptcy Act to the Bankruptcy Code in 1979 and bridges the secured creditor's desire to retain its original bargain and the debtor's need to keep the property to reorganize its estate.

Understanding the § 1111(b) Election By Franklind Lea, CIRA

The conceptual struggle for many practitioners lacking experience with § 1111(b) is that the payoff at the beginning of the plan term is always the balance, but in most cases, the payoff switches part of the way through the contemplated plan term to the payoff under § 1129(b)(2)(A)(i) (recall that the payoff is always the higher of the two lines). When this occurs, the rate of decline in the amount owed from period to period often decreases sharply, making one accuracy of their results. This can be seen in about the 90th month in the neighboring graph.



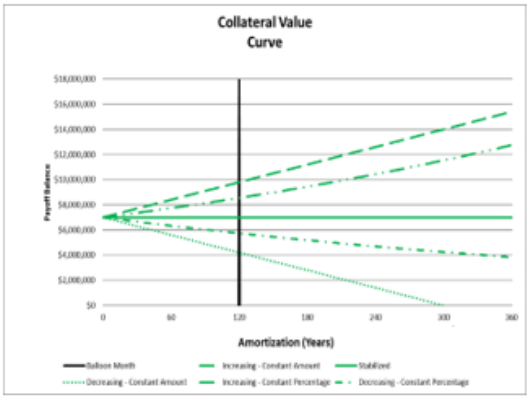
The two payoff curves from the prior two graphs are redrawn showing the the higher of the two balances

Setting Payments: The Code does not require equal principal and interest payments, so a debtor may set the payments in any manner it chooses so long they are consistent with § 1111(b) and § 1129(b)(2)(A)(i), and any other applicable sections of the Code. When defining plan payment provisions, a debtor should keep in mind the Code's fair and equitable provisions.

The Importance of Collateral Value and Term: A primary strategy of many § 1111(b) proponents is to use the election to make their secured claim's payoff at the end of the plan greater than the debtor can reasonably support. Since the payoff amount after the 1111(b) election amortizes downward from the higher allowed claim, which is often much higher than the value of the underlying security interest, a payoff is often a difficult or insurmountable task. This provides leverage for the secured creditor to negotiate an improved position in the bankruptcy. It may also lead to a fight over the collateral's value, which causes significant risk to the debtor's post-petition payments and cash flow, or an outright denial of confirmation by a bankruptcy court.

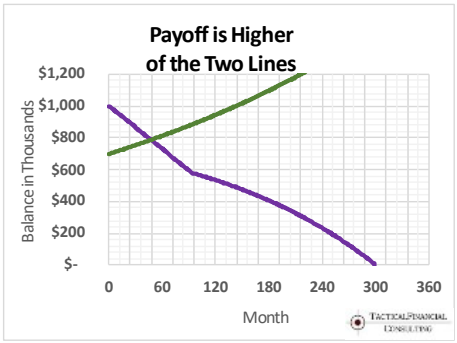
Understanding the § 1111(b) Election By Franklind Lea, CIRA

The debtor and creditor need to understand the expected future value of the collateral securing the creditor's claim. While real estate is often perceived to "always go up" in the long term, that position is intellectually inaccurate as at some point the real estate will wear out and/or need a major renovation to maintain its economic utility and value. Personal property, such as equipment, is often expected to fall consumed through use. However, equipment values often rise either in value as the property ages or is as a response to high demand or after the recovery of a period of low demand.



The green lines represent various possible estimates of a creditor's collateral, and show how a creditor's collateral value can rise, fall, remain stable, or be erratic during the term of a bankruptcy plan.

Collateral value often determines the feasibility of a plan. A comparison between the payoff amount at the end of the plan (represented by the purple line in the neighboring graph) and the collateral value (represented by the green line in the neighboring graph) is necessary to understand the prospect of plan feasibility.



Collateral values can behave in a myriad of ways often associated with the type of collateral and its economic life

In this instance, the two lines intersect at about the 60th month. If the plan term is less than 60 months, the analysis shows the collateral value is insufficient to be sold and repay the secured claim. If the plan term is 60 months or more, it could be argued that the collateral could be sold to repay the outstanding secured claim amount. It is unlikely that a court would approve such a thin margin at this 60-month value estimate unless there was strong and sufficient reasoning that the value would not deviate from the estimate. A debtor would be more likely to convince a court of its ability to repay the debt if the plan term was longer and provided a greater amount of time for the debtor's property to increase in value and for the claim payment to be amortized.

