BOOK REVIEW

RICHARD LIEB*
Reviewing

JANIS SARRA, CREDITOR RIGHTS AND THE PUBLIC INTEREST: RESTRUCTURING INSOLVENT CORPORATIONS (UNIVERSITY OF TORONTO PRESS 2003)

In *Creditor Rights and the Public Interest: Restructuring Insolvent Corporations*,[1] Professor Janis Sarra provides a provocative critique of the process for restructuring insolvent corporations in Canada and the United States, which in both countries is dominated by creditor interests. She argues that the process should be expanded to give the holders of non-monetary interests the right to be heard in restructuring proceedings if their interests could be affected by the reorganization.

Professor Sarra's thesis accepts as a premise of bankruptcy theory that the interest of creditors to realize on their monetary claims against a debtor entitles them to a dominant voice in the restructuring process and the highest priority of distribution in the reorganization. Given that premise, Professor Sarra argues that there are various persons and groups who, although they have not made investments of cash or property in the debtor, nevertheless have a stake in the enterprise that can be adversely affected during and after the debtor's reorganization, and thus should be accorded a role in the restructuring process. The holders of these non-monetary interests, which are referred to in *Creditor Rights and the Public Interest* as "stakeholders," include workers seeking to preserve their jobs, federal and local governmental entities whose interests extend beyond the collection of their federal income tax and local property tax claims, as well as individual consumers, trade suppliers and local communities who likewise may have non-monetary interests in a reorganizing debtor.

Since non-traditional stakeholder interests are not generally given a voice in restructuring proceedings, Professor Sarra calls for expanding the reorganization process by recognizing that they have a right to be heard. Such expansion would add a new dimension to the reorganization process that would represent a significant development in bankruptcy theory, predicated on the notion that every person and entity who has an important interest which may be affected by the reorganization of a particular debtor should have a right to be heard in the

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* Richard Lieb is a professor and the Distinguished Scholar in Residence in the LL.M. in Bankruptcy Program at St. John's University School of Law. He was a founding partner and is of counsel to Kronish Lieb Weiner & Hellman LLP, New York, N.Y.

[1] JANIS SARRA, CREDITOR RIGHTS AND THE PUBLIC INTEREST: RESTRUCTURING INSOLVENT CORPORATIONS (2003).

proceeding even though the holders of such interests do not have a monetary investment at risk.

The author summarizes her thesis, which she calls "enterprise wealth maximization," as follows:

> I have suggested that enterprise wealth maximization, rather than shareholder wealth maximization or creditor wealth maximization, should be made a substantive objective of insolvency law. Such a recasting of goals would promote a governance model that accounts for all the inputs into the corporation. Its distributive consequence would be to recognize value currently generated by particular stakeholders, not only in capital investments, but in the governance role of debt and the contributions of human capital and infrastructure. Wealth creation would be linked more directly to those who have the greatest incentive to generate value and to monitor decision makers in governance of a corporation.
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> . . . Inherent in the enterprise value maximization goal is a recasting of fiduciary obligation to take account of all interests in the firm.[2]

Creditor Rights and the Public Interest is as well written as it is utopian. It contends that non-traditional stakeholder interests have rarely been accorded recognition in reorganization proceedings. There are, however, a few reported reorganization cases in the United States in which governmental entities that did not have monetary claims against the debtor were nevertheless held to have standing to be heard in the case because of their statutory regulatory power with respect to the activities of the particular debtor.[3]

In another case, *In re City of Bridgeport*,[4] an unincorporated association of 115 cities and towns in Connecticut (the "Association") was held not to be a "party in interest" within the meaning of Bankruptcy Code section 1109(b) in a city's chapter 9 case and thus not entitled to be heard as a matter of right, but was granted "limited *amicus curiae* status."[5] Based on that status, the Court authorized the Association to

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[2] *Id*. at 271.

