Vol. 51 | No. 5 | May 2014

education | research | information

benefits

WEB exclusive

MAGAZINE

The bankruptcy process can seem mysterious—especially to someone caught up in it. This article explains the process, highlighting key aspects of filing claims and timing. Important terms are defined in a sidebar.

Bankruptcy Basics

by Paul A. Green

For most of us who work with employee benefit plans, the bankruptcy process seems like a mysterious black hole from which nothing good can ever come. This article is intended to shed some light on the process and remove some of its mystery.

Bankruptcy has two general goals: the orderly and "fair" distribution of assets among creditors and the "fresh start." That said, bankruptcy proceedings can leave you feeling neither fair nor fresh.

Legal Framework

In 1978, the Bankruptcy Code[1] replaced a bankruptcy law that had been originally enacted in 1898. Following the Supreme Court's decision tossing out its initial efforts as unconstitutional,[2] Congress modified the Code in 1984 making bankruptcy judges a "unit" of the district court, giving the district court original jurisdiction over all bankruptcy cases and making bankruptcy judges, with their 14-year terms, like magistrates.

The Bankruptcy Code also created a new branch of the Department of Justice, the Office of the Bankruptcy Trustee. Many of the ongoing administrative tasks previously supervised by the bankruptcy judges are now handled by the U.S. Trustee.

Commencement of Case

Most bankruptcies are commenced when the bankrupt entity—known as the *debtor*—files a petition. This is known as a *voluntary bankruptcy.*[3] The filing of a voluntary petition triggers the *order for relief*, which starts the whole bankruptcy process. The petition also triggers an automatic *order of reference* by which the proceeding is "referred" from the district court to the bankruptcy court.

A voluntary bankruptcy petition should be accompanied (or followed shortly) by a bevy of schedules and other documents, including a list of creditors and major shareholders, a list of claims, a schedule of assets, and a general statement of the debtor's business activities and how it came to need to file

for bankruptcy.[4] Although these documents may not be accurate or complete, they may be the best easily available sources of information. Moreover, although required to be filed in every case, the attachments and schedules may be filed late or not at all.

Some bankruptcies—known as *involuntary bankruptcies*—are filed by creditors. The bankruptcy court will decide whether to issue an order for relief and, once that has been entered, the case proceeds in the same manner as a voluntary case.

The *automatic stay* begins after the petition has been filed or the order of relief has been entered. The automatic stay prohibits any litigation or other collection activities involving the debtor. Violating the automatic stay can put a party in contempt of court—a very bad thing. Even sending a dunning letter technically is a violation of the automatic stay and should be avoided. There are some important exceptions to the automatic stay. Most notably, government regulatory proceedings are exempt. Furthermore, the bankruptcy court may grant relief from the automatic stay for good reason.

Closely related to the automatic stay is the power of the bankruptcy court to remove ongoing actions in other courts for resolution by the bankruptcy court. Excluded from this removal power are proceedings before the United States Tax Court, civil actions by governmental units under their police or regulatory powers, and other instances where abstention is required or otherwise appropriate.[5]

Creditors and Committees

Shortly after the commencement of the case, a notice of the first meeting of creditors will be sent to interested parties containing useful information, such as the names, addresses and telephone numbers of some or all of the essential parties and, often, the bar date (the deadline for filing claims), as well as the date, time and place of the first meeting of creditors. The meeting (often called the *Section 341 meeting*) will be held within 20 to 40 days after the filing of the bankruptcy petition, unless otherwise ordered by the bankruptcy court.[6] The debtor is responsible for providing an official to answer creditors' questions, under oath, at the meeting.[7] Although usually no transcript is made, these meetings routinely are taped.

At or prior to the first meeting of creditors, the U.S. Trustee will appoint a creditors' committee to oversee the conduct of the bankruptcy. The committee, composed of the major unsecured creditors of the debtor, is closely involved in the finances of the estate. With the approval of the bankruptcy court, other committees may be appointed such as an equity holders' committee or a labor committee.[8]

Affairs of the Estate

In a Chapter 7 bankruptcy, a trustee is appointed. The trustee is not an employee of the U.S. Trustee's Office, although he or she usually is selected from a list maintained by the U.S. Trustee. The trustee ordinarily has all of the power and authority of the debtor. The trustee, under the supervision of the bankruptcy court and U.S. Trustee, is responsible for managing the affairs of the estate, liquidating the assets of the estate and collecting all amounts owed to the estate.[9] Ordinarily, a business will cease operations as of or before the filing of the bankruptcy petition. The bankruptcy court may, however, authorize the trustee to continue operating the business for a limited period.[10]

In a Chapter 11, on the other hand, the estate normally remains under the control of the debtor as a *debtor in possession*, subject to the supervision of the bankruptcy court. The bankruptcy court may, however, divest the debtor of control of the business and may appoint a trustee (sometimes referred to as a *substitute debtor in possession*).[11] Ordinarily, a business will continue operating subsequent to the filing of a Chapter 11 bankruptcy petition. An estate that conducts business is required to file periodic financial statements with the bankruptcy court; these normally are supplied to the creditors' committee.[12]

Often, closely related and commonly owned companies will file their bankruptcies together. For administrative convenience, these related bankruptcies may be administered together—This is known as *procedural consolidation* or *joint administration*. A procedural consolidation is not a merger; each of the individual debtors retains its separate identity. Occasionally, related entities will undergo a *substantive consolidation* (bankruptcy lawyers like to call this *sub con*), which is effectively a merger of the separate entities.

In order to continue its operations during the bankruptcy, the estate may require money or other forms of credit—known as *DIP financing*. If the debtor in possession or trustee cannot obtain financing in any other way, the bankruptcy court may allow a new lender to take a security interest in the unliened assets of the estate or may grant the creditor a "superpriority," with a higher priority than all of the other unsecured creditors.[13]

In addition, a debtor in possession or a trustee may, after notice and hearing, use, lease or sell property of the estate outside the ordinary course of business. Under certain circumstances, property of the estate may be sold free and clear of all liens, encumbrances and other interests. (Note: In a Chapter 11, an attempt to sell all, or a substantial portion of, the property of the estate

may amount to the equivalent of a plan of reorganization, although objections to such attempts typically fail.)[14]

Claims

Claims that are not *scheduled* (i.e., not listed in Schedule A) or that are scheduled as disputed, contingent or unliquidated, must be evidenced by the filing of a proof of claim or they will not be paid. Claims that are correctly scheduled need not be claimed by a proof of claim.[15]

Technically, claims may be filed at any time. Claims filed after the bar date, however, will be paid only to the extent that any assets remain in the estate after all allowed scheduled and timely filed claims are paid. Usually, there is no money available to pay late claims.[16] **This is why it is so important to never miss a bar date.** Estimate if you have to, guess if you need to. But always file something. As long as you are estimating, it is better to guess high than to guess low—It is easier to reduce your claim later than to increase it.

