

# Judicial Panel

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COMMISSION TO  
STUDY THE REFORM  
OF CHAPTER 11

2012~2014  
FINAL REPORT AND RECOMMENDATIONS  
SPONSORED BY THE ANTHONY RAL SCHRELLING ENDOWMENT FUND

## Resolving Circuit Splits to Guide Stakeholders and Litigants

The ABI Chapter 11 Commission Weighs In

*Consensus Recommendations Reached to Resolve Splits Dealing with Financing, Sales, Plans, Labor, Contracts and Leases*

[www.commission.abi.org](http://www.commission.abi.org)

### *Resolving Splits*

- The permissibility of cross-collateralization and roll-up provisions in postpetition financing facilities
- The use of the doctrine of necessity in chapter 11 cases
- The standard of review applicable to the appointment of a chapter 11 trustee under section 1104

### *Resolving Splits*

- The definition of “executory contract” for purposes of section 365
- The effect of rejecting an executory contract or unexpired lease under section 365
- The ability of a debtor to assume intellectual property licenses under section 365(c) (i.e., the hypothetical test versus the actual test) and the treatment of trademark licenses generally
- The proper calculation of a landlord’s claim against the estate (i.e., the accrual approach versus the billing date approach)

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### *Resolving Splits*

- The application of the safe harbor in section 546(e) to bar fraudulent transfer actions brought under applicable nonbankruptcy law
- The treatment of ordinary supply contracts as qualified financial contracts subject to the protection of the Bankruptcy Code’s safe harbor provisions
- The meaning of “for the benefit of the estate” under section 550

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## *Resolving Splits*

- The permissibility of gifting and nonconsensual third party releases
- The application of the new value corollary
- The calculation of the cramdown interest rate
- The fiduciary duties of a debtor (as opposed to a debtor in possession) proposing a chapter 11 plan

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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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