

## **ABI COMMISSION TO STUDY THE REFORM OF CHAPTER 11**

### **Multiple Enterprise Cases Advisory Committee**

Meeting  
July 23, 2012  
Telephonic Conference Call

#### MINUTES/SUMMARY

The Multiple Enterprise Cases Advisory Committee (the "Committee") of the ABI Commission held its organizational meeting on Monday, July 23, 2012, via teleconference. *The following individuals participated in the meeting:* Lisa G. Beckerman, Martin J. Bienenstock, Daniel C. Cohn, Sam Gerdano, Peter M. Gilhuly, Daniel M. Glosband, Honorable Allan L. Gropper, Michelle Harner, Steven Hedberg, Robert J. Keach, Kenneth N. Klee and Daniel A. Zazove. *Committee members not in attendance:* Adam J. Levitin, Thomas Moers Mayer and Honorable Michael G. Williamson.

Mr. Gerdano commenced the meeting at approximately 4:05 p.m., E.T. The meeting adjourned at approximately 5:00 p.m., E.T. The following matters were discussed during the course of the meeting:

*Opening Remarks:* Mr. Gerdano welcomed the Committee members and provided a brief overview of the advisory committee structure. Mr. Keach also welcomed the Committee members and expressed the Commission's gratitude for their service. He then explained the Commission's origins, mission and progress to date. He noted the similarities between the Commission's mission and the themes underlying the 2009 ABI symposium titled, "Chapter 11 at a Crossroads: Does Reorganization Need Reform?" He also emphasized the Committee's fundamental role in the Commission's efforts to reconceptualize business reorganizations. Mr. Keach further explained that the Advisory Committee Guidelines and other helpful information and resources were available at the Commission's website: [www.commission.abi.org](http://www.commission.abi.org).

*Advisory Committee Guidelines:* Prof. Harner reviewed the Advisory Committee Guidelines. She explained the internal structure of the Committee, including the roles of Chair or Co-Chairs and Reporter or Co-Reporters. Prof. Harner further explained that the Reporter role was open to any Committee member and was not reserved for an academic member. She then identified the various resources available to the Committee, including research assistants, a research fellow and certain research databases. Prof. Harner and Mr. Keach encouraged Committee members to involve other support resources at their firms or institutions; they asked only that Committee members inform the Commission representatives of the individuals so involved to ensure appropriate communications and confidentiality. Prof. Harner and Mr. Keach also discussed the need for advisory committees to submit reports on a rolling basis so that the Commission can consider various pieces of the overall project at various points throughout the process.

Prof. Harner next discussed the Confidentiality provision of the Guidelines. She explained the balance reached by the Commission in the Confidentiality provision, and its intended scope.

Prof. Harner invited Committee members to contact her with any additional questions or concerns.

*Preliminary Assessment:* Prof. Klee introduced the Preliminary Assessment of the study topic. He explained generally how the Commission developed the Preliminary Assessment, and Mr. Keach noted that it represented the Committee's initial consideration of the issues and questions raised by the study topic. Prof. Klee first reviewed the substantive consolidation subtopic, and Mr. Cohn noted the relation of this subtopic to debtor-in-possession financing issues. Mr. Keach agreed with the observation and noted that this might be an issue on which this Committee and the Finance Advisory Committee coordinate their efforts. Mr. Hedberg then reviewed additional subtopics, and the Committee engaged in a dialogue concerning the various issues related to each. Prof. Klee encouraged the Committee to approach the subject matter anew, drawing on actual experiences but not feeling constrained by existing precedent or the current construct of the Bankruptcy Code. Several Committee members commented on the richness of the issues and contributed potential perspectives for consideration.

Mr. Keach then discussed certain aspects of the Committee's internal governance, reviewing the roles of Chair and Reporter and the flexibility afforded the Committee in allocating duties and responsibilities throughout the project. He asked Committee members interested in serving as Chair(s) or Reporter(s) to email Prof. Harner and the Commission representatives on or before Friday, July 27, 2012. He indicated that the Commission representatives would select a Chair(s) and Reporter(s) so that the Committee could start its substantive work. Mr. Keach also noted that a contact list would be forthcoming.

Prof. Harner and Mr. Keach closed the meeting by thanking all Committee members for their participation.