In a Chapter 7, the bar date is 90 days after the first date set for the first meeting of creditors, unless otherwise ordered by the bankruptcy court.[17] Rescheduling the first meeting of creditors does not change the bar date, unless otherwise ordered by the bankruptcy court.

In a Chapter 11, the bar date depends on the rules of the local bankruptcy court district. In some judicial districts, the bar date is the same as in a Chapter 7. In others, the bar date is the date set by the court. The bar date may be stated in the notice of the first meeting of creditors, in a separate notice or order or kept a deep, dark secret.[18]

Allowed claims, whether scheduled or filed, will generally be paid in the following order, although this can be modified by the terms of a Chapter 11 plan of reorganization:

- Secured claims with interest, to the extent they are secured, up to the value of the collateral or the amount of the claim with interest, whichever is lower[19]
- Superpriority claims, with interest[20]
- Priority claims:
  - —Certain administrative and domestic support priority claims—debts incurred by a trustee on behalf of the estate after the filing of the bankruptcy petition, as well as domestic support obligations, but excluding any amounts payable as gap claims or other administrative priority claims. Such claims must be paid fully in cash, sometimes with interest, on or before the date of distribution.[21]
  - —Other administrative priority claims incurred by the estate after the filing of the bankruptcy petition that are not described in the prior paragraph, including those incurred by a debtor in possession. It is unusual to have claims arising under both administrative provisions, so that both categories generally are referred to just as *administrative claims.* Such claims must also be paid fully in cash, sometimes with interest, on or before the date of distribution.[22]
  - —*Gap period claims* incurred in an involuntary case subsequent to the filing of the petition but prior to the entry of the order for relief. Gap period claims are treated in the same manner as administrative claims.[23]
  - —*Wage priority claims*—wages, vacation pay, etc., but excluding other employee benefits, earned within the 180 days before the earlier of the filing of the petition or the cessation of business, up to a maximum of $10,000 per individual claimant. These must be paid in cash on the date of distribution or, in a Chapter 11 with the consent of the class, may be paid in installments.[24]
  - —*Employee benefit priority claims*, including pension plans, health insurance plans, etc., for the 180-day period prior to the earlier of the date of filing the bankruptcy petition or the date of cessation of business. These claims can be up to a maximum of $10,000 times the total number of participants who worked at any time during the 180-day period, less the total amount allowed as wage priority claims. These claims must be paid in cash on the date of distribution, or in a Chapter 11 and with the consent of the class, may be paid in installments.[25]
  - —*Loaves and fishes priority*—Claims of farmers against grain storage facilities or of fishermen against fish storage facilities. These must be paid in cash on the date of distribution or, in a Chapter 11 with the consent of the class, may be paid in installments.[26]
  - —*Consumer layaway priority*—Certain debts owed to individual consumers who paid the debtor for personal items that were never delivered. These must be paid in cash on the date of distribution or, in a Chapter 11 with the consent of the class, may be paid in installments.[27]
  - —*Tax priority*—Taxes incurred by the debtor prior to the filing of the petition. In a Chapter 11, these may be paid in installments over six years.[28]
  - —*Bank capital priority*—Certain debts owed to maintain the capital of a financial institution[29]
  - — §507(a)(1)—*drunken driver priority*—Amounts owed for death or personal injury by a drunken driver.
- General unsecured claims

- Claims filed after the bar date
- Claims for fines or penalties
- Interest on the above, unless interest is otherwise paid
- Any assets remaining are paid to the debtor or, if applicable, the shareholders (i.e., the holders of *interests*).

Interest typically is not paid on claims, with the exception of secured claims and administrative priority claims. Nevertheless, if the payment of a claim is delayed beyond the date other claims are paid as a result of an objection or otherwise, the claim should be entitled to interest running from the date of general distribution to the date of payment.

Claims of pension and benefit plans generally fall into a few distinct categories. Unpaid contributions attributable to the period after the bankruptcy petition is filed (or, in an involuntary case, after the order for relief) ordinarily are entitled to administrative priority. Unpaid contributions attributable to the 180 days prior to the earlier of the date of the petition or the cessation of operations will be entitled to employee benefit priority up to the statutory maximum. All other unpaid contribution claims typically are general unsecured claims.

Pension plan withdrawal liability usually is a general unsecured claim, without regard to whether the withdrawal occurs before or after the filing of the petition. For withdrawals occurring after the date of the filing of the bankruptcy petition, however, a number of courts will treat the portion of the withdrawal liability "attributable to" the period following the filing of the bankruptcy petition as entitled to administrative priority.[30] Although it is not necessarily clear what *attributable to* means, it generally refers to the amount of the increase in the withdrawal liability that resulted from work performed after the date of the bankruptcy petition.

Employee contributions withheld from pay but not remitted to the plan should not be a "claim" at all since it is not property of the estate; it is held by the estate in trust. Such amounts should be payable, with interest, ahead of all other claims. Alternatively, the plan may seek a determination that the holding of such assets is a fiduciary breach that is nondischargeable.[31]

Claims, whether scheduled by the debtor or made by proof of claim, are paid only to the extent they are allowed.[32] A claim scheduled by the debtor as contingent or disputed is automatically disallowed unless a proof of claim is filed. Otherwise, if no objection is made to a claim, it is automatically allowed.[33] Any interested party may file an objection to any claim, whether scheduled or filed by a proof of claim.

Executory Contracts

In addition to providing relief from creditors, filing for bankruptcy gives a debtor the power to pick and choose among its contracts that have not yet been fully performed (*executory contracts*). In a Chapter 11, with the exception of collective bargaining agreements and contracts providing for retiree health care, the debtor in possession has the power to reject executory contracts with the approval of the bankruptcy court if such contracts are a burden to the estate. The standard is the *business judgment* rule. The debtor in possession may seek rejection in a separate motion or in the plan of reorganization. Furthermore, even before it has filed a rejection motion, a debtor is free to ignore the terms of its executory contracts (known as *self-help*). In a Chapter 7, all executory contracts automatically are rejected unless they are assumed by the trustee.[34]

Contrary to the common misperception, when a contract is rejected, it does not just disappear. It is treated as if the contract had been breached as of the date of the filing of the bankruptcy petition, with all damages from that breach being treated as a general unsecured claim.[35] Any performance by a creditor under a contract that has been rejected will be paid for as an administrative priority claim for the value of any products or services provided (known as *quantum meruit*).[36] For example, suppose a debtor is locked into an above-market supply contract in which it is forced to buy a raw material at $100 per unit, even though the market price has dropped to $60 per unit. Three months after filing its Chapter 11 petition, the debtor decides to reject the contract, although it has already bought 1,000 units since filing its petition and has three years left on the contract. By rejecting the contract, the debtor now has to pay only $60 for each of the 1,000 units it has bought (the quantum meruit value), leaving the supplier with a $40 per unit general unsecured claim for each of the 1,000 units, as well as a prospective general unsecured claim for its damages projected over the remaining life of the contract.

