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36th Annual Jay L. Westbrook Bankruptcy Conference

It's About Time – Value as a Temporal Construct in Bankruptcy Cases

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November 17, 2017

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"The value of my home?
You mean right *now* or a few seconds ago
when you asked the question?"

Bankruptcy Value Not Defined

- In any particular case, especially a reorganization case, the determination of which entity should be entitled to the difference between the going concern value and the liquidation value must be based on equitable considerations based on the facts of the case. It will frequently be based on negotiation between the parties. Only if they cannot agree will the court become involved.

Louis W. Levit, *Use and Disposition of Property under Chapter 11 of the Bankruptcy Code: Some Practical Concerns*, 53 AM. BANKR. L.J. 275, 288 (1979). 289 (citing to the House Report 95, 95th Congress, First Session at 339)

Adequate Protection

- When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—(1) requiring the trustee to make a cash payment or periodic cash payments to such entity, *to the extent that* the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title *results in a decrease in the value of such entity's interest in such property* . . . .
- 11 U.S.C. § 361(1)

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First appeared as part of the conference materials for the
36th Annual Jay L. Westbrook Bankruptcy Conference session
"It’s About Time: Value as a Temporal Construct"