

SURVEY

ACTIVISM, UNCERTAINTY, AND ABUSE: CURRENT ISSUES IN BANKRUPTCY LAW

The United States has recently witnessed some of the largest corporate bankruptcy filings in history. Accordingly, because bankruptcy touches so many facets of business law, we have decided to devote the *Columbia Business Law Review's* fourth annual survey of law to some key discussions in the current bankruptcy landscape.

The survey's first piece, *Cracking the Code: The Legal Authority Behind Extrastatutory Debtor-in-Possession Financing Mechanisms and Their Prospects for Survival*, explores the use of three bankruptcy financing practices that have become common despite their lack of explicit sanction by the text of the Bankruptcy Code. Specifically, the piece discusses the legal and normative validity of cross-collateralization, critical vendor orders, and restrictive loan covenants that grant lenders control over a debtor's governance, as well as judicial efforts to curtail the use of those practices.

The second piece of the survey focuses on the issue of financial valuation in bankruptcy. *Valuation Uncertainty in Chapter 11 Reorganizations* examines various valuation disputes that arise in the context of reorganization plan confirmation and cramdown, explaining how and why such disputes occur and analyzing potential methods of resolving the problems caused by valuation uncertainty.

The final piece of the survey, *Responding to Threats of Bankruptcy Abuse in a Post-Enron World: Entrusting the Bankruptcy Judge as the Guardian of Debtor Estate*, addresses the trend of sales, as opposed to reorganizations, during Chapter 11 bankruptcies. The paper provides a summary of different methods and tools used for conducting bankruptcy sales both inside and outside of reorganization plans. It also outlines the provisions of the Bankruptcy Code

that empower and guide courts in their management of bankruptcy sales and discusses the tendency of bankruptcy judges to favor general guiding principles over bright-line rules in an effort to preserve their equitable discretion and maximize the value of the bankruptcy estate.

We hope you find the information in this survey helpful, and we welcome your comments or suggestions.

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