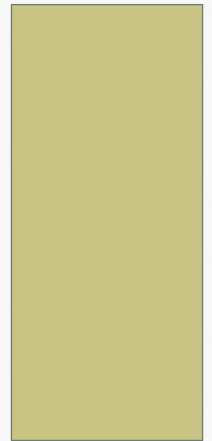


OBSERVATIONS
REGARDING CHAPTER 11
PRACTICE IN UNITED
STATES

FIRST INTERNATIONAL G.R.O. ANNUAL CONFERENCE
MODENA, ITALY -- OCTOBER 11, 2013



FLEXIBILITY OF CHAPTER 11

- 363 sales of assets
 - Has lead to a new paradigm: the sale of a going concern as an alternative to a classic plan of reorganization
- Break-up fees
 - Practices from non-bankruptcy business world and adapted these practices to bankruptcy cases.
- Sales, mergers, acquisitions, debt for equity exchanges; the importance of the “fulcrum” security
- Trust in system; efficiency of case administration; impartiality and experience of the bench.

ABI COMMISSION - POTENTIAL CHANGES TO THE CODE

- Thinking of ways to be more efficient and effective
- Working with the business/technological world—not against it
- Corporate structures are often overleveraged making reorganization more difficult

PLAYERS

- Debtor-in-possession or “DIP”
 - Separate legal entity
 - Enhanced duties to creditors and shareholders.
 - Managers do not necessarily lose their jobs.
 - Preserves employment and continuity of business operations.
- Counsel to Debtor-in-Possession
 - Retention approved by the Court
 - Fees approved by Court
 - Fiduciary Duties
 - Balance between business and bankruptcy- must advise on bankruptcy law and reorganization strategies
- Financial advisors
 - Aides to legal and business persons
 - Develops or evaluates business plan

COURTS

- Accessibility/efficient
- Specialized
- Creative
 - Application of existing codified law in ways not fully anticipated by drafters.

Adaptive attempts to deal with problems presented by each case.

Examples:

- - Auto Industry
- - Lehman
- - Mass torts
- - Labor and pension liabilities
- - Municipal Debtors (Stockton, Detroit)

CREDITORS

- Secured
- Unsecured
- Committees
 - Representative of creditors, appointed by US Trustee and functions as estate fiduciary
- Get to vote on the plan by classes (majority in number; two thirds in amount)

OTHER COMMITTEES

- Equity Committees
- Ad Hoc Unofficial Committees (e.g. Bond Holders)

GOVERNMENT ENTITIES

- United States Trustee
- Pension Benefits Guaranty Corp
- Securities Exchange Commission
- Taxing Authorities
 - Local
 - State
 - Federal

OTHER PROFESSIONALS

- Examiner
- Chapter 11 Trustee (or chapter 7 if case converts)
- Chief Restructuring Officer - Functions similar to a Trustee
- Mediators
- Liquidating Trustee (under liquidating trustee formed under plan)

CLAIMS TRADING

- Source of liquidity and source of innovation and creative problem solving in hands of acquirers.
- Double edged sword because don't know who you are negotiating with if claims are being traded rapidly

MAKING CHANGES TO CODE ARE DIFFICULT

- Intellectual Property
- Code lags behind trademark law
- Very political
- Congress adds exceptions to general rules that make it more difficult

CROSS-BORDER CASES/ CHAPTER 15

- Plenary cases
- Ancillary proceedings

BENEFICIAL OUTCOMES

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