Rejection of collective bargaining agreements (often referred to as *1113 rejection* after the provision in the Bankruptcy Code) in a Chapter 11 are covered by separate provisions of the Bankruptcy Code, with different requirements and effects.[37] Unlike standard rejection, a debtor may not resort to self-help. Even on an interim basis, a debtor must get authority from the court to modify the terms of a collective bargaining agreement prior to its rejection.[38] It is important to understand that these requirements do not apply to an expired collective bargaining agreement (including the "terms and conditions" imposed by federal

labor law during bargaining) because such a contract is no longer executory.

The following steps generally are required before a bankruptcy court may order the rejection of a collective bargaining agreement:[39]

- The debtor must make a proposal to the union to modify the collective bargaining agreement any time after filing its petition and before an application seeking rejection of the agreement.
- The proposal must be based on the most complete and reliable information available at the time of the proposal.
- The proposed modifications are *necessary* to permit the reorganization of the debtor.
- The proposed modifications must assure that all creditors, the debtor and all of the affected parties are treated *fairly and equitably*.
- The debtor must provide the union with such relevant information as is necessary to evaluate the proposal.
- The debtor must meet at reasonable times with the union between the time of the making of the proposal and the hearing on the application to reject the collective bargaining agreement.
- The union must have refused to accept the debtor's proposal without *good cause*.
- The *balance of the equities* clearly favors the rejection of the collective bargaining agreement (meaning that the burden is not unfairly placed on the employees covered by the collective bargaining agreement).

Rejection of collective bargaining agreements is handled on a very tight schedule. Upon the filing of an application for rejection, the court must schedule a hearing to be held within 14 days, and all interested parties must be given at least ten days' notice. The court may delay the hearing for up to seven days, or longer if the union and the debtor so agree. The court must rule within 30 days after the date of the commencement of the hearing unless the parties agree to extend the deadline. If the court fails to rule within the designated time, the debtor may unilaterally abrogate the contract pending the court's ruling.

The effect of the rejection of a collective bargaining agreement is also different from that of standard rejection. Prior to rejection or modification, the debtor's financial obligations under the contract are administrative expenses. The effect of modification or rejection of a collective bargaining agreement is, however, unclear. Some courts treat rejection of a collective bargaining agreement similarly to that of a standard contract: The contract is treated as having been breached as of the date of modification or rejection, and damages from the breach are treated as general unsecured claims.[40] Other courts treat the contract as having been "abrogated" so that no damages arise from rejection.[41]

Rejection of retiree health benefits in a Chapter 11 are covered by a separate provision of the Bankruptcy Code largely modeled on the provisions dealing with collective bargaining agreements (often referred to as *1114 rejection*).[42] Although on its face the relevant provision of the Bankruptcy Code seems to apply to all retiree health benefits, courts generally have concluded that 1114 rejection is not required unless the debtor has a continuing contractual obligation to provide those benefits. In the absence of such a continuing contractual obligation, the courts generally have ruled that a debtor may resort to self-help and unilaterally terminate those benefits.[43]

The requirements for rejection or modification of retiree health benefits are similar to those applicable to collective bargaining agreements. In order for a court to order the modification or elimination of retiree health benefits, it must find:

- That the debtor:
  - —Made a proposal to the *authorized representative* of the retirees
  - —Provided the representative with such relevant information as was necessary to evaluate the proposal
  - —Met at reasonable times with the representative to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits.
- That the authorized representative refused to accept such proposal without good cause
- That the modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably, and that the modification is clearly favored by the balance of the equities (i.e., that the burden is not unfairly placed on the retirees).

In negotiating changes to retiree health benefits, the debtor must deal with the retirees' authorized representative. If the retiree health care was collectively bargained, the retirees' authorized representative will be their labor union unless either the union declines to serve or the court determines that different representation is appropriate. Otherwise, the retirees' authorized representative will be a committee of retirees appointed by the court. A debtor may seek to modify benefits on an interim basis prior to a final order if essential to the continuation of the debtor's business or in order to avoid irreparable damage to the estate.

Like the rejection of a collective bargaining agreement, modification of retiree health benefits runs on a tight sched-

Glossary of Bankruptcy Terms

Absolute Priority Rule—Payments of claims and interests is based strictly upon the statutory priorities. The rule ordinarily is required in a Chapter 7 and applicable to a Chapter 11 with respect to an impaired class that is "crammed down."

Abstention—

a. Mandatory: Upon the timely motion of a party, the bankruptcy court must abstain from all proceedings concerning certain related matters not arising in or under a bankruptcy case that, except for the bankruptcy, could have been brought only in a state court, and in which a state court is available that can adjudicate the matter in a timely fashion. (28 U.S.C. §1334(c)(2).)

b. Permissive: In the interest of justice or comity, a bankruptcy court may abstain from hearing proceedings arising in or related to a bankruptcy. (28 U.S.C. §1334(c)(1).)

Adequate protection—The right of a secured creditor to have its interest in the collateral protected against any diminution in value. The bankruptcy court may provide such protection by requiring the estate to make cash payments to the secured creditor providing a lien in comparable property, or such other relief as will provide the secured creditor the "indubitable equivalent" of its interest in the collateral. (§361.)

Adversary proceeding—A proceeding before the bankruptcy court similar in form to a civil action in district court. An adversary proceeding may rise from an attempt to recover property; to determine the validity, priority or extent of a lien or other interest in property; to sell property that is subject to the undivided interest of a co-owner; to object to or revoke a discharge or the confirmation of a plan of reorganization; to determine the discharge ability of a debt; to subordinate a claim or interest outside of a plan of reorganization; to obtain an injunction; to obtain a declaratory judgment related to one of the matters listed above; or to determine a cause of action removed to the bankruptcy court. A proceeding on an objection to a claim becomes an adversary proceeding only if the objection is coupled with a demand for relief of the kind listed above (Rule 3007 and 7001). In general, such a proceeding is subject to the Federal Rules of Civil Procedure and the Federal Rules of Evidence, as modified by the Bankruptcy Rules. (Rules 7001-7087.)

Allowed claim or interest—A claim or interest that has been allowed by the bankruptcy court. (§502.)

Appeal—The district court has jurisdiction to hear appeals from the bankruptcy court. The judicial circuit may establish a bankruptcy appellate panel, consisting of bankruptcy court judges, to hear certain appeals made to the district court, provided no party objects. The decision of the district court or appellate panel may be further appealed to the Court of Appeals. (28 U.S.C. §158; Bankruptcy Rules 8001-8019.)