[3] *See In re* Pub. Serv. of New Hampshire, 88 B.R. 546, 546–47 (Bankr. D. N.H. 1988) (according standing to regulatory agency having jurisdiction over public utility's rate changes); *In re* Cash Currency Exch., Inc., 37 B.R. 617, 620 (N.D. Ill. 1984), *aff'd on other grounds*, 762 F.2d 542 (7th Cir. 1985), *cert. denied*, 474 U.S. 904 (1985) (allowing intervention by Illinois Director of Financial Institutions); *see also* 4 WILLIAM L. NORTON JR., NORTON BANKRUPTCY LAW AND PRACTICE, § 80:2, 80-4 to -6 (2d ed. 1997) (stating even if party does not qualify as party in interest within meaning of Code, court may still permit intervention for protection of rights affected by litigation).

[4] *In re* City of Bridgeport, 128 B.R. 30 (Bankr. D. Conn. 1991).

[5] *Id*. at 32.

submit a memorandum of law and to present a short oral argument on the issue of whether the Debtor-City had authority to file a chapter 9 petition to adjust its debts.[6] Despite the Association's lack of a monetary claim or any other direct legal interest, the Court recognized the Association's special interest by granting *amicus* status to it. The Court welcomed the Association's participation as an aid to the Court in resolving the issue in dispute, and also observed that participation on an *amicus* basis would not cause a delay in the case.[7] The Court's basic premise in granting such standing to the Association was that it "does have a special interest in this case . . . [and] may contribute a different and useful perspective."[8]

The Court thus held that a non-traditional stakeholder not having a monetary claim, has a right to be heard in a restructuring case if the stakeholder has a sufficiently important interest and its participation would not unduly delay or complicate the proceeding.[9] Similarly, two authors suggested in a scholarly article that chapter 11 should be viewed as a process that reflects various competing and conflicting policy goals which serve not only to protect debtor and creditor interests and possibly provide for some recovery by shareholders, but also as "a vehicle to protect employees, a means to protect the public fisc, and, loosely, a vehicle to serve the public interest."[10]

Although *Creditor Rights and the Public Interest* frequently addresses these issues from the viewpoint of Canadian restructuring law, it deals generally with the subject from the point of view of the same bankruptcy, economic and social policy considerations that underpin issues under United States law as to whether and how to provide standing to non-traditional stakeholder interests in reorganization cases. The author's creative thesis thus provides a basis for a fresh reexamination of the theory of reorganization law in Canada and the United States. The basic theory of chapter 11 reorganization is that preservation of a debtor entity, either through its internal reorganization or by sale of the debtor's business, tends to maximize the estate and the values realized by the creditors, and at times shareholders, above

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[6] *Id*. This chapter 9 filing was contested by the State of Connecticut and a Financial Review Board which had certain authority over the Debtor-City's finances. *Id*. at 31.

[7] *Id*. at 32.

[8] *Id*.

[9] *See Id*. *But see In re* Addison Comm. Hosp. Auth., 175 B.R. 646, 651–52 (Bankr. E.D. Mich. 1994) (holding unincorporated group of citizens who were not creditors of debtor, a municipal hospital authority, but who were taxpayers of nearby properties whose residents were served by debtor-hospital, were not "parties in interest" and thus could not be heard in debtor-hospital's chapter 9 case).

[10] G. Eric Brunstad, Jr. & Mike Sigal, *Competitive Choice Theory and the Broader Implications of the Supreme Court's Analysis in Bank of America v. 203 North LaSalle Street Partnership*, 54 BUS. LAW. 1475, 1516–18 (1999) [hereinafter *Broader Implications*]; *see also* Elizabeth Warren, *Bankruptcy Policy*, 54 U. CHI. L. REV. 775, 777–78 (1987) (debating different views of purpose and policy of bankruptcies). *See generally* KAREN GROSS, FAILURE AND FORGIVENESS, REBALANCING THE BANKRUPTCY SYSTEM (1997) (bankruptcy law should change its priority and other features to provide more protection to those not directly involved but unavoidably affected by bankruptcy process).

those realized in a piecemeal liquidation.[11] Additionally, in chapter 11 reorganizations all debts not preserved by the confirmed plan of reorganization must be discharged for the debtor and the estate to gain a fresh start.[12] Professor Sarra argues that these goals should be recast to reflect important interests of persons and entities that do not have monetary claims.

