ABI Commission Update

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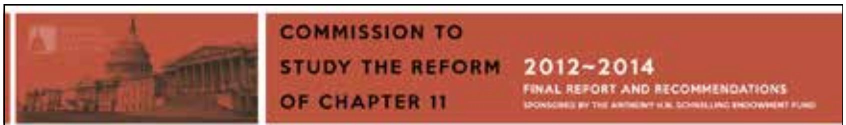

ABI Commission to Study the Reform of Chapter 11

Overview of
Recommendations and Findings

www.commission.abi.org

Why Reform? Why Now?

- An effective and predictable business bankruptcy scheme rebuilds companies, preserves jobs, and fosters economic growth

- Distressed companies are not using chapter 11, or are waiting too long to use it, undercutting its utility for all stakeholders
  - Perception is chapter 11 does not work for many distressed debtors

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Approach to Reform

- Who: The 18 voting and four *ex officio* Commissioners are among the most prominent chapter 11 professionals in the U.S. today, supported by more than 130 others who served on 13 topical advisory committees
- Objective study of chapter 11: *What is working and what is not working as well as it could?*

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Approach to Reform

- How: Commissioners held 17 field hearings around the country to gather testimony, while considering hundreds of other written submissions, and evaluating empirical data
- Process included perspectives and significant input from representatives of all major stakeholders in chapter 11 cases

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Approach to Reform

- There were no pre-determined principles, agendas, or outcomes
- Commission studied and considered all potentially competing interests in working to strike balanced approach under proposed principles

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Key Themes of Recommendations

- Reduce barriers to entry
- Facilitate certainty and more timely resolution of disputed matters
- Enhance exit strategies for debtors
- Create an effective alternative restructuring scheme for small and medium-sized firms

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Key Principles: VIP

- A debtor's "***Valuation Information Package***" would include:

  (i) tax returns for the previous three years (inclusive of all schedules);
  (ii) annual financial statements (audited if available) for the prior three years (inclusive of all footnotes);
  (iii) most recent independent appraisals of any of the debtor's material assets (including any valuations of business enterprise or equity); and
  (iv) to the extent shared with prepetition creditors and existing or potential purchasers, investors, or lenders, all business plans or projections prepared within the past two years

(Report, at 45)

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Key Principles: VIP

- VIP intended to get more information relevant to valuation issues to stakeholders earlier in the case
- A debtor would file a list of information contained in its VIP in connection with any motion under section 361, 362, 363, or 364 of the Bankruptcy Code
- Copies of VIP would be available upon request, subject to appropriate protections for confidential or proprietary information

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Key Principles: Valuation Standards

- No proposed changes to judicial valuation approach currently used under the Bankruptcy Code
- Encourages use of court-appointed valuation experts

(Report, at 180)

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Key Principles: SME

- For purposes of these principles, the term "***small or medium-sized enterprise***" ("***SME***") means a business debtor with—
  - (i) No publicly traded securities in its capital structure or in the capital structure of any affiliated debtors whose cases are jointly administered with the debtor's case; and
  - (ii) Less than $10 million in assets or liabilities on a consolidated basis with any debtor or nondebtor affiliates as of the petition date
- SAREs excluded from SME principles

(Report, at 279)

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Key Principles: SME

- No mandatory creditors' committee; may appoint estate neutral to help with business and plan
- No mandatory deadlines, but SME must propose, and court will approve, timeline tailored to particular case
- Prepetition equity holders may retain their interests, subject to certain conditions
  - These conditions include satisfying section 1129(b) for secured creditors
  - Granting unsecured creditors 85% of economic ownership interests in reorganized company with limited voting rights

(Report, at 291, 294, 297)

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Key Principles: Estate Neutral

- Appointed by U.S. Trustee
- Never mandatory
- Would replace examiners
- Flexibility, with some limitations, is the key
  - Role is defined by parties and court's order, and
  - Tailored to particular case

(Report, at 32)

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Key Principles: General Plan Provisions

- Move to a "one creditor, one vote" rule for numerosity
- Expressly permit third party releases and exculpation clauses satisfying certain conditions
- Eliminate section 1129(a)(10) and codify the new value corollary
- Market-based approach to cramdown interest rate (rejects *Till*)
- Provide distribution to junior creditors *if* supported by reorganization value of firm

(Report, at 257, 252, 250, 224, 234, 207-211)

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Conclusion

- Principles intended to, among other things, create certainty and efficiencies in process
- Commission hopes that the Report will facilitate debate and meaningful dialogue concerning necessary and beneficial reforms to chapter 11

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