Automatic stay—The filing of the bankruptcy petition automatically precludes all actions against the debtor outside of the bankruptcy court, including civil suits, foreclosure actions, etc., and halts all pending actions. The automatic stay may be lifted by the bankruptcy court with respect to a single creditor or a whole class of creditors. An exception to the automatic stay applies to certain government regulatory actions, including a proceeding before the National Labor Relations Board. (§362.)

Bankruptcy—The method provided under federal law, as referenced in the U.S. Constitution, by which an individual or business can be relieved of the burden of overwhelming debt, and through which the creditors can receive the fairest possible distribution of the assets of the debtor.

Bankruptcy Act—The law that applies to bankruptcy cases commenced prior to October 1, 1979.

Bankruptcy appellate panel—A panel of three bankruptcy judges that, upon a majority vote of the district judges within the judicial district, may hear particular appeals from the bankruptcy court made to the district court. (28 U.S.C. §158.)

Bankruptcy Code—The law that applies to bankruptcy cases commenced on or after October 1, 1979 and upon which this outline is based.

Bankruptcy court—A unit of the district court in each judicial district consisting of bankruptcy judges, created to handle matters under the Bankruptcy Code. (28 U.S.C. §§151-158.)

Bankruptcy judges—"Title I judges" who serve as officers of the district court appointed for 14-year terms.

Bar date—The last date allowed for filing timely claims. (Rules 3002(c) and 3003(c)(3).)

Break-up fee—Where a debtor enters into a commitment with a third party that includes the payment of a fee to the third party in the event the deal does not go forward, usually because the debtor has gotten a better offer.

Chapter 7 bankruptcy—Straight liquidation. Its chief characteristics are that control of the assets of the estate is given to a trustee, and distribution of the assets of the estate is made according to a strict statutory formula. (§§701-784.)

Chapter 9 bankruptcy—Municipal bankruptcy; not treated here.

Chapter 11 bankruptcy—Reorganization; generally used by businesses that intend to remain in operation. It may, however, be used as a vehicle for liquidation (a *liquidating Chapter 11*). Its chief characteristics are that it allows the debtor to remain in control of the assets of the estate, subject to the supervision of the bankruptcy court; it allows the business to continue operating for a limited period free from the pressure of paying its preexisting debts; and the form of the distribution of estate assets, the treatment of claims against the estate, the distribution of ownership interests in the reorganized debtor and the future operations of the debtor may be specified in a plan of reorganization. (§§1101-1174.)

Chapter 12 bankruptcy—Special provisions for family farmers and fisherman. (§§1201-1231.) Not treated here.

Chapter 13 bankruptcy—Adjustment of debts; used by individuals with a steady income who wish to repay some or all of their debts over time. (§§1301-1330.)

Chapter VII bankruptcy (or straight bankruptcy)—Straight liquidation under the Bankruptcy Act; similar to a Chapter 7. Not dealt with here.

Chapter X bankruptcy and Chapter XI bankruptcy—Reorganizations and arrangements under the Bankruptcy Act; similar to a reorganization under Chapter 11. Not dealt with here.

Claim—Any debt or obligation of the debtor, even if contingent, contested and/or unliquidated (i.e., where the exact amount of the claim is not known). (§101(4).)

Claims register—The list of filed claims maintained by the clerk of the bankruptcy court; not necessarily up-to-date at any given time.

Collateral—The property of the debtor by which a secured claim is secured.

Codebtor—An individual or entity that is jointly liable with the debtor on a particular debt or claim. Where the common creditor has not filed a claim against the debtor, the codebtor may file a claim in anticipation of ultimate liability on the debt. Such a claim is considered to be subrogated to the claim of the common creditor. (§509, Rule 3005.)

Glossary of Bankruptcy Terms

Consolidation—

a. Procedural (also known as joint administration)—The consolidation of two separate bankruptcy cases involving separate, although possibly related, debtors, into a single proceeding for administrative convenience. This is often used in cases involving separate bankruptcies of corporate affiliates and, in individual bankruptcies, of spouses. Although conducted as a single proceeding, jointly administered cases will usually retain separate docket numbers. Claims against one debtor involved in such a proceeding will not ordinarily be considered to have been filed against any other debtor in the same proceeding. For purposes of avoiding confusion, claims that are intended to be made against two or more debtors involved in a jointly administered case should be made in separate proofs of claim, with the identity of the intended debtor clearly indicated, both in the proofs of claim and in the cover letter to the bankruptcy court. (§302, Rule 1015.)

b. Substantive—Effectively a merger of two or more separate debtors into a single entity. It is similar to procedural consolidation in that all separate proceedings will be combined into a single proceeding; different in that the formerly separate debtors will be treated as a single entity. Thus, a claim against one of the formerly separate debtors constitutes a claim against all.

Contested matter—A dispute in a bankruptcy case that must be resolved by the bankruptcy court in much the same manner as a suit in district court. The rules to be followed in resolving the matter are, however, somewhat looser and less formal than those followed in district court or by the bankruptcy court in an adversary proceeding. (Rule 9014.) A contested matter ordinarily is created by, for example, the filing of an objection to a proof of claim or to a disclosure statement, unless the matter to be resolved is one that must be resolved in an adversary proceeding. (Rules 3007 and 7001.)

Conversion—Upon motion of the debtor or a party to the bankruptcy proceeding, by order of the bankruptcy court, a Chapter 11 may be converted to a Chapter 7. (§1112.) Additionally, a Chapter 7 generally may be converted into a Chapter 11 by the debtor or by order of the bankruptcy court on motion of a party. (§706.) Claims filed in the proceeding prior to the conversion ordinarily do not have to be refiled after the conversion, unless the bankruptcy court orders otherwise. (Rule 1019.)

Core proceedings—Certain specified matters considered to be at the heart of the bankruptcy proceeding, including matters concerning the administration of the estate, allowance of claims, orders to turn over or recover property; motions to modify the automatic stay; questions concerning discharge; determinations of the validity, extent or priority of liens; confirmations of plans of reorganization; orders concerning the sale of property; other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship; and recognition of foreign proceedings and other matters under Chapter 15. Other matters properly subject to the jurisdiction of the bankruptcy court, including personal injury claims, are known as *related proceedings*. Where the case has been properly referred to the bankruptcy court, and where such referral has not been withdrawn, the bankruptcy court is empowered to decide matters arising in core proceedings, subject to appeal. (28 U.S.C. §157(b).)

Cram-Down—

a. Secured creditor cram-down: The act of forcing a secured creditor to accept the value of its security in satisfaction of its secured claim. Any portion of the claim remaining unsatisfied becomes an unsecured claim. (§§506, 1129(b)(2)(A).)

b. Cram-down in a plan of reorganization: The process of forcing unsecured creditors and interest holders to accept a proposed plan of reorganization against their will. Also applies to the process of forcing a secured creditor to accept cash in an amount equal to the value of the collateral or the amount of the claim with interest, whichever is lower, thereby giving up the security interest and being forced to accept a plan of reorganization. (§1129(b)(2)(B).)

