**Minutes of the December 20, 2013 Meeting**

**ABI Commission to Study Chapter 11 Reform**

**Advisory Committee on Executory Contracts and Leases**

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Participants: Kevin Huennekens, Chair Absent: Berry Spears, Reporter

 Lisa Hill Fenning, Reporter Larry Ahern

Ingrid Bagby David Epstein

Susan Freeman Charles Tabb

David Kuney Jay Westbrook

Mark Stingley

Commission: Richard Levin

Deborah Williamson

Consultant: David Pollack

ABI: Michelle Harner

**I.** **Minutes**: Minutes of October 31 and November 19, 2013 meetings approved.

**II.** **Update:**  The proposed report on Topic #12, International Issues, could not be completed in time for consideration. The Committee will conclude its work without that report.

**III.** **Discussion of Overview Summary**

A. Consensus: the overview accurately reflects the deliberations of the Committee. Several minor clarifications were suggested and incorporated.

B. After discussion, the Committee decided to encourage consideration of a simplified structure for the section. Currently, a multitude of subsections each specifies the consequences of rejection for each of a variety of different specific types of contracts. If the principle endorsed by the Committee -- that Section 365 should generally follow nonbankruptcy law to the extent possible -- is expressly made applicable to the nonmonetary consequences of rejection, it should be possible to eliminate the need for such specificity.

C. The Committee recommended adding a fourth point to the list of areas of concern: the continuing confusion in the case law as to whether rejection equates to rejection.

D. The revised Overview Summary will be distributed on negative notice for any further changes and may then be submitted to the Commission.

**III. CONCLUSION:** The Advisory Committee has completed its work and has submitted all other reports requested by the Commission. No further meetings are required.

Minutes prepared by Lisa Fenning

b.            The proposed Topic #5 revisions regarding the right of counterparties to enforce post-petition performance would mitigate against abuse.

c.             Landlords would retain the right to seek to shorten the deadline for cause.