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Introduction

With this issue of the *American Bankruptcy Institute Law Review*, the recently released final report of the National Bankruptcy Review Commission ("NBRC"), *Bankruptcy: The Next Twenty Years*, is addressed while we celebrate the completion of our fifth year of publication. In this issue, distinguished bankruptcy academics and professionals comment on the report of the NBRC, which evaluated current bankruptcy laws and designed a number of proposals for submission to Congress for bankruptcy reform.

The issue begins with Gary Klein's review of the NBRC's consumer bankruptcy proposals. Mr. Klein concludes that the report slants in favor of creditors and gives little protection to consumer debtors. He further suggests that the credit industry should accept some responsibility for the increase in consumer bankruptcy filings.

George J. Wallace presents additional analysis of the NBRC's consumer bankruptcy recommendations. Wallace finds that the NBRC's proposals fail to advance the consumer bankruptcy debate. He specifically addresses three issues that he believes are central to the appraisal of the current consumer bankruptcy system: (1) the effectiveness of the current consumer bankruptcy system; (2) the possibility that consumer bankruptcy relief is too easy to obtain; and (3) the effect that the expansion of consumer bankruptcy remedies has on the price and/or availability of credit.

Next, Sheldon S. Toll discusses the NBRC's recommendations regarding mass tort claims. Toll finds the NBRC's treatment of mass tort claims to be misplaced because the proposed amendment of the Bankruptcy Code cannot address and resolve a litigation crisis that plagues, not just the bankruptcy courts, but the entire court system.

The NBRC's recommendations on partnership as debtor and partner as debtor are examined by Laurence D. Cherkis. Cherkis notes that the NBRC's recommendations, chief among them the proposed granting to the bankruptcy court the power to adjudicate liability of general partners for partnership debts, are sound and will increase the efficiency of the bankruptcy process. He concludes that the NBRC's proposals materially advance the analysis of the controversial issues involved in partner as debtor.

Charles Jordan Tabb considers current preference law and possible recommendations to ease its use in practice. By analyzing the ABI Preference Survey and the NBRC recommendations, Tabb considers three possible proposals. He concludes by suggesting a complete elimination of preference law or, in the situation where the dollar amount is significant, a clearer definition of the ordinary course of business exception.

The next article, by G. Ray Warner, discusses the NBRC's proposals regarding conflicts of interest in the bankruptcy arena. The NBRC's recommendations retain the old

"disinterestedness" standard while creating a narrow exception for representing professionals that hold relatively insubstantial unsecured claims or equity interest in chapter 11 debtors. Warner suggests the NBRC's proposal is flawed because it fails to remedy the problematic framework of the rule and, instead of proposing a new rule, merely proposes new exceptions to the old rule.

The chairperson of the Tax Advisory Committee to the NBRC, Jack F. Williams, utilizes the analysis found in the Tax Advisory Committee's final report, which he prepared, to address four tax issues discussed in the NBRC's final report. He reviews: (1) the NBRC's adoption of the Tax Committee's recommendation that chapter 13 debtors be required to file all tax returns within six years prior to the petition date as a prerequisite to confirmation; (2) the Tax Committee's and NBRC's failure to reach agreement on any single proposal to reject, modify, or reaffirm the present scope of chapter 13 discharge; (3) the NBRC's recommendations the section 724(b) be amended; and (4) the NBRC's adoption of the Tax Committee's recommendation that I.R.C. section 1001 be modified to provide that tax consequences on the transfer of an asset in satisfaction of a nonrecourse debt parallel those applied to recourse debts.

In Jay Lawrence Westbrook's article, the NBRC's proposed treatment of executory contracts is explored. Westbrook summarizes and explains the NBRC's recommendations. He finds the recommendations bring order to this area of bankruptcy law and encourages their acceptance.

Robert M. Zinman urges Congress not to adopt what he considers to be the NBRC's "bizarre" proposal involving the new value exceptions to the absolute priority rule. The NBRC's proposal involves the elimination of exclusivity on the submission of a new value plan by the debtor. Professor Zinman argues that the NBRC's proposal creates new uncertainty in this area while failing to resolve the existing uncertainty.

In addition, this issue contains two student notes addressing the NBRC report. The first note, *Eliminating 'Executory' from Section 365: The National Bankruptcy Review Commission's Panacea For an Ailing Statute*, analyzes the NBRC's proposal to remedy the problems inherent in section 365. Specifically, the note discusses how executoryness, with respect to personal service contracts, has created problems within the entertainment industry and how the NBRC's proposals if adopted by Congress, will eradicate those concerns. The second note, *The National Bankruptcy Review Commission: Proposals for Single Asset Real Estate*, summarizes both the NBRC's Small Business Working Group's Proposals and Professor Kenneth Klee's alternative proposal. This note chronicles the rise of the single asset real estate debtor and the Bankruptcy Reform Act of 1994's attempt to stop abuse of the bankruptcy process.

Finally, we proudly commemorate the *American Bankruptcy Institute Law Review's* fifth year of publication with an index, divided by title, author, and subject, of all published articles. We hope the index serves as a valuable tool for referring to and locating articles.

Since our first issue in Spring 1993, the *Law Review* has grown and gained wide acceptance in the bankruptcy community. We believe (and hope) this issue provides insight into the NBRC's final report while continuing the *Law Review's* tradition of excellence.

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