Creditor—A person or entity to whom the debtor owes a debt or obligation. (§101(9).)

Creditors' committee—A group consisting of the major unsecured creditors of the debtor, which participates in most aspects of the bankruptcy. (§§705 and 1102-1103.)

Date of distribution—The date most of the allowed claims are paid out of the assets of the estate. In a Chapter 7, the date of distribution will be set by order of the bankruptcy court. In a Chapter 11, the date will be established by the confirmed plan of reorganization. (Rules 3009 and 3021.)

Debtor—The subject of the bankruptcy; the person or entity whose debts and assets are affected by the bankruptcy. (§101(12).)

Debtor in possession—The debtor in a Chapter 11 bankruptcy where the debtor continues to operate the business subsequent to the filing of the bankruptcy petition. In general, any power or obligation granted to a trustee also applies to a debtor in possession. (§1107.)

DIP financing—The financing package generally provided by a bank or syndicate of banks to a debtor in possession in a Chapter 11 bankruptcy. The lender typically is provided superpriority status, and the loan package may include "roll-ups."

Discharge—The order of the bankruptcy court by which the debtor is relieved forever of the obligation of repaying all preexisting claims, subject to very few exceptions. Not granted in a business Chapter 7 or a liquidating Chapter 11. (§§523, 524, 727 and 1141.)

Disclosure statement—A statement filed in a Chapter 11 detailing the debtor's present and projected future financial condition, filed in connection with, and ordinarily containing a summary of, the plan of reorganization. (§1125.)

Dividend—The payment or payments to a creditor on distribution of the estate.

Docket sheet—The list maintained by the bankruptcy court of all documents filed in a bankruptcy proceeding (other than claims, which appear on the claims register) and all actions taken by the bankruptcy court.

Estate—The legal entity created with the filing of the bankruptcy petition, consisting, with some exceptions, of the nonexempt property of the debtor. The interest of an individual debtor in a pension plan generally is not property of the estate. (§§522 and 541.)

Examiner—An individual appointed by the bankruptcy court in a Chapter 11 to investigate the debtor. An examiner has some or all of the authority of a trustee, as ordered by the bankruptcy court. (§§1104(b) and 1106(b).)

Exclusive period—In a Chapter 11, the period of time (normally the 120 days following the filing of the bankruptcy petition) during which only the debtor may propose a plan of reorganization. Typically, these are extended at the debtor's request. (§1121.)

Executory contract—A contract not fully performed, where the obligations remaining unperformed entail more than the payment of money. (§§365 and 1113.)

Exempt property—Property of an individual debtor not subject to the control of the bankruptcy court and, therefore, not subject to distribution to creditors. Benefits payable under a pension plan generally constitute exempt property. (§522.)

Glossary of Bankruptcy Terms

Fiduciary out—Where the debtor or the creditors' committee has entered into a commitment with a third party but subsequently receives a better offer from a different party, the ability of the debtor or creditors' committee to break the original commitment in favor of the better offer. It often is accompanied by a "no-shop agreement" and a "break-up fee."

Filed claim—A claim evidenced by the filing of a proof of claim. (§501; Rules 3001-3005.)

First-day motions and orders—Administrative and other matters typically resolved, at least on an interim basis, as soon as possible after the filing of the bankruptcy petition in a Chapter 11. This typically includes such matters as joint administration, other orders of administration, interim retention of debtor's counsel, interim DIP financing; authority to use cash collateral; authority to continue to conduct business, fill orders, pay employee wages (including pre-petition wages), etc. These often are subject to substantially reduced notice periods.

Fraudulent transfers—Transfers of property by the debtor within two years prior to the filing of the petition for less than full value that, under certain circumstances, may be set aside by the trustee or debtor in possession. (§548.) In addition, also includes transfers of property that may be set aside by the trustee or debtor in possession under state law or other nonbankruptcy law, even if made more than one year prior to the filing of the petition. (§544.) On rare occasions, a payment to an employee benefit plan may be set aside as a fraudulent transfer.

General unsecured claim—A claim, whether filed or scheduled, not secured and not entitled to priority.

Interests—The rights of equityholders, .e.g., owners and shareholders, in the property of the debtor.

Involuntary bankruptcy—A bankruptcy proceeding commenced by creditors; fairly unusual. (§303.)

Matrix—The mailing list used by the bankruptcy court, the debtor in possession or the trustee, etc., in sending notices and other documents to interested parties. Not everyone listed on the matrix, however, will receive all notices or documents.

No-shop agreement—Where a debtor or creditors' committee has entered into a binding commitment and has agreed to seek competing offers. Such an agreement does not preclude a fiduciary out.

Notice—A brief description of an action or event, or of a proposed action or event, in a bankruptcy proceeding, normally prepared by the proponent of the action or event, the trustee or debtor in possession, usually sent to some or all of those listed on the matrix who the sender and/or the bankruptcy court believes is interested in the matter. Some notices, such as a notice of first meeting of creditors, will be sent to everyone on the matrix. (§102 and Rule 2002.)

Notice and hearing—Where the Bankruptcy Code allows an action to take place after notice and hearing, there is no requirement that the hearing actually take place. Rather, appropriate notice must be given of the proposed action, with an opportunity for any interested party to request a hearing. (In rare cases where the bankruptcy court determines there is insufficient time for a hearing, it may authorize the action without a hearing.) If no hearing is requested, the action may be taken without a hearing and, ordinarily, without approval by the bankruptcy court. (§102(1) and Rule 2002.)

Petition (or bankruptcy petition or petition in bankruptcy)—The document filed in the bankruptcy court that commences the bankruptcy proceeding. (Rules 1002-1006.)

Plan of arrangement—In Bankruptcy Act cases, a plan similar to a plan of reorganization. Not dealt with here.

Plan of reorganization—A plan filed in a Chapter 11 only in which the filer of the plan proposes how the claims and interests are to be classified and how the different classes are to be treated, proposes how the ownership of the debtor will be redistributed and describes the proposed future activities of the debtor. (§1123.)

Preferences—Certain transfers of property of the debtor within the 90 days before the filing of the petition (or one year if the transfer is to an insider) made on account of preexisting debt that, under certain circumstances, may be set aside by the trustee or debtor in possession. (§547.) The amount of such a transfer set aside as a preference usually may be claimed by the transferee as a general unsecured claim. (§502(h).) Under certain circumstances, a payment to an employee benefit plan made within the 90 days prior to the date of the filing of the bankruptcy petition may be set aside as a preference.

Prepack or prepackaged bankruptcy—A Chapter 11 proceeding where the debtor and the major creditors have worked out their arrangements in advance of the bankruptcy filing. These typically are undisputed proceedings that conclude very quickly.

