UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

35TH ANNUAL JAY L. WESTBROOK BANKRUPTCY CONFERENCE

CRAMDOWN OR IN HIPSTER-SPEAK "CRAM"

Presented by:

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DISCLAIMER

- *We have prepared this summary to provide an overview of issues that may arise in connection with cramdowns and interest rate calculations in chapter 11 cases. This is a not intended to cover every issue which may affect the company or industry. This is not intended to be and is not legal advice or an opinion of any of the individuals making this presentation.*

THE CRAM

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THE CRAM: INTRODUCTION

- Cramups and cramdowns
- Bankruptcy Code § 1129(a)(8) requires that a plan of reorganization must be accepted by each class of impaired claims or equity interests, or be unimpaired, in order for the plan to be confirmed consensually under the Bankruptcy Code.
- Bankruptcy Code § 1129(b)(1) provides that a plan that satisfies all of the other applicable provisions of Section 1129(a) may be confirmed and non-accepting classes "crammed" despite the non-acceptance of the plan by other classes.
- Plan must satisfy two major tests:
    - (1) the plan must not unfairly discriminate; and
    - (2) the plan must be "fair and equitable"

THE CRAM: NO UNFAIR DISCRIMINATION – 1129(b)(1)

- Plan cannot discriminate unfairly against a dissenting class compared to similarly situated creditors in a different class
- “Unfair” Discrimination must be more than mere discrimination.
- Facts and circumstances determine purpose for discrimination under a plan
  - Reasonable justification for discrimination in good faith?
- *In re Aztec Co.*, 107 B.R. 585, 590 (Bankr. M.D. Tenn. 1989)
  - (1) whether the discrimination is supported by a reasonable basis;
  - (2) whether the debtor can confirm and consummate a plan without the discrimination;
  - (3) whether the discrimination is proposed in good faith; and
  - (4) the treatment of the classes discriminated against.

THE CRAM: THE ABSOLUTE PRIORITY RULE

- Under the “absolute priority rule,” a non-accepting class of creditors or interest holders cannot be compelled to accept less than full compensation if a more junior creditor or interest holder receives anything or retains its interest under the plan.
- Prevents any junior class from receiving property so long as any non-accepting senior class is not paid in full
- Ensures that the priority rules set forth in Bankruptcy Code § 507 are followed
- The Cram Rules by Classes
  - (1) secured claims, (2) unsecured claims, (3) equity interests

Title search: Cramdown or in Hipster-speak "Cram"

Also available as part of the eCourse
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