V. Voting and Voting Strategies

Understanding the § 1111(b) Election By Franklind Lea, CIRA

Contrary to popular belief, the making of the election is not a vote against the Plan. Plan voting continues by class as described in § 1126 and a secured creditor retains its right to vote for or against a debtor's plan.[2] However, since a creditor's secured and unsecured claims merge into a single secured claim upon making the election, a creditor retains its right to vote only in its secured claim's class (albeit at the larger amount of its allowed claim).

Example: Analyzing The Effect of the Election on Claim Amounts and Voting

The charts and graphs in the following exhibit show the effect of making the § 1111(b) election on a secured creditors' allowed, secured, and unsecured claim amounts and the voting within the secured and unsecured plan classes. This example uses a $1,000,000 allowed claim with a security interest valued at $700,000. Thus, § 506(a) bifurcates the allowed claim into a $700,000 secured claim and a $300,000 unsecured claim. As shown, when the election occurs, the secured claim rises to $1,000,000 and eliminates the unsecured claim.

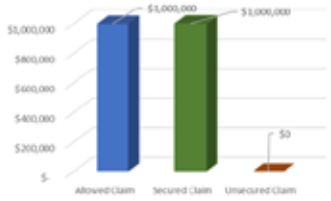
This affects the secured creditor's voting rights. Prior to making the election, the secured creditor holds a vote in both the secured and unsecured classes, though once made it eliminates the unsecured vote, changing the number of claimants and dollar amount of claims within the class. Depending on the number and dollar amount of the creditor makeup of the class, this may dramatically affect the claims voting by having a significant impact on whether a secured creditor can dominate either the secured or unsecured class and determine its outcome. The question, of course, is what is the makeup of the remaining creditors and how do you expect them to vote?

[2] "A class of claims has accepted a plan if such plan has been accepted by creditor…that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors…that have accepted or rejected such plan." 11 U.S.C. § 1126(c).

Voting Recap— Election Made v. No 1111b Election Made

	CLAIM BALANCES	VOTING
1111b Election Not Made		

	Number of Creditors	Amount of Claims
Secured Votes	1	$ 700,000
Unsecured Votes	1	$ 300,000
Total	2	$ 1,000,000

	CLAIM BALANCES	VOTING
1111b Election Made		

	Number of Creditors	Amount of Claims
Secured Votes	1	$ 1,000,000
Unsecured Votes	0	$ 0
Total	1	$ 1,000,000

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Creditor Voting Strategies: The following is a review of some common creditor strategies.

Willing Lender/No Election Made (Secured Vote=Yes, Unsecured Vote=Yes)
The creditor retains the secured and unsecured claims, voting to support the plan in both classes.

- Vote "Yes" and support the plan "as is" and receive payouts as described in the plan in the secured and unsecured classes
- Vote "Yes" and support the plan after negotiating better repayment terms through the threat of § 1111(b) during the plan development period or at the confirmation hearing

Willing Lender/Election Made (Secured Vote=Yes, Unsecured Vote=n/a)
The creditor forgoes its unsecured claim and uses its secured claim votes to support the plan.

- Vote "Yes" and support the plan by becoming the consenting impaired class to share in the potential appreciation of the collateral
- Vote "Yes" and support the plan by becoming the consenting impaired class to try to force the plan's confirmation over the objection of other creditors, and to share in the potential appreciation of the collateral
- Vote "Yes" and support the plan for the benefit of having the debtor manage the asset, repay the claim, and share in the potential appreciation of the collateral

Unwilling Lender/Election Not Made (Secured Vote=No, Unsecured Vote=No)
The creditor retains the secured and unsecured claims, voting to not support either plan class.

- Vote "No" in the secured and unsecured classes and attempt to defeat the plan through voting
- Vote "No" in the secured and unsecured classes and attempt to defeat the plan through a challenge to feasibility (*e.g.*, monthly payments that are too high to pay; too high of a balance at the end of the plan term, or both)

Unwilling Lender/Election Made (Secured Vote=No, Unsecured Vote=n/a)
The creditor forgoes its unsecured claim and uses its secured claim vote to support the plan.