Priority—With respect to a scheduled or filed claim, the right of the creditor to be paid ahead of other creditors. (§507(a).) The holder of a priority claim has special rights under a plan of reorganization. (§1129.)

Proof of claim—The document filed by a creditor in making a claim. (§501; Rule 3001.)

Quantum meruit—A phrase generally used in connection with goods or services provided to the estate after the filing of a bankruptcy petition under a contract that has been retroactively rejected. The value of the goods and services is entitled to administrative priority, and any remaining balance is entitled to general unsecured status as damages from the rejection of the contract.

Referral or order of reference—An order entered by the district court referring bankruptcy-related matters to the bankruptcy court. (28 U.S.C. §§157(a) and 1334(a).) Most, if not all, districts have a general standing order or rule routinely referring all bankruptcy cases to the bankruptcy court.

Rejection of executory contract—The power of the trustee or debtor in possession, with bankruptcy court approval, to breach and terminate an executory contract. (§§365 and 1113.)

Related proceeding—A noncore proceeding arising in, or otherwise related to, a bankruptcy case. Unless the parties consent otherwise, the bankruptcy court is empowered only to propose findings of fact and conclusions of law to the district court. Prior to the entry of any order or decision by the district court, the proposed findings of the bankruptcy court are subject to de novo review. (28 U.S.C. §157(c).)

Removal—Any civil claim or cause of action related to a bankruptcy case, other than a proceeding before the U.S. Tax Court or a civil action by a governmental unit under its police or regulatory power may be removed to the bankruptcy court, unless abstention is required or otherwise appropriate. The bankruptcy court may remand the claim or cause of action on any equitable ground. (28 U.S.C. §§1334(c) and 1452.)

Request for notice—A form filed by a creditor with the bankruptcy court requesting that all notices, etc., be sent to the filer. (Rule 2002.) The request usually is sufficient to get the creditor placed on the matrix. It is not always a dependable way of monitoring the progress of a bankruptcy proceeding.

Glossary of Bankruptcy Terms

Roll-ups—In cases where a pre-petition lender also provides DIP financing, a term in the DIP financing package that either uses post-petition financing to pay off the pre-petition debt or that otherwise affords post-petition status to pre-petition debt. Often coupled with provisions imposing a limited time period after which the debtor and other Interested parties are barred from challenging any aspect of the pre-petition financing arrangement (the *challenge period*).

Schedule A—List of debts, normally filed by the debtor along with the bankruptcy petition. The list may be updated from time to time. (Rule 1007.)

Schedule B—List of assets, normally filed by the debtor along with the bankruptcy petition. It may be updated from time to time. (Rule 1007.)

Scheduled claim—A claim listed in Schedule A.

Section 341 meeting—The first meeting of creditors.

Secured claim—A claim secured by property of the debtor, to the extent the value of the collateral equals or exceeds the amount of the claim. In the event that the claim exceeds the value of the collateral, the claim is secured up to the value of the collateral, the remainder of the claim being unsecured. (§§101(42) and (43) and 506.)

Statement of affairs or statement of financial affairs (SOFA)—A summary of the operations and financial condition of the debtor, normally filed with the bankruptcy petition.

Subordinated claim or interest—

a. A claim or interest that the bankruptcy court, based upon equitable principles, has ordered not be paid until other, similar claims or interests are paid. For example, the bankruptcy court may subordinate a general unsecured claim held by a major shareholder to other, similar claims held by nonshareholders. Often referred to as *equitable subordination*. (§510.)

b. A claim based upon a written instrument that, by its own terms, can be paid only after other specified debts are paid. For example, a class of claims may exist based on debentures that, by their own terms, may be paid only after a different class of debentures is paid. Thus, in a Chapter 7, claims based on such subordinated instruments will be paid only after the other, nonsubordinated claims, otherwise entitled to the same treatment, are paid. In a Chapter 11, a class of claims based upon such subordinated instruments may be created that is treated as junior to, and entitled to treatment inferior to, a class of otherwise similar, nonsubordinated claims.

Subrogated claim—The claim of an entity based upon a debt owed to a different entity (i.e., the original creditor), which the claimant gains the right to make, often as a result of an obligation of the original creditor to the claimant. Also arises where the claim is based on the claimant's status as a codebtor. (§509(a).) A subrogated claim that would have been entitled to wage, employee benefit, loaves and fishes, consumer product, tax priority or bank capital priority if made by the original creditor, loses its priority status and is paid only as a general unsecured claim. (§507(d).)

An example of a subrogated claim is a claim made by an investor that has paid employees of a debtor for the right to any distribution resulting from their wage claims.

Substitute debtor in possession—A term used occasionally for a trustee in a Chapter 11.

Superpriority—A special priority that the bankruptcy court may grant to a lender that provides financing to the estate subsequent to the filing of the petition. Takes priority ahead of all of the priority creditors. (§364.)

Trustee (or bankruptcy trustee)—In a Chapter 7 (or in an unusual Chapter 11 where the debtor is not operating the business as a debtor in possession), the individual who steps into the shoes of the debtor subsequent to the filing of the bankruptcy petition for the purpose of, as applicable, operating the business, managing the assets of the estate, closing out the affairs of the estate and/or liquidating the assets of the estate. In addition to the special powers granted under the Bankruptcy Code, the trustee ordinarily has all of the power and authority that the debtor had before the bankruptcy, including the authority to execute any instrument that could have been executed by the debtor. In general, any reference to the trustee also includes the debtor in possession. Not to be confused with the U.S. Trustee. (§§701-704 and 1104-1106.)

Trustee in bankruptcy—Under the Bankruptcy Act, similar to a trustee under the Bankruptcy Code. Not treated here.

U.S. Trustee—A government administrative official within the Department of Justice who oversees the administration of bankruptcies within the district and performs certain functions previously performed by the bankruptcy court. Not to be confused with the trustee. (§§1501 et seq.)

Voluntary bankruptcy—A bankruptcy proceeding commenced by the debtor. The great majority of bankruptcies are voluntary. (§301.)

Withdrawal of reference—

a. Mandatory: The district court must withdraw a proceeding from the bankruptcy court where the proceeding involves the consideration of nonbankruptcy laws of the United States regulating organizations or activities affecting interstate commerce. (28 U.S.C. §157(d).)

b. Permissive: The district court may withdraw a proceeding from the bankruptcy court where cause is shown. (28 U.S.C. §57(d).)

ule. Upon the filing of an application for rejection, the court must schedule a hearing to be held within 14 days, and all interested parties must be given at least ten days' notice. The court may delay the hearing for up to seven days, or longer upon the agreement of the representative and the debtor. The court must rule within 90 days after the date of the commencement of the hearing, unless the parties agree to extend the deadline. If the court fails to rule within the designated time, the debtor may unilaterally abrogate the contract pending the court's ruling.