Given these goals and the means to accomplish them as reflected in the present reorganization laws of Canada and the United States[13] — which have been the subject of scholarly debate over whether reorganization under chapter 11 is more costly to creditors than outright liquidation[14] — Professor Sarra appropriately points out that little scholarly attention has been paid to the rights and role of non-traditional stakeholders in the reorganization process. Although she provides several examples of Canadian court decisions that could be viewed as according a greater role to the interests of "social stakeholders" and the "public interest" in restructuring proceedings, they do not appear to represent the beginnings of a Canadian trend towards recognition of such interests, just as there are virtually no precedents in the United States that recognize interests of non-monetary stakeholders in reorganization cases, and even some that reject that recognition.[15] Nor is this surprising. From the inception of reorganization proceedings in the 1930s under the Bankruptcy Act of 1898, as amended, and later insolvency statutes in Canada — the "market theory," which underpins reorganization and looks to

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[11] *See* Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343, 353 (1985) (maximizing value of estate is important goal of bankruptcy laws); Otte v. United States, 419 U.S. 43, 53 (1974) (stating overriding concern of act is to preserve as much of estate as possible for creditors).

[12] *See* 11 U.S.C. § 1141(d) (2002) (providing, with certain exceptions, confirmation of chapter 11 plan discharges all debts arising before confirmation, except as provided in confirmed plan or confirmation order); *see also* Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934) ("One of the primary purposes of the Bankruptcy Act is to 'relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations . . . consequent upon business misfortunes.'").

[13] *See* Cont'l Illinois Nat'l Bank & Trust Co. of Chicago v. Chicago R.I. & P. Ry. Co., 294 U.S. 648, 676 (1935) (stating while injunction cannot constitutionally impair lien, it was not unconstitutional to suspend "the enforcement of the lien by a sale of the collateral pending further action"). The decision in the *Continental Illinois* case was the forerunner of the automatic stay provisions in Bankruptcy Code section 362(a).

[14] *See* SARRA, *supra* note 1, at 30–55 (canvassing scholarly debate among leading American theorists of bankruptcy law and economics, including Honorable Richard Posner, Seventh Circuit Court of Appeals, and Professors Lynn LoPucki, Thomas Jackson, Karen Gross, Elizabeth Warren, Susan Block-Lieb, and Douglas Baird, among other American and numerous Canadian scholars).

[15] *See In re* Pub. Serv. of New Hampshire, 88 B.R. 546, 558 (Bankr. D. N.H. 1988) (accorded standing to regulatory agency having jurisdiction over public utility's rate changes); *In re* Cash Currency Exch., Inc., 37 B.R. 617, 628 (N.D. Ill. 1984), *aff'd on other grounds*, 762 F.2d 542 (7th Cir. 1985), *cert. denied*, 474 U.S. 904 (1985) (allowing intervention by Illinois Director of Financial Institutions); *see also In re* City of Bridgeport, 128 B.R. 30, 32 (Bankr. D. Conn. 1991) (granting association of cities limited amicus curie status); Weismann v. Hassett (*In re* OPM Leasing Services), 21 B.R. 983, 986 (S.D.N.Y. 1981) ("Neither a former officer of a debtor nor a stockholder of the debtor's parent corporation is a party in interest."); 4 WILLIAM L. NORTON JR., NORTON BANKRUPTCY LAW AND PRACTICE, § 80:2, 80-4 to -6 (2d ed. 1997) (stating even if party does not qualify as party in interest within meaning of Code, court may still permit it to intervene for protection of rights affected by litigation).

market forces to maximize creditors' return,[16] and the "debt collection" theory, which is geared toward collecting and liquidating assets for distribution of the proceeds to creditors[17] — generally only recognized the interests of those who invested debt or equity capital in the debtor prior to its bankruptcy. These theories allocate the estate's assets to creditors according to the "absolute priority" rule under which holders of secured claims have the highest priority and equity holders the lowest.[18]

Understandably, creditors have always looked to gain the highest possible return on their claims in reorganization cases in accordance with the "absolute priority rule,"[19] and would view granting a role in reorganization cases to holders of non-traditional stakeholders who have made no monetary investment in the debtor as an assault on their position. According a role to the holders of non-monetary interests would, as creditors would see it, only increase litigation and the costs of reorganization, as well as delay the progress of the reorganization case, confirmation and consummation of a reorganization plan, and distribution on their claims.