- Vote "No" in the secured class and attempt to defeat the plan through voting
- Vote "No" in the secured class and attempt to defeat the plan through a challenge to feasibility (*e.g.*, too high of a balance at the end of the plan term)

Understanding the § 1111(b) Election By Franklind Lea

Debtor Case Strategies: The following is a review of some common debtor strategies.

- Since the election is by class, creditors might be "gerrymandered" into classes to avoid/ minimize the liability created by the § 1111(b) election
- Negotiate a deal to get the secured creditor to become an accepting class
- Lengthen the plan term to enhance feasibility by increasing total amount paid under aggregate payment test and further reduce balances due under both payment tests
- Lengthen the amortization period of the claim's repayment to enhance feasibility to decrease the monthly payment

VI. Final Considerations for Debtor and Secured Creditors

Other possible considerations for both the debtor and secured creditor are as follows:

- Will the collateral appreciate or depreciate over the life of the plan?
- Will the collateral require additional cash to be maintained, or will collateral throw off cash that will support the business?
- Is it likely that the collateral has been over- or under-valued? Is that collateral worth more to the debtor than to the market? Is the collateral worth more to the creditor than to the market?
- In the case of a strategic lender, is the collateral worth more to the lender than to the market?
- What is likelihood the debtor will default?
- Are there special turnover provisions in the plan if the debtor defaults?
- What is the likelihood the debtor can or will sell or refinance the collateral during the plan?
- What is the likelihood of receiving payments on the unsecured claim? Is it speculative, or guaranteed? Is it capped or a percent of returns?
- Will the secured creditor's rejecting votes make it impossible for the debtor to have an impaired accepting class at confirmation?
- Will the election require the debtor to have a plan term so long as to make the plan so speculative that feasibility is in doubt?
- Will the election require the debtor to have a plan term so long as to make the plan fail the "fair and equitable" standard?

Faculty

Amber M. Carson is a partner-elect in Gray Reed & McGraw LLP's Dallas office, where she guides debtors, creditors, official committees and other parties through every phase of commercial bankruptcy and creditors' rights matters before courts in Texas and across the country. She has helped clients achieve positive outcomes in difficult cases spanning many industries, from oil and gas, health care and retail to restaurants, construction and manufacturing. She also handles bankruptcy-related litigation involving a number of complex issues, including fraudulent transfers, preference actions and contract disputes. Ms. Carson currently serves on ABI's Diversity and Inclusion Working Group and is a member of ABI's Business Reorganization and Young and New Members Committees. In addition, she serves as president of the DFW Association of Young Bankruptcy Lawyers, vice president of Law School Relations for the Bankruptcy Law Section of the State Bar of Texas and membership co-chair for the DFW Network of the International Women's Insolvency and Restructuring Confederation. Following law school, Ms. Carson clerked for Hon. Harlin D. Hale, Chief U.S. Bankruptcy Judge for the Northern District of Texas. In 2022, she was honored as one of ABI's "40 Under 40." She also has been recognized as a Best Lawyer in Dallas Under 40 by *D Magazine*, a Rising Star by *Texas Super Lawyers* and a "One to Watch" in *The Best Lawyers in America*, and she was selected to participate in the National Conference of Bankruptcy Judges' Next Generation Program. Ms. Carson received her undergraduate degree from the University of Massachusetts at Amherst and her J.D. from Southern Methodist University's Dedman School of Law, where she often serves as a guest lecturer on creditor's rights.

Hon. Daniel P. Collins is a U.S. Bankruptcy Judge for the District of Arizona in Phoenix, appointed on Jan. 18, 2013. He served as chief judge from 2014-18. Previously, he was a shareholder with the law firm of Collins, May, Potenza, Baran & Gillespie, P.C. in downtown Phoenix, practicing primarily in the areas of bankruptcy, commercial litigation and commercial transactions. Judge Collins Dan is President-Elect for the National Conference of Bankruptcy Judges, is a Fellow in the American College of Bankruptcy, served on ABI's Board of Directors, is on the board of the Phoenix Chapter of the Federal Bar Association and is a member of the University of Arizona Law School's Board of Visitors. He also is a founding member of the Arizona Bankruptcy American Inn of Court. Judge Collins received both his B.S. in finance and accounting in 1980 and his J.D. in 1983 from the University of Arizona.

