

ABI COMMISSION TO STUDY THE REFORM OF CHAPTER 11

Financing Chapter 11 Advisory Committee

March 20, 2013
Meeting (by Telephonic Conference Call)

MINUTES/SUMMARY

The Financing Chapter 11 Advisory Committee (the “Committee”) of the ABI Commission to Study the Reform of Chapter 11 (the “Commission”) held a meeting on Wednesday, March 20, 2013, via teleconference. *The following individuals participated in the meeting:* Marc Abrams; Norma Corio; Judge Robert Drain; William Fox (and colleague Claire Holloway); Elliot Ganz; Sam Gerdano; Marshall Huebner; Nathan Lebioda; Christopher Mirick; Harold Novikoff; Felton Parrish; James Seery; and Ashley Bruce on behalf of Paul Singerman. *Committee members not in attendance:* Jo Ann Brighton; Michelle Harner; Robert Keach; Harvey Miller; Rebecca Roof; David Skeel; and Judge Gregg Zive.

Mr. Mirick commenced the meeting at approximately 3:00 p.m. prevailing Eastern time. The following matters were discussed during the course of the meeting:

Approval of minutes. The minutes from the March 6, 2013, meeting of the Committee were approved.

Roll-up Subcommittee Report. A discussion was had regarding the comments received from the Commission on the draft report on the topic of roll-ups. Among the topics discussed were the following:

- Whether forward cross-collateralization, combined with a new-money loan, was a viable alternative to roll-ups;
- The concerns created by turning pre-petition debt into post-petition debt, specifically regarding the power of administrative expense holders to demand payment in full and the inability to cram down on administrative expenses;
- Whether there should be a right of debtors to turn roll-up DIPs into exit facilities;
- Whether a local rule or a bankruptcy rule or statute that barred roll-ups would affect pricing or availability of DIP financing;
- Whether it might be appropriate to limit the ability of rolled-up DIPs to exercise remedies without in effect first seeking relief from the automatic stay;
- Whether permitting cram-down on the rolled-up portion of a DIP, and/or permitting the rolled-up portion of the DIP to agree to alternative treatment by bankruptcy voting majorities, would be desirable; and

- Whether codifying limits or restrictions on roll-ups would be useful given how fact-specific many roll-up situations are.

It was generally agreed that the Committee did not have answers to these questions. Mr. Mirick agreed to work with Ms. Brighton and Ms. Roof to incorporate these ideas into the draft report, which would then be recirculated to the Committee for further comment and discussion at a future meeting.

Additional Subcommittees. Mr. Huebner reported on the status of the work of the subcommittee examining adequate protection. The subcommittee has identified four topics to examine, and is gathering information and reviewing it.

Mr. Mirick reported on the status of the work of the subcommittee examining the equities of the case exception to the post-petition effect of pre-petition security interests. The subcommittee has gathered numerous articles and other materials and is in the process of reviewing those materials.

And Ms. Bruce and Mr. Ganz reported on the status of the work of the subcommittee examining the pay-to-play issue. Initial discussion drafts have been prepared on the issue, and it is clear that the subcommittee has identified differing views and opinions on the matter, which will be further developed.

Conclusion. Mr. Mirick concluded the meeting by thanking everyone for their participation in the meeting and dedication to the work of the Committee.

The meeting adjourned at approximately 3:45 p.m. prevailing Eastern time.