Creditor Rights and the Public Interest, contrariwise, argues that the recognition of non-creditor stakeholder interests is not only required in the interest of fairness to the holders of such interests, but would also reduce the economic and social costs of post-confirmation failure of a reorganized debtor by tending to ensure that a reorganization plan would be approved only of it is likely that the reorganized company would survive as reorganized.

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[16] *See Broader Implications*, *supra* note 10, at 1519 (critiquing market theory). *See generally* Douglas Baird & Thomas Jackson, *Corporate Reorganizations and the Treatment of Diverse Ownership Interests: A comment on Adequate Protection of Secured Creditors in Bankruptcy*, 51 U. CHI. L. REV. 97, 102 (1984) (explaining in market economies firms fail and keeping firms going may "do more harm than good."); James W. Bowers, *Whither What Hits the Fan?: Murphy's Law, Bankruptcy Theory, and the Elementary Economics of Loss Distribution*, 26 GA. L. REV. 27, 34–35 (1991) (stating free market bankruptcy system would minimize losses).

[17] *See, e.g.*, Bartel v. Bar Harbor Airways, Inc., 196 B.R. 268, 273 (S.D.N.Y. 1996) (explaining how sections 363 and 1123(b)(4) of Bankruptcy Code provide for sale of assets and distribution to creditors in chapter 11 cases); *see Broader Implications*, *supra* note 10, at 1517 (identifying theory as focusing on creditors wishes regarding disposition of assets); *see also* Warren, *supra* note 10, at 785 (explaining distribution and division of debtors assets to creditors as center of bankruptcy scheme).

[18] *See* Bank of Am. Nat. Trust & Sav. Assn. v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 444–49 (1999) (analyzing "absolute priority" rule); *In re* Geneva Steel Co., 281 F.3d 1173, 1181 n.4 (10th Cir. 2001) (stating absolute priority rule requires certain classes of claimants to be paid in full before any member of subordinate class is paid).

[19] *See, e.g.*, Fross v. MJBP, Inc., (*In re* Fross), BAP No. KS-00-028, 2000 Bankr LEXIS 1578 at *3–*4 (B.A.P. 10th Cir. Dec. 22, 2000) (creditor claiming plan violated absolute priority rule by allowing debtors to keep exempt property); *see Broader Implications*, *supra* note 10, at 1475–77 (explaining absolute priority protects creditors' claims by not allowing equity holders to receive property until creditors are fully paid or each class consents); I.R.S. v. Creditors Comm. (*In re* Deer Park Inc.), 10 F.3d 1478, 1482–83 (9th Cir. 1993) (IRS arguing court order violated absolute priority by reallocating portion of secured claim to unsecured priority).

The author argues that according standing and the right to be heard to non-traditional stakeholders such as workers, communities, and governments, would bring a somewhat different focus on reorganization proceedings because of the strong post-insolvency interests in the corporation that such non-traditional stakeholders possess. She also appropriately argues that present reorganization theory fails to recognize the broad human and social interests that various non-monetary stakeholders have in a reorganizing debtor.[20]

In urging her "enterprise wealth maximization" theory, the author does not take on the fundamentals of the historic theory of bankruptcy reorganization predicated on creditor control. Nevertheless, her theory of bankruptcy reorganization has little chance of adoption by the courts in the United States or Congress, at least in the foreseeable future, in light of the ingrained paramount rights of creditors. The development of new theories of bankruptcy and economics, however, such as the author's, are important for the development of the law to reflect values of fairness and economies in the reorganization process. But the author's theory might gain a meaningful measure of acceptance over time either through judicial recognition of non-traditional interests or by the expansion of existing provisions of the bankruptcy law. For example, the Bankruptcy Code's "party in interest" provision in section 1109(b) could be more broadly interpreted by the courts to recognize standing in a reorganization case for the holders of a non-monetary interest upon a demonstration of its importance to the stakeholder in a particular chapter 11 case.[21]