Unlike the case with collective bargaining agreements, there is little doubt as to the treatment of damages that arise from the rejection or modification of retiree health benefits. Prior to rejection or modification, retiree benefits are entitled to treatment as administrative expenses. Unlike the case with a collective bargaining agreement, damages arising from rejection or modification are similar to the treatment standard rejection: The obligation to provide retiree benefits is treated as having been breached as of the date of modification or rejection, and damages from the breach are treated as general unsecured claims.

It is important to bear in mind that the special provisions dealing with collective bargaining agreements and retiree health benefits do not apply in a Chapter 7 proceeding. There, all rejection is handled the same way.

Dispute Resolution

There are two types of bankruptcy proceedings: *core* and *noncore* proceedings. The latter is otherwise referred to as *related matters*. Core proceedings generally include those matters at the heart of the bankruptcy proceeding, including issues of the administration of the estate, dealing with claims, etc. Related matters include everything else, such as personal injury claims.

The bankruptcy court has the authority to resolve core proceedings, subject to appeal.[44] For noncore proceedings, the bankruptcy court has the power to issue only proposed findings of fact and conclusions of law, which do not become final until entry by a district court or otherwise consented to by the parties. If an objection is filed, the district court must review the matter from scratch (de novo in legalese).[45]

When disputes arise during a bankruptcy proceeding, there are several different mechanisms for their resolution. Most disputes are treated as *contested matters*. For example, the filing of an objection to a claim or motion ordinarily creates a contested matter. A contested matter is resolved by the bankruptcy court in a manner similar to a suit in district court, e.g., by trial or by settlement, although under somewhat looser rules.[46]

Some disputes are subject to a more formal dispute resolution process known as an *adversary proceeding*.[47] An adversary proceeding is similar in form to a civil action in district court in that it is initiated by the filing of an "adversary complaint" and generally is subject to both the Federal Rules of Evidence and the Federal Rules of Civil Procedure, albeit with some modifications.

Adversary proceedings may be initiated to resolve only specific enumerated categories of disputes, including an attempt to recover property; to determine the validity, priority or extent of a lien or other interest in property; to sell property that is subject to the undivided interest of a co-owner; to object to or revoke a discharge or the confirmation of a plan of reorganization; to determine the discharge ability of a debt; to subordinate a claim or interest outside of a plan of reorganization; to obtain an injunction; to obtain a declaratory judgment related to one of the above-listed matters; or to determine a cause of action removed to the bankruptcy court.[48]

Yet a third mechanism for resolving disputes is known as the *withdrawal of reference*. Under certain circumstances, the "reference" from the district court to the bankruptcy court may be withdrawn so that the particular matter is resolved by the district court. Withdrawal of the reference is required if the proceeding involves the consideration of nonbankruptcy laws of the United States regulating organizations or activities affecting interstate commerce.[49] A district court has the discretionary authority to withdraw the reference *where cause is shown*.[50] In practical terms, however, courts tend to read the withdrawal provisions very narrowly and are loathe to withdraw the reference.

As noted earlier, the automatic stay stops any pending court actions against the debtor in their tracks, and most such cases may be removed to the bankruptcy court. The bankruptcy court has the authority to remand the claim or cause of action on any equitable ground.[51]

Finally, the automatic stay can be lifted on the motion of any party so that the case can be adjudicated in a different forum.[52] Perhaps the most frequent reason for lifting the automatic stay is to permit a secured lender to foreclose on its security.

Disclosure Statement and Plan of Reorganization

One of the most important features of Chapter 11 is that it permits a debtor to modify the distribution of assets to creditors and to plan for its future through a *plan of reorganization*. A proposed plan of reorganization must always be filed with a *disclosure statement*.[53] The disclosure statement is intended to provide sufficient infor-

mation to enable creditors to decide intelligently whether to vote for or against the plan of reorganization. It should contain detailed information concerning the past and present financial condition and activities of the debtor and a projection and analysis of its future activities, and relate this information to the terms of the proposed plan of reorganization. Moreover, the disclosure statement must be approved by the bankruptcy court before the proponent of the plan of reorganization can begin to solicit support for the plan.[54]

Initially, only a debtor is permitted to propose a plan of reorganization. This *exclusivity period* lasts for the 120 days following the filing of the bankruptcy petition. The exclusivity period may be extended and usually is more than once.[55] Once the exclusivity period has expired, any interested party may propose a plan of reorganization.[56] Any interested party may file objections to a proposed plan of reorganization based on failure to conform to law.[57]

A plan of reorganization must designate separate classes of claims and interests; specify the treatment of each class (i.e., the manner and amount of payment each claim or interest within the class will receive); specify any redistribution of ownership interests in the reorganized debtor; accept or reject executory contracts; and provide adequate means for the plan's implementation.[58]

In general, all claims or interests in a class must be substantially similar and must receive the same treatment under the plan. The holder of a particular claim or interest may, however, accept less favorable treatment than is accorded similar claims or interests. Moreover, plans often designate a separate class of small unsecured claims for administrative convenience.[59]

Once the court has approved the disclosure statement, the voting period for the plan of reorganization will begin. Each *impaired creditor* (i.e., each creditor who is not made entirely whole under the plan) with an allowed claim or interest will be entitled to vote for or against the plan,[60] although under some circumstances all of the members of a class may be presumed to have voted against a plan if they can be *crammed down* (i.e., forced to accept a plan against their will). A plan of reorganization that otherwise complies with law will be approved if:

- Each impaired class of claims and interests accepts it or each dissenting class can be crammed down.[61]
  - —A class has accepted the plan of reorganization if holders of two-thirds of the value of the allowed claims voting and half in number vote to accept the plan or if the holders of two-thirds of the allowed interests voting vote to accept.[62]
  - —A dissenting class of unsecured claims may be crammed down if the claimholders in the class will receive the full value of their claims, or no *junior class* (i.e., no class of claims that would only be paid after payment of the dissenting class under the normal priorities) receives any payment under the plan (sometimes referred to as the *absolute priority rule*).[63]
- If any class of claims is impaired, at least one class votes to accept the plan.[64]
- Each holder of a claim votes to accept the plan or each dissenting claimant receives as much under the plan on account of the claim as would be received in a liquidation.[65]
- Confirmation of the plan is not likely to lead to the liquidation or subsequent reorganization of the debtor (as long as liquidation or subsequent reorganization is not provided for under the plan).[66]

All parties to a bankruptcy proceeding are bound by the terms of a confirmed plan of reorganization.[67]

Discharge (the "Fresh Start")

