

## ABI COMMISSION TO STUDY THE REFORM OF CHAPTER 11

### Avoiding Powers Advisory Committee

Meeting  
August 10, 2012  
Telephonic Conference Call

#### MINUTES/SUMMARY

The Avoiding Powers Advisory Committee (the "Committee") of the ABI Commission held its organizational meeting on Friday, August 10, 2012, via teleconference. *The following individuals participated in the meeting:* Geoffrey L. Berman, John Wm. Butler, Samuel J. Gerdano, Debra I. Grassgreen, Michelle M. Harner, Honorable Stacey Jernigan, Bruce S. Nathan, John D. Penn, Ronald R. Peterson, David B. Wheeler and R. Scott Williams. *Committee members not in attendance:* Honorable Steven Rhodes and G. Ray Warner.

Mr. Gerdano commenced the meeting at approximately 4:05 p.m., E.T. The meeting adjourned at approximately 4:50 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 and the Commission's progress to date. Mr. Berman welcomed the Committee members and expressed the Commission's gratitude for their service. He explained the Commission's origins and mission and 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 noted that the Advisory Committee Guidelines and other helpful information and resources are available at the Commission's website: [www.commission.abi.org](http://www.commission.abi.org). Mr. Butler also welcomed the Committee members and emphasized the Committee's fundamental role in the Commission's efforts to reconceptualize business reorganizations.

*Advisory Committee Guidelines:* Prof. Harner reviewed the Advisory Committee Guidelines. Prof. Harner explained the internal structure of the Committee, including the roles of Chair or Co-Chairs and Reporter or Co-Reporters. She noted that the Reporter role was open to any Committee member and was not reserved for an academic member. Mr. Berman explained that the Commissioners anticipated adding another academic member to the Advisory Committee and welcomed suggestions from the existing members. Prof. Harner then identified the various resources available to the Committee, including research assistants, a research fellow and certain research databases. She encouraged Committee members to involve other support resources at their firms or institutions and asked only that Committee members inform the Commission representatives of the individuals so involved to ensure appropriate communications and confidentiality. Prof. Harner 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:* Mr. Butler and Mr. Berman introduced the Preliminary Assessment of the study topic. Mr. Berman explained generally how the Commission developed the Preliminary Assessment and noted that it represented the Commission's initial consideration of the issues and questions raised by the study topic. Mr. Butler commented briefly on the Commission's process for identifying and selecting advisory committee members and developing the Preliminary Assessments for each advisory committee. A discussion then ensued regarding the scope of the Preliminary Assessment, potential additional issues within that scope and the parameters of the Committee's work. Judge Jernigan asked about the structure of the Advisory Committee's work moving forward. Mr. Butler explained that small groups of the Committee may take the lead on various subtopics but that the Committee as a whole would consider the issues and present proposals to the Commission. He also reviewed the potential format and content of the Advisory Committee interim reports and noted that the Commission would provide a template to facilitate those reports.

Mr. Butler then explained 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 the Commission representatives on or before Friday, August 17, 2012. The Advisory Committee discussed various ways to identify individuals to serve as Chair and Reporter and asked Mr. Gerdano to facilitate another call among the Committee members for that purpose. Mr. Nathan asked about communications among Committee members, and Prof. Harner indicated that a contact list would be forthcoming. Mr. Butler also explained the need for the Committee to work closely with the Commission representatives and the Commission Co-Chairs as it moves forward through the process. He also indicated that the Commission representatives would select a Chair(s) and Reporter(s) as quickly as possible so that the Committee could start its substantive work.

Mr. Gerdano emphasized the Committee's objective to identify the optimal process for effectuating corporate reorganizations and that it should not feel constrained by existing precedent or political considerations. He closed the meeting by thanking all Committee members for their participation.