



# Cram Down

*What Can I Prove is Fair and Equitable These Days?*



## **American College of Bankruptcy Seminar**

Austin, Texas  
The Driskill Hotel

**Friday, January 14, 2011**

Welcome Reception  
6 p.m. - 8 p.m.

**Saturday, January 15, 2011**

Seminar  
8 a.m. - 5 p.m.

This seminar will have panel debates focusing on four methods of fair and equitable treatment described in Section 1129(b). Professor Westbrook will open the seminar with some remarks about the state of Chapter 11 practice. After that, we are promoting vigorous debate in each of the four panels between debtor and creditor advocates, involving financial experts and moderated by Judges. Chief Judge Isgur and Judge Mott will be participating by actively roving the audience with microphones to encourage participation. We hope this “moderated vigorous debate”, known in Texas as a “fair fight”, will be one you won’t soon forget.

Please join us in Austin.

8:00 a.m. Breakfast

8:30 a.m. Professor Westbrook’s Opening Remarks

## Panel 1

*What can we prove about old fashioned cram down? Let them retain their lien and give them cash payments over time that equal the present value of their collateral.*

- ☉ How do we prove the value of their collateral?
- ☉ If they are undersecured, where do we find one impaired accepting class?
- ☉ Do we have to give them covenants?
- ☉ How do we prove what interest rate we have to pay them (Where has Till gone?)
- ☉ Who is going to own this reorganized company? If we convert unsecured debt to equity, how much of the reorganized company will they own?

### Panelists will include:

Debtor Advocate: Hugh Ray, McKool Smith

Creditor Advocate: Berry Spears, Fulbright & Jaworski

Financial Experts: Bob Ogle  
Wayne Wilson

Judge Moderator: Honorable Stacey Jernigan, Northern District of Texas

## Panel 2

*Do we need a new investor to make our old fashioned cram down work? Who can it be? How much can we offer them?*

- ☉ Can the old owners be the new investors?
  - ☉ Does that mean we have to give up exclusivity or to conduct some kind of auction? Where has **La Salle** gone?
  - ☉ What does it mean that the new investment must be necessary and the new investor can only receive fair equivalent value?
- ☉ What if we have entirely new investors?
  - ☉ Who is an entirely new investor? Is it my uