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The members of this Commission share decades of experience and a commitment to assisting our clients through the re-structuring process. However, since the adoption of the Bankruptcy Code some 34 years ago in 1978, that process has evolved and the goal of preserving companies (debtors) and jobs has become increasingly difficult. The Commission's primary purpose is to identify what changes should be proposed to aid in the restructuring process with a focus on preservation of employment opportunities, not only with the debtor, but with the debtor's suppliers and customers. Such modifications, while statutory and thus legal in nature, will also reflect the practical and operational issues which I and other members of management of troubled companies, have experienced. We will also be asking whether there are provisions in the Bankruptcy Code which limit the willingness of even strong companies to take a risk because of the potential of a future default. Calculated risks are necessary for corporate advancement and, hence, job preservation and creation. If the answer is yes, we will then look for creative and sustainable solutions through modifications to the Bankruptcy Code.

As a turnaround and restructuring professional who has served as an interim CEO of small ($20mm companies) and very large multi-billion dollar public corporations, as well as being a Chapter 11 Trustee and Federal Court Receiver, my focus will be to consider which parts of the Bankruptcy Code impede and which aspects further a successful operational and financial restructuring of a company in today's world of fast changing technology and sophisticated financial instruments. I do not define a "successful restructuring" as merely an exit from bankruptcy, but rather an exit from bankruptcy by a company which is stable, operationally sound, and with a capital structure which will allow it to compete. While the company may not be completely "fixed", it will exit bankruptcy in a state that it is healthy, both operationally and financially, allowing jobs to be saved and, eventually, even, created.

Over the last 34 years, the bankruptcy system/process has become so complex that achieving such a goal is very difficult. To understand this phenominum, one must ask why this is so and what has changed. And, while there are reasons that are beyond this Commission's ability or need to review, a couple of themes are evident.

First, debtors and the court are now required to spend an inordinate amount of time dealing with extremely complex financial issues and instruments that did not exist as recently as a decade ago. Bankruptcies are no longer relationship driven by trade vendors and commercial banks. Now, bankruptcies are driven by financial holders of claims, such as debt traders, holders of credit

default swaps, intricate securitizations and the like. The agendas driving these financial claim holders often have nothing to do with the true long-term success of a reorganized debtor or the welfare of employees; rather, they are driven by short term profit gains. The effort now spent by the debtor on negotiating with, and appeasing these parties' requests - actually demands – both informally and in contested court hearings, causes turmoil, is expensive and extremely time consuming. In short, this financially driven bankruptcy model which we find so common today diverts management's attention and resources away from dealing with its truly important constituents – its other creditors, vendors, customers and employees.

Second, the bankruptcy process has become inflexible and cumbersome in many regards, creating unrealistic deadlines and requirements for a debtor, and thus hindering its ability to effectuate a successful restructuring of its operations. Such hindrances include - but are certainly not limited to - accelerated plan proposals as a result of shortened exclusivity; unrealistic time constraints for assumption of leases and other executory contracts; the inability to provide meaningful incentives to key management and employees who must balance concerns for their families with a commitment to help preserve company jobs; and, the creation of numerous committees, each with its own multiple sets of advisors, all paid for by the debtor, draining its much needed liquidity to effectuate its organization.

Twenty-one years ago, I was appointed the Chapter 11 Trustee of Fairchild Aircraft Corporation. Fairchild was the second largest non-government employer in San Antonio, Texas. It manufactured the 17 passenger aircraft used by commuter airlines throughout the world. When I was appointed, the company was two weeks into its bankruptcy and was in a state of chaos. There were 21 aircraft in the factory in various states of completion. The Debtor had no funding, with the exception of minimal use of cash collateral and the lenders had refused to provide a Debtor-in- Possession ("DIP") loan. Fairchild's sole supplier of engines, Allied Signal, was refusing to continue to sell and, in fact, had already begun disassembling their manufacturing line. Fairchild's exclusive brake vendor, with which it had an executory contract, had already filed a motion to force its rejection and was no longer making deliveries. In addition, the company could not provide warranties under the existing sales contracts it held. And, in two days I had a multi-million payroll to make for the previous two week period. I was left with no options at that point but to call all 350 employees into the auditorium and tell them they were being laid off because I could not pay them. The factory "went dark". In short, there was no reason to believe that Fairchild had a future.

But, 20 years ago there were factors at work which allowed the debtor to restructure effectively under the Bankruptcy Code. However, our world has changed, but the Code has not.

For instance, when Fairchild was in bankruptcy, banks, insurance companies and other primary lenders were driven by long term relationships with their borrowers. The agent bank held the

largest position in the debt and other lenders in the syndicate remained the same throughout the term of the loan. In other words, they had a vested interest in seeing that a debtor restructured. Further, most companies entered bankruptcy with unencumbered assets which could be used to secure additional funding. This is no longer the case. At Fairchild, I was immediately able to meet with the agent bank and negotiate a DIP loan which would support at least a minimal level of operations and provide some comfort to vendors and employees. The lenders, while international banks, were still part of the community and saw their own reputations at stake, not just the Debtor's.

Today, the agents/arrangers of loans no longer have a close bond with their borrower and often hold very little of the debt after the issuance. This is also true of syndicate members who frequently trade in and out of the debt as often as daily if there is a profit or fee to be made. Simply put, lenders today are fee driven, not relationship driven.

Additionally, new players have entered the field. Now, hedge funds have become prominent DIP lenders, as they are both desirous of the large fees involved and, in some cases, find this to be the best way to control the bankruptcy if they have a desire to eventually own the company. If I were the Trustee of Fairchild today, I would have a much more difficult time negotiating a DIP loan on reasonable terms, if at all. The core of the discussion would focus on the terms and fees of the DIP loan, not on a plan for finding a long term solution to the company's operating and financial problems.

Twenty years ago there would have been one official committee, the Official Committee of Unsecured Creditors. The people chosen for the Committee by the US Trustee would have been providers of products and services to the Debtor who held unsecured claims. These were parties who needed the Debtor to survive long term, not only because they made a profit from selling to Fairchild, but because the loss of Fairchild's business could have a direct impact on their own business and, ultimately, the vendor's employees. Today, it has become difficult to sit a Creditors' Committee with suppliers to the debtor, as it is likely that these suppliers have sold their claims to debt traders at some discount in order to cash out quickly. The trading of debt is now pervasive at all levels of a company's capital structure. Twenty years ago, the practice of debt trading did not exist. While trading in claims may provide liquidity in the financial markets, it provides very little benefit to a Debtor. These traders are driven to make short term profits for the claim holder without necessarily having a regard for the long term well-being of the debtor or for the underlying principal of bankruptcy, which is to provide a company the opportunity for a "fresh start". Yet, trading in claims is now part of the bankruptcy process which is here to stay.

Along with this trading phenomenon has come the establishment of multiple committees formed to represent various, and often opposing, constituents – unsecured bondholders, retirees, unions, and committees representing claims of foreign subsidiaries, to name a few. Each of these

committees has its own agendas and its own numerous advisors, paid for by the debtor. Additionally, for the debtor to fulfill the demands made by these various constituents only creates turmoil and places undue requirements on management and company resources, namely the employees and the debtor's cash.

In Fairchild, I was able to regularly meet with the Committee of Unsecured Creditors and find resolutions to the issues Fairchild faced. In fact, I solicited the Committee's assistance in successfully negotiating a new contract with Allied Signal for plane engines. And, as the Committee became more comfortable that the company might have a future, they again started selling on market terms which was an enormous help in providing needed cash flow. Because the vendors had regained confidence, I was able to slowly bring back the work force and restart operations. This also earned Fairchild renewed credibility in the market place, bringing purchasers of planes back. In the current environment, I would have to negotiate plan issues with debt traders who might be here today and gone tomorrow. And, vendors would not have had the same incentive or influence to assist in the restructuring process.

In Fairchild's bankruptcy, the Debtor had an unlimited amount of time to determine how to best restructure its business operations. Therefore, management was not forced to drive its business solutions based on today's restrictive time constraints of exclusivity and acceptance or rejection of executory contracts. This provided me the opportunity to negotiate new sales of planes, resulting in full re-employment of all 350 people previously laid off. This time also allowed me to negotiate the sale of the company intact with eight potential qualified buyers. It was critical to each and every one of these buyers that they had the opportunity to decide which contracts they would assume or reject. Had these decisions been forced earlier in the case, there would have been many fewer bidders. It was also imperative to them that the current lenders would continue to lend to the company post petition. With the trading of debt that is prominent today, that may not have been a possibility.

Fairchild filed its disclosure statement eight months after its entrance into bankruptcy and emerged from bankruptcy a healthy company through a sale of its assets within ten months. At the Plan Confirmation hearing, there were still two public corporations fighting for the company. On the date of emergence from bankruptcy, there were 522 employees, an increase of 200 from the date the company filed. Three months later, under the new owner, there were 850 employees and the company was posed to be a strong competitor yet again.

The bankruptcy environment has changed dramatically since 1978. In many ways, the current Bankruptcy Code does not reflect today's realities; thus, management may no longer possess the adequate tools for solving the problems of a financially distressed company and, ultimately, for saving jobs. In summary, this Commission is charged with analyzing the Bankruptcy Code as it stands today and determining if there are ways to make improvements which more appropriately

align it to today's environment and which insure that the "fresh start" concept is still an underpinning of the bankruptcy process. Only if this is still true can precious jobs be conserved.