

Table of Contents

I. INTRODUCTION.....	1
II. EXECUTIVE SUMMARY OF PROPOSED PRINCIPLES	5
III. BACKGROUND ON THE COMMISSION AND THE STUDY PROJECT.....	7
A. BRIEF HISTORY OF U.S. BUSINESS REORGANIZATION LAWS.....	8
B. THE NEED FOR REFORM	12
C. THE COMMISSION’S STUDY.....	13
D. THE COMMISSION’S DELIBERATIONS	16
IV. PROPOSED RECOMMENDATIONS: COMMENCING THE CASE	19
A. OVERSIGHT OF THE CASE	21
1. THE DEBTOR IN POSSESSION MODEL	21
2. THE CHAPTER 11 TRUSTEE.....	26
3. THE ESTATE NEUTRAL.....	32
4. STATUTORY COMMITTEES.....	38
5. ESTATE FIDUCIARIES.....	43
6. VALUATION INFORMATION PACKAGES	45
7. PROFESSIONALS AND COMPENSATION ISSUES	48
8. COSTS IN CHAPTER 11 CASES	55
B. FINANCING THE CASE.....	67
1. ADEQUATE PROTECTION	67
2. TERMS OF POSTPETITION FINANCING	73
C. BREATHING SPELL FOR DEBTOR UPON FILING	79
1. TIMING OF APPROVAL OF CERTAIN POSTPETITION FINANCING PROVISIONS	79
2. TIMING OF SECTION 363X SALES	83
D. PAYMENT OF CERTAIN CLAIMS UPON FILING.....	87
1. PREPETITION CLAIMS AND THE DOCTRINE OF NECESSITY.....	88
2. WAGE AND BENEFITS PRIORITIES	92
E. FINANCIAL CONTRACTS, DERIVATIVES AND SAFE HARBOR PROVISIONS.....	94
1. SCOPE OF SECTION 546(E) SAFE HARBORS.....	95
2. TREATMENT OF REPURCHASE AGREEMENTS UNDER SAFE HARBORS.....	99
3. ASSUMPTION OF FINANCIAL CONTRACTS.....	102
4. SECTION 562 AND “COMMERCIALLY REASONABLE DETERMINANTS OF VALUE”	104
5. WALKAWAY CLAUSES	106
6. EXCLUSION OF “ORDINARY SUPPLY CONTRACTS” FROM SAFE HARBORS.....	107

V. PROPOSED RECOMMENDATIONS: ADMINISTERING THE CASE.....	111
A. EXECUTORY CONTRACTS AND LEASES	112
1. DEFINITION OF EXECUTORY CONTRACT	112
2. GENERAL RIGHTS OF PRIVATE PARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES	115
3. REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES.....	119
4. INTELLECTUAL PROPERTY LICENSES	122
5. TRADEMARK LICENSES	126
6. REAL PROPERTY LEASES	129
B. USE, SALE, OR LEASE OF PROPERTY OF THE ESTATE	135
1. GENERAL PROVISIONS FOR NON-ORDINARY COURSE TRANSACTIONS	135
2. FINALITY OF ORDERS	139
3. TRANSACTIONS FREE AND CLEAR OF INTERESTS.....	141
4. CREDIT BIDDING	146
C. AVOIDING POWERS	148
1. PREFERENCE CLAIMS.....	148
2. RECOVERIES UNDER SECTION 550.....	151
D. LABOR AND BENEFITS	156
1. COLLECTIVE BARGAINING AGREEMENTS UNDER SECTION 1113	156
2. RETIREE BENEFITS AND SECTION 1114.....	166
E. ADMINISTRATIVE CLAIMS	169
1. SECTION 503(B)(9) AND RECLAMATION	169
2. ADMINISTRATIVE CLAIMS COMMITTEE	173
3. WARN ACT CLAIMS.....	174
4. SEVERANCE BENEFITS	177
F. GENERAL VALUATION STANDARDS	180
G. STANDARD FOR REVIEWING SETTLEMENTS AND COMPROMISES	183
H. THE <i>IN PARI DELICTO</i> DOCTRINE	186
VI. PROPOSED RECOMMENDATIONS: EXITING THE CASE	193
A. GENERAL AUTHORITY OF DEBTOR IN POSSESSION AND ITS BOARD OF DIRECTORS.....	194
1. PREEMPTION AND THE AUTHORITY TO APPROVE TRANSACTIONS AND PLAN	194
2. ROLE OF DEBTOR IN PLAN PROCESS	197
B. APPROVAL OF SECTION 363X SALES	201
C. VALUE DETERMINATIONS, ALLOCATION, AND DISTRIBUTIONS	207
1. CREDITORS' RIGHTS TO REORGANIZATION VALUE AND REDEMPTION OPTION VALUE	207
2. NEW VALUE COROLLARY	224
3. SECTION 506(C) AND CHARGES AGAINST COLLATERAL	226
4. SECTION 552(B) AND EQUITIES OF THE CASE	230
5. CRAMDOWN INTEREST RATES.....	234
6. CLASS-SKIPPING AND INTRA-CLASS DISCRIMINATING DISTRIBUTIONS	237