A recognition of non-monetary stakeholder interests might also be accomplished by means of granting stakeholders' applications for *amicus curiae* status entitling the *amicus* to file a brief on the issues and to argue orally to the same extent as the court accepts argument from "parties in interest" in the proceeding. The United States Supreme Court and some courts of appeals have long granted *amicus* status in recognition of the importance to the holders of non-

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[20] *See, e.g.*, United States v. LTV Corp. (*In re* Chateaugay Corp), 944 F.2d 997, 1008 (2d Cir. 1991) ("[A] cleanup order that accomplishes the dual objectives of removing accumulated wastes and stopping or ameliorating ongoing pollution emanating from such wastes is not a dischargeable claim."); United States v. Hubler, 117 B.R. 160, 165 (Bankr. W.D. Pa. 1990), *aff'd without opinion*, 928 F.2d 1131 (3d Cir. 1991) (holding defendants' obligation under environmental compliance order was not discharged by bankruptcy filing because plaintiff did not convert defendants' liabilities into monetary terms). *But see* 11 U.S.C. § 101(5)(B) (2002) (indicating some forms of injunctive orders are within Bankruptcy Code's definition of claim).

[21] The courts could expand upon the broad construction by the Second Circuit of Bankruptcy Code section 1109(b) in *In re Caldor Corp*., 303 F.3d 161 (2d Cir. 2003). *Caldor* held that the right of a party to be heard on "any issue in a [chapter 11] case" under section 1109(b) included the right to be heard in each and every proceeding in the chapter 11 case without being required to move for and obtain an order for intervention in any proceeding. *Id*. at 169. In so holding, the court rejected the argument that requiring a party to obtain an order for intervention in each separate adversary proceeding would have "'the salutary effect of granting bankruptcy judges a reasonable, objective basis for balancing the interests of litigants in adversary proceedings with those of would-be interveners.' " *Id*. at 175–76.

economic interests of the issue on appeal,[22] such as law professors whose sole interest is in the pronouncement of sound legal principles by the courts.[23] However, *amicus* status is almost always limited to the filing of briefs without permitting oral argument.[24]

One other device suggested by the author to apply her "enterprise wealth maximization" theory would be the appointment of separate official committees in restructuring cases to represent the interests of non-traditional stakeholders. Unlike the unofficial committee approach under the prior Bankruptcy Act, which did not provide for official committees, Bankruptcy Code, section 1102(a) mandates the appointment of official creditors' committees in chapter 11 cases, and also authorizes the appointment of additional separate official committees to represent various interests. These committees have the right to engage professional persons

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[22] *See* United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., 1988 WL 2150. The Westlaw version of the *Timbers of Inwood* decision noted that an *amicus* brief was filed on behalf of the National Association of Credit Management (which did not have a direct interest in case) by its counsel, Richard Levin and Kenneth N. Klee. Brief for Amici Curiae Nat. Assoc. of Credit Mgmt. at 11, United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., 484 U.S. 365 (1988) (No. 86-1602). A *pro se* brief was filed by two law professors, Raymond T. Nimmer and Edward L. Ripley, for themselves as *amici curiae*. Brief for Amicus Curiae Raymond T. Nimmer & Edward L. Ripley at 4, United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., 484 U.S. 365 (1988) (No. 86-1602). The official report of *Timbers of Inwood*, however, did not note the filing of the briefs on behalf of the several *amici*. 484 U.S. 365 (1988). Likewise, in Hartford Underwriters' Ins. Co. v. Union Planters' Bank, 530 U.S. 1 (2000), and Norwest Bank Worthington v. Ahlers, 485 U.S. 197 (1988), Westlaw contains links to *amicus* briefs filed by the holders of non-monetary interests. In *Hartford Underwriters*, an amicus brief was filed by the Commercial Fin. Ass'n, representing the interests of secured creditors. Brief of Amici Curiae Insurance Assoc. and National Union Fire Ins. Co. of Pittsburgh at 6, Hartford Underwriters Ins. Co. v. Magna Bank N.A., 530 U.S. 1 (2000) (No. 99-409). (United Planters' Bank was the successor to Magna Bank.) In *Norwest Bank*, the court allowed the United States, whose interest was based on its frequent role as a creditor, to submit an *amicus* brief in support of a secured creditor. Brief for the United States as Amicus Curiae at 7, Norwest Bank Worthington v. Ahlers, 485 U.S. 197 (1987) (No. 99-409).

