

**OBSERVATIONS REGARDING
CHAPTER 11 PRACTICE IN UNITED
STATES**

FIRST INTERNATIONAL G.R.O. ANNUAL CONFERENCE
MODENA, ITALY -- OCTOBER 10, 2013

BUSINESS OF DIP

Valuations


- Judgments made by the parties and the Court
- Interplay between expert witnesses and the Court
- Use of valuation methodologies and market forces as proxies for market value
 - Public market data
 - Distressed debt markets
 - Derivatives
 - Competing valuation methodologies: (DCF; comparable companies; precedent transactions)

CHALLENGES IN EMERGING FROM BANKRUPTCY


- Fixing the business
- Fixing the capital structure
- Getting it right the first time and avoiding repeat filings



MEASURING SUCCESS

- Is the reorganization likely to be followed by another insolvency?
 - Feasibility – what if no one objects?
 - Are the costs acceptable relative to the distributions to creditors and the benefits associated with maintaining a going concern
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EQUITABLE REMEDIES

- Priority and pro rata share of assets – equitable distribution
 - Substantive consolidation and enterprise groups – critical issue in Lehman
 - Equitable subordination or disallowance
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Why does the U.S. Insolvency System Fit Our History and Business Culture?



- Bankruptcy is needed in an entrepreneurial society
- American society rewards performance and encourages a second chance and a fresh start
- Transparency and direct creditor involvement




NON-BANKRUPTCY ALTERNATIVES

- Litigation path—longer and no stay
- Work out – out of court resolution
- System in civil courts—longer time to get rulings
- Remedies—money damages, generally



CAPITALIST ECONOMIC SYSTEM

- Use of counsel, financial advisers and investment bankers
 - Robust capital markets that participate in financing and restructuring activities
 - Solutions fit patterns established in corporate transactions
 - Conflict resolution through advocacy and compromise
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DEMOCRATIC-REPUBLIC POLITICAL SYSTEM

Collaborative determination

- Self-determination
- Manifest destiny
- Individual creditors vote on plan with adequate disclosure

BENEFICIAL OUTCOMES

- Company comes out of bankruptcy by way of 363 sale or reorganization in a manner that preserve jobs, value, maintains contributing enterprise
 - Quick process at an acceptable societal cost
 - Worked well during financial crisis
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