

Antonin Scalia Law School at George Mason University

Bankruptcy Reorganization Seminar

Law 454-001

Mondays 6:05 PM – 8:05 PM

Room Arlington TBD

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Syllabus

Text:

There is no text other than a copy of or access to the U.S. Bankruptcy Code, 11 U.S.C. §§101 – 1532 (2019) (referred to here as “*Code*”) and the Federal Rules of Bankruptcy Procedure (referred to here as “*Rules*”). The Code and the Rules must be current and must include the most recent Amendments. Both the Code and the Rules are available online. In addition, students must have internet access.

Case Study:

The Seminar will use an actual chapter 11 case, either current or recently closed, as a case study. Students will have access to all papers and pleadings filed in the case through special web pages set up for the case. We will discuss how best to access and use this resource during the first class.

Prerequisites: Bankruptcy Law 167-001 or -002 or permission from Professor Young. For students who have not taken Bankruptcy Law, permission will be granted based on the student’s experience working for a bankruptcy lawyer or a bankruptcy judge.

Course Description: This Seminar discusses the procedures, the strategies and the dynamics of corporate reorganization under Chapter 11 of the Code. There is no exam; there is a writing requirement. Grading is based on a combination of class participation and the writing component. Suggested topics for the writing will be provided. Students must pick a topic for their writing component during the first half of the semester and turn in their writing at or before the last class. Each class will discuss a topic related to the case study. Materials for each class discussion will be made available on Professor Young’s TWEN page.

FIRST CLASS: INTRODUCTION, LEARNING OUTCOMES & ORGANIZATION

Our goal for this course is to develop an understanding about chapter 11 reorganization, how it is supposed to work, how it is different from other bankruptcy proceedings, how a debtor company can use chapter 11 to save its business and how creditors are protected during the process. We will review some case law, but mostly the weekly discussions will focus on what happened in the case. Access to the docket for the case will be reviewed during the first class. Because the writing portion of this course is important, one night will be devoted to a discussion about legal writing and ample time will be set aside for students to work on topics, research, writing styles and formats.

During the semester, we will discuss the following topics in the following order, sometimes in one meeting, sometimes more than one meeting. We will discuss a more detailed schedule during the first class.

THE DEBTOR

Who is the “Debtor” in this case? Why did the Debtor file bankruptcy? What did the Debtor hope to accomplish through a reorganization? What did it take to get ready for filing the bankruptcy? Who was involved? Review: *Code* §109 (eligibility), §327 (employment of professionals), §521 (what Debtor must file), §541 (property of the Estate), § 362 (automatic stay), §1101(1), §1107 & §1108 (debtor in possession); *Rules* 1007 (lists, schedules and statement); *See also* 28 U.S.C. §§ 1408-1410 (venue). Review in the Docket: “Notice of Commencement”; “Bar Date Notice”; “Administrative Claims Bar Date Notice”; Scan: “Voluntary Petition” Docket No. 1; Scan: “Schedules & SOFA”.

THE COMMITTEE

How does a Committee get formed? How does the Committee hire professionals? What power and authority does a Committee have? What role did the Committee play in this case? What is §1102(b)(3) all about? NOTE: Review: *Code* §1102 (Creditors Committees), §1103 (Committee Powers and Duties), §503 (Expenses), §341 (Meeting of Creditors); *Rules* 2003 (Meeting of Creditors), 2007 (Review of Committee Appointment).

FINANCING AND FINANCES

What financial problems did the Debtor have? What does a company do when its bank turns on it? How does a debtor in bankruptcy get financing? Review: *Code* §364 (Financing).

WHAT GOES ON DURING THE BANKRUPTCY

How does the Debtor operate during bankruptcy? What can it do and what can it not do? What does the debtor do about operational issues? What does the Debtor need to do in preparation for filing its Plan? Review: *Code* §365, §502, §503.

NEGOTIATING A DEAL

What looked like an opportunity to restructure in bankruptcy suddenly became an effort just to survive. The dynamics of the parties: The Debtor, the Committee and the Banks. Who has the leverage? What does each party want out of the bankruptcy and how do they get what they want?

DISCLOSURE STATEMENT

What do you disclose? Can the debtor hide anything? How do you write it and who do you expect will (can) read it? How does the Debtor get the Disclosure Statement approved? Once the Disclosure Statement is approved, what happens next? Who gets it? What else does the Debtor have to send with the Disclosure Statement? What role does the Committee play? Review: *Code* §1125; *Rules* 3016, 3017.

THE PLAN

What's in the Plan? What's not in the Plan? What does this all mean? When does it go effective? Who gets to vote? How do they vote? How do you coordinate the voting? What's a vote worth? How do you get the votes needed to confirm the Plan? Review: *Code* §1121, §1123, §1126, §1127, §1128, §1129, §1141.

SUBCHAPTER V CASES

What is a Subchapter V Case? How is it different from a Small Business Case? What are the advantages for the Debtor? What's the status? Review The Small Business Reorganization Act of 2019 (SBRA), enacted August 23, 2019 adding Subchapter V to chapter 11 of the Bankruptcy Code, amended by the Coronavirus Aid, Relief and Economic Security (CARES) Act, effective March 27, 2020; Review: *Code* § 1181- § 1195.

POST CONFIRMATION – PUTTING THE PLAN INTO EFFECT

The “Third Part of Reorganization”. What goes on after the Plan is confirmed? Who represents whom? Who pays for it all? When do the creditors get paid? What has to be done before creditors get paid?