In Chapter 7, only an individual debtor can receive a discharge. A corporate debtor, although only an asset-free shell, remains liable for its unpaid debts.[68] Similarly, in a Chapter 11 liquidation, no discharge can be granted.[69] On the other hand, in a Chapter 11 reorganization where the debtor continues in operation, confirmation of the plan of reorganization operates as a discharge.[70] Subject to certain exceptions, a discharge makes the debtor's preexisting liabilities unenforceable.[71]

A discharge may not apply to certain claims, e.g., claims based upon the debtors' fraud, alimony and child support obligations, willful and malicious injury, educational loans or drunken driving. Some of these claims will, however, be discharged unless the affected creditor requests that the debt be made nondischargeable and, ultimately, the bankruptcy court grants the request. Such exceptions almost always apply only to individual bankruptcies and not to business bankruptcies.[72]

Appeals

Decisions of the bankruptcy court may be appealed to the district court.[73] Some circuits have established bankruptcy appellate panels (BAPs) consisting of bankruptcy judges. The BAP may hear cases appealed to the district court if the parties have given their consent.[74]

A notice of appeal must be filed with the clerk of the bankruptcy court within ten days of the date of the entry of the judgment, order or decree appealed from. The decision

<< bio

Paul A. Green is a partner in the Washington, D.C. law firm Mooney, Green, Saindon, Murphy & Welch P.C., where he serves as counsel to multiemployer pension and welfare plans and to labor unions, specializing in ERISA and employee benefits. He previously was a partner in the Washington firm Beins, Axelrod, Osborne, Mooney & Green, P.C. Green has also taught as an adjunct professor at the Columbus School of Law, Catholic University of America. Before entering private practice, he was an attorney in the Office of the General Counsel, Pension Benefit Guaranty Corporation. Green earned his B.A. degree at the University of Chicago and J.D. degree from the University of Maryland School of Law. He has authored significant articles on various aspects of benefits law, has taught classes at the George Meany Center for Labor Studies, and has served as a speaker and moderator at benefit conferences for the International Foundation and other organizations.

of the district court or the appellate panel may be further appealed to the court of appeals.

Useful Sources of Information and Documents

- The first meeting of creditors—This provides a chance to question the debtor under oath.
- PACER—The docket and all docket entries, as well as the claims register, are now generally available through PACER, an electronic public access service.
- Debtor and creditors' committee websites—In large bankruptcies, the docket, claims register and a bevy of other information can be found on websites maintained by the debtor and/or the creditors' committee. The major advantage of these sites is that, unlike PACER, they are free to use.
- The court's website—Each bankruptcy court has a website that typically includes a complete set of the local rules and standing orders (including standing orders specific to each individual judge), hearing schedules and more.
- The clerk of the bankruptcy court—When in doubt, call the clerk's office. These folks are here to help and can be a treasure-trove of information.
- The trustee or the debtor in possession or, where the debtor in possession is a corporation, an officer of the corporation
- The attorney for the trustee or debtor in possession
- Former officers of the debtor
- Members of the creditors' committee, particularly the chairman or the secretary
- The attorney for the creditors' committee
- The United States Trustee
- In the event that the parties refuse to provide documents voluntarily, the bankruptcy court has the authority to issue subpoenas and to order depositions.[75]

Endnotes

1. All section citations are to the Bankruptcy Code, as amended, 11 U.S. C. §§101-1532, unless otherwise indicated. All rules citations are to the Bankruptcy Rules, unless otherwise indicated.
2. *Northern Pipeline Construction Company v. Marathon Pipe Line Company*, 458 U.S. 50 (1982).
3. §§301, 303; Rules 1003, 1010-1013. 28 U.S.C. §151.
4. Rules 1001, 1007. 28 U.S.C. §157(a).
5. 28 U.S.C. §1452(a).
6. Rule 2002(a)(1).
7. §341; Rule 2003.
8. §§705 and 1102-1103; Rule 2007.
9. §§701-704.
10. §721.
11. §§1104-1108.
12. §§704(8), 1106(a)(1); Rule 2015(a)(3).
13. §364.
14. §363.
15. §§501, 1111(a); Rules 3001-3005.
16. §706(a)(3).
17. Rule 3002(c).
18. Rule 3003(c)(3).
19. §506.
20. §364.
21. §507(a)(1); see, §§503(b), 1129(a)(9)(A).
22. §507(a)(2); see, §§502(f), 503(b) and 1129(a)(9)(A).
23. §507(a)(3).
24. §507(a)(4); see, §§1129(a)(9)(B).
25. §507(a)(5); see, §1129(a)(9)(B).
26. §07(a)(6); see, §1129(a)(9)(B).
27. §507(a)(7); see, §1129(a)(9)(B).
28. §507(a)(8); see, §1129(a)(9)(C).
29. §507(a)(9).
30. *In re Marcal Paper Mills, Inc*, 630 F.3d 311 (3rd Cir. 2011).
31. See, discussion of Dispute Resolution and Discharge, supra.
32. §726.
33. §502(a).
34. §365.
35. §§365(g)(l), 502(g).
36. §503(b).
37. §1113.
38. §1113(e), (f).
39. §§1113(b), (c).
40. See, *In re Texas Sheet Metals, Inc.*, 90 B.R. 260, 272-73 (BR. S.D.Tex.1988); *In re Moline Corp.*, 144 B.R. 75, 78-79 (BR. N.D.Ill.1992).
41. See, *Northwest Airlines Corp. v. Ass'n of Flight Attendants-CWA*, 483 F.3d 160 (2d Cir. 2007); cf., *In re Blue Diamond Coal Co.*, 160 B.R. 574, 577 (E.D.Tenn. 1993).
42. §1114.
43. See, *In re Delphi Corp.*, 61 C.B.C.2d 853 (BR. S.D.N.Y. 2009), but see, *IUE-CWA v. Visteon Corp.*, 612 F.3d 210 (3d Cir. 2010).
44. 28 U.S.C. §157(b)(1).
45. 28 U.S.C. §157(c) 28 U.S.C. §157(c).
46. §502(b); Rules 3007, 9014 and 9019(b).
47. Rules 7001-7087.

48. Rule 3007 and 7001.
49. 28 U.S.C. §157(d).
50. 28 U.S.C. §157(d).
51. 28 U.S.C. §§1334(c) and 1452.
52. §362(d).
53. §1125; Rule 3016(c).
54. §1125; Rules 3016 and 3017.
55. §1121.
56. §1121; Rule 3016(a).
57. §1128(b).
58. §§1123, 1129.
59. §1122; Rule 3013.
60. §1125(b); Rule 3018.
61. §1129.
62. §1126(c).
63. §1129(b).
64. §1129(a)(10).
65. §1129(a)(7).
66. §1129(a)(11).
67. §1141(a).
68. §727.
69. §1141(d)(3).
70. §1141(d).
71. §524.
72. §523.
73. 28 U.S.C. §158; Rules 8001-8017.
74. 28 U.S.C. §158(b).
75. Rule 2004.