Franklind D. Lea, CIRA is the president of Tactical Financial Consulting, LLC in Alpharetta, Ga., and has more than 30 years of professional experience and education in complex business and financial matters. He has broad expertise in commercial finance, insolvency, real estate, real estate finance and valuation. His experiences encompass business and project evaluation, damage claims and lost profits, debt and equity structuring and restructuring, feasibility analysis, financial analysis, investment management, lending and leasing, and valuation. His professional roles have been as an appraiser, commercial lender, credit officer, financial consultant and workout officer. Since the creation of Tactical Financial, Mr. Lea has provided services to companies, investors, lenders and secured creditors, unsecured creditors' committees and law firms. He has acted as an advisor and litigation consultant, and has provided expert witness reports and expert testimony for a number of matters related to damage claims, feasibility, financing, real estate and specialized bankruptcy issues

such as the § 1111(b) election, § 1129 confirmation requirements, the indubitable equivalent and *Till* cramdown interest rates. Within these roles, he has participated in more than 200 court hearings and provided testimony through affidavits, depositions and direct examination within the courtroom. Prior to forming Tactical Financial, Mr. Lea was a senior lender at Textron Financial Corp. for 11 years, where he focused on specialty real estate lending and large account workouts for real estate, equipment leasing and commercial lending. During his tenure at Textron Financial, he held several senior roles within its specialty lending divisions and risk-management department. He completed approximately 50 multi-million dollar specialty loan transactions and conducted several multi-year complex workouts and financial restructurings. Mr. Lea sits on ABI's Board of Directors and is an At-Large member of its Executive Committee. He also is a former co-chair of ABI's Asset Sales Committee and sits on the advisory board of ABI's Judge Alexander L. Paskay Memorial Bankruptcy Seminar. Mr. Lea received his B.S. in management and his M.B.A. from Florida State University, and a Master's degree in real estate and urban analysis from the University of Florida.

Tara J. Schellhorn is a partner with Riker Danzig Scherer Hyland & Perretti LLP in Morristown, N.J., in the firm's Bankruptcy & Corporate Restructuring Group. Her practice focuses on all aspects of bankruptcy and restructuring, including the representation of debtors, creditors' committees, trustees, financial institutions, secured lenders, unsecured creditors and other parties in interest in complex chapter 11 cases. Ms. Schellhorn also has experience in bankruptcy litigation, including prosecuting and defending nondischargeability, preference and other avoidance actions. In addition, she has significant experience representing clients on complex corporate lending issues, including the representation of indenture trustees in default and bankruptcy situations. Her practice also includes civil litigation in both federal and state courts. Ms. Schellhorn is a member of the International Women's Insolvency & Restructuring Confederation (IWIRC) and co-chairs its New Jersey Network. She also is U.S. Program Committee Co-Director for the IWIRC International Board and is an active ABI member, currently co-chairing ABI's Young and New Members Committee and overseeing the *ABI Journal*'s "Building Blocks" column. Ms. Schellhorn also is a member of the Lawyers Advisory Committee to the U.S. Bankruptcy Court for the District of New Jersey, co-chairs the Morris County Bar Association's Women Lawyers Committee and is a member of the board of advisors of the Widener University Commonwealth Law School. In January 2020, Ms. Schellhorn was appointed to a two-year term as a member of the Chester Township Environmental Commission. Prior to joining Riker Danzig, she clerked for Hon. Raymond T. Lyons in the U.S. Bankruptcy Court for the District of New Jersey. Ms. Schellhorn received her undergraduate degree *magna cum laude* and Phi Beta Kappa from Gettysburg College in 2004, and her J.D. *magna cum laude* from Widener University School of Law in 2007, where she served as editor-in-chief of the *Widener Law Journal* and received the *Widener Law Journal* Award for Distinguished Legal Scholarship. In addition, she received a 2007 ABI Medal of Excellence for outstanding performance in her bankruptcy coursework.