D. DISCLOSURE AND USE OF POSTCONFIRMATION ENTITIES AND CLAIMS TRADING	240
E. GENERAL PLAN CONTENT	246
1. DEFAULT PLAN TREATMENT PROVISIONS.....	246
2. EXCULPATORY CLAUSES	250
3. THIRD-PARTY RELEASES	252
F. PLAN VOTING AND CONFIRMATION ISSUES	257
1. CLASS ACCEPTANCE GENERALLY AND FOR CRAMDOWN PURPOSES.....	257
2. ASSIGNMENT OF VOTING RIGHTS.....	261
3. DESIGNATION OF VOTES.....	264
4. SETTLEMENTS AND COMPROMISES IN PLAN	266
5. DISCHARGE OF CLAIMS UPON CONFIRMATION	268
G. ORDERS RESOLVING CHAPTER 11 CASE (EXIT ORDERS).....	269
 VII. PROPOSED RECOMMENDATIONS: SMALL AND MEDIUM-SIZED ENTERPRISE (SME) CASES.....	 275
A. DEFINITION OF SME	279
B. GENERAL APPLICATION OF SME PRINCIPLES.....	289
C. OVERSIGHT OF SME CASES.....	291
D. PLAN TIMELINE IN SME CASES.....	294
E. PLAN CONTENT AND CONFIRMATION IN SME CASES	296
 VIII. PROPOSED RECOMMENDATIONS: STANDARD OF REVIEW AND KEY DEFINITIONS.....	 303
A. GENERAL STANDARD OF REVIEW	304
B. KEY DEFINITIONS AND CONCEPTS IN PRINCIPLES	304
 IX. OTHER ISSUES RELATING TO CHAPTER 11 CASES	309
A. VENUE OF CHAPTER 11 CASES.....	310
B. CORE AND NONCORE MATTERS IN CHAPTER 11 CASES.....	314
C. INDIVIDUAL CHAPTER 11 CASES.....	317
D. SIFIS AND SINGLE POINT OF ENTRY SCHEMES	319
E. CROSS-BORDER CASES.....	326
 X. CONCLUSION.....	331
 APPENDIX A: MEMBERS OF THE ABI COMMISSION TO STUDY THE REFORM OF CHAPTER 11	 333
 APPENDIX B: RESEARCH ASSISTANTS AND EMPIRICISTS.....	 363

APPENDIX C:	
ADVISORY COMMITTEE MEMBERS	367
APPENDIX D:	
PUBLIC FIELD HEARING WITNESS LIST	375
APPENDIX E:	
SUMMARY OF FIELD HEARINGS AND TOPICS OF DISCUSSION.....	381
APPENDIX F:	
ACADEMICS INVOLVED IN APRIL 2014 SYMPOSIUM	387
APPENDIX G:	
ADDITIONAL VIEWS ON SEVERANCE BENEFITS PRINCIPLES	391