[23] Seven law professors filed an amicus brief in the United States Supreme Court in support of the petition for certiorari filed by the State of Tennessee from the Sixth Circuit's decision in *Tennessee Student Assistance Corp. v. Hood* (*In re* Hood), 319 F.3d 755 (6th Cir. 2003), *cert. granted*, 71 U.S.L.W. 3724 (U.S. Sept. 30, 2003) (No. 02-1606). *Hood* held that because the Constitution in Article I, section 8, Clause 4 authorizes Congress to establish uniform laws on bankruptcy, it had constitutional authority to abrogate state sovereign immunity in Bankruptcy Code section 106 despite the Supreme Court's holding in *Seminole Tribe v. Florida*, 517 U.S. 44 (1996), that Congress could not do so when exercising other Article I powers. The Supreme Court granted certiorari in *Hood*, and the *amici* will file a brief in the Supreme Court on the merits in support of the Debtor's position that by promulgation of the original Constitution the states lost whatever immunity they had from suits against them in the federal courts of bankruptcy.

[24] *See* SUP. CT. R. 28.7 ("[C]ounsel for an *amicus curiae* may seek leave of the Court to argue orally . . . . Such a motion will be granted only in the most extraordinary circumstances."); FED. R. APP. P. 29(g) (warning in advisory committee's note language stating amicus will be granted permission to participate in oral argument "only for extraordinary reasons" has been deleted, to reflect common practice of courts to allow parties to share argument time with amicus; however, in other instances amicus may participate only in extraordinary circumstances); *see also* American Coll. of Obstetricians & Gynecologists v. Thornburgh, 699 F.2d 644, 646 (3d Cir. 1983) (identifying a caveat in Federal Rule of Appellate Procedure 29: leave of court for amicus curiae to participate in oral argument only granted for "'extraordinary reasons.'").

whose fees are paid from the debtor's estate.[25] The United States trustee has authority to appoint such additional separate official committees, and must appoint an additional separate official committee when ordered by the court to ensure adequate representation of a particular interest.[26] Section 1102(a), however, may not be broad enough to authorize the appointment of separate official committees to represent non-traditional stakeholder interests because committees can only be appointed under section 1102(a) for the representation "of creditors or of equity security holders."[27]

Moreover, the bankruptcy courts in the United States have regrettably had a knee-jerk reaction against ordering the appointment of additional separate official committees, as have the United States trustees. The courts, reflecting the views of official creditors' committees in most chapter 11 cases, have generally been of the view that where the official creditors' committee in a case is functioning, there is no lack of adequate representation and thus no need to appoint an additional separate official committee.[28] Simply put, as courts see it, the appointment of additional committees is undesirable because it would only increase the costs of the case and to delay confirmation.[29]

Underlying the antipathy of the bankruptcy courts to order the appointment of additional separate official committees is the view that early confirmation of a reorganization plan negotiated by the debtor, the official creditors' committee, and the other major parties in interest is the standard to measure the success of a chapter 11 case, and that the presence of more official committees would generate litigation and impede confirmation.[30] That standard, however, does not reflect the statutory

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[25] *See* 11 U.S.C. § 330(a)(1) (2002) (providing attorney compensation for actual and necessary services and expenses).

[26] 11 U.S.C. § 1102(a)(2) (2002); *see In re* Hills Stores, 137 B.R. 4, 7 (Bankr. S.D.N.Y. 1992) (holding creditor committee does not have to reproduce creditor body but should adequately represent various creditor types); *see also In re* Drexel Burnham Lambert Group, Inc., 118 B.R. 209, 212 (Bankr. S.D.N.Y. 1990) ("[S]tandard of adequate representation . . . lies not in uniqueness of single claim but 'in nature of case and composition of committee' . . . chief concern . . . is whether it appears that different classes of debt and equity holders may be treated differently under a plan and need representation through appointment of additional committees.").

