

Antonin Scalia Law School at George Mason University

Bankruptcy Reorganization Seminar

Law 454-001
Mondays 6:05 PM – 8:05 PM
Room Arlington TBA

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Syllabus

Text:

The text is the U.S. Bankruptcy Code, 11 U.S.C. §§101 – 1532 (2019) (referred to here as the “Code”) and the Federal Rules of Bankruptcy Procedure (referred to here as the “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 the Chapter 11, Subchapter V case, *In re: 1106 Montello LLC*, U.S. Bankruptcy Court for the District of Columbia, as a case study. We will either use the court’s PACER program to access the papers and pleadings filed in the case or the papers and pleadings will be available in TWEN. 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 prior 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.

FIRST CLASS: INTRODUCTION and ORGANIZATION.

We will review some case law, but mostly the weekly discussions will focus on what happened in the 1106 Montello LLC 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. Our goal for this seminar 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

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 AND THE TRUSTEE

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? Who is the Subchapter V Trustee? Why is there a trustee in Subchapter V? Review: Code §1181 (sections inapplicable in Subchapter V), §1183 (Trustee), §109 (eligibility), §327 (employment of professionals), §521 (what Debtor must file), §541 and §1186 (property of the Estate), § 362 (automatic stay), §1101(1), §1107 & §1108 and §1184 (debtor in possession); §1187 and Rule 1007 (lists, schedules and statement); See also 28 U.S.C. §§ 1408-1410 (venue). Review in TWEN: “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? Why is there no Committee in this case? What is §1102(b)(3) all about? NOTE: Review: Code §1102 (Creditors Committees), §1103 (Committee Powers and Duties), §1181 (inapplicable in Subchapter V), §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? Why did the financing in this case fail? 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? Why is there a Subchapter V Status Conference? Review: Code §365, §502, §503, §1181, §1188.

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 Trustee and the Bank. Who has the leverage? What does each party want out of the bankruptcy and how do they get what they want? Why did this case fail?

DISCLOSURE STATEMENT

Why is there no Disclosure Statement in Subchapter V? Where does the Debtor provide the “adequate information”? Can the debtor hide anything? How do you write it and who do you expect will (can) read it? Review: Code §1125, §1190; 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 on a Chapter 11 Plan? On a Subchapter V Plan? How do parties vote (if they get to vote)? How do you coordinate the voting? What’s a vote worth? How do you get the votes needed to confirm a Plan? Review: Code §1121, §1123, §1126, §1127, §1128, §1129, §1141, §1190, §1191.

SUBCHAPTER V CASES

How is a Subchapter V Case different from a Small Business Case? What are the advantages for the Debtor? What’s the status? 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?