[27] 11 U.S.C. § 1102(a).

[28] *See In re* Sharon Steel Corp., 100 B.R. 767, 779 (Bankr. W.D. Pa. 1989) (discussing decisions where courts have refused to appoint additional committees because cost and delay outweigh benefits); *see also In re* Enron Corp., 279 B.R. 671, 690 (Bankr. S.D.N.Y. 2002) (noting committee is "functioning well" and appears to be fulfilling its task of facilitating negotiations and compromises); *In re Hills Stores*, 137 B.R. at 6 (bankruptcy courts have generally been reluctant to appoint additional committees).

[29] *See In re Enron Corp.*, 279 B.R. at 684 (noting court is unconstrained in determining whether additional committees are necessary); *In re Sharon Steel*, 100 B.R. at 779 (identifying costs and delays of appointing additional committees); *see also In re* McLean Indus., Inc., 70 B.R. 852, 862 (Bankr. S.D.N.Y. 1987) (highlighting costs could be "extreme" in authorizing additional committees).

[30] *See, e.g.*, *In re Sharon Steel*, 100 B.R. at 779 (commenting success of case would be determined by working out differences within committee); *see* G. Eric Brunstad, Jr. & Mike Sigal, *Competitive Choice Theory and the Unresolved Doctrines of Classification and Unfair Discrimination in Business Reorganizations Under the Bankruptcy Code*, 55 BUS. LAW. 1, 1 (1999) ("The practical aim of chapter 11 of the Bankruptcy Code is the successful confirmation of a negotiated plan that either provides for the

text of section 1102(a),[31] and is also subject to serious question because of the large number of failures of confirmed chapter 11 debtors who find themselves in need of debtor relief in a second chapter 11 case despite the statutory finding made by the courts in their first chapter 11 cases under Bankruptcy Code section 1129(a)(11) that confirmation "is not likely to be followed by . . . the need for further financial reorganization of the debtor . . . ."[32]

To succeed, therefore, the "enterprise wealth maximization" theory of *Creditor Rights and the Public Interest* will thus have to meet head-on the established notion that the creditors should have a strong measure of control of chapter 11 cases, and the attitude of creditors that anyone "not in the money" should have no role in a chapter 11 case. Nevertheless, attorneys who consider undertaking the representation of non-traditional stakeholder interests in chapter 11 cases should not be reluctant to do so in light of the fact that local communities, local governments, and other non-traditional stakeholders have important interests that should be represented. Attorneys who represent such interests will find helpful support in the theory and analysis advanced by Professor Sarra and in the Canadian cases she reviews in her book, as well as her extensive footnotes.

Creditor Rights and the Public Interest also contains a brief and fairly accurate description of chapter 11's provisions, which should be particularly helpful to readers outside the United States. It also contains brief analyses of the reorganization processes in France, Germany and the United Kingdom, for whose accuracy I cannot vouch due to my lack of detailed familiarity with them.[33]

Bankruptcy theorists will find *Creditor Rights and the Public Interest* and its creative thesis worthwhile. It should also be helpful to bankruptcy practitioners in proceedings that implicate the goals and purposes of reorganization cases.

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reorganization of the bankrupt debtor, or the orderly liquidation of its assets."); *see also* J. Bradley Johnston, *The Bankruptcy Bargain*, 65 AM. BANKR. L.J., 213, 270 (1991) ("Ideally, the creditors' committee should [function] . . . by effectively treating unsecured creditors as one bargaining entity with one bargaining agenda.").

[31] 11 U.S.C. § 1102(a) (2002) (authorizing court to order appointment of additional committees of creditors or equity holders by United States Trustee and also authorizing United States Trustee to appoint such additional committees as he or she deems appropriate).

[32] 11 U.S.C. § 1129(a)(11) (2002).

[33] Additional information about the reorganization processes in Germany and the United Kingdom, and information about the reorganization processes in Japan, Portugal, Turkey, Hong Kong, Mexico, China, Belgium or Australia is available in the Annual Bankruptcy Survey of Law 1999, 2000, 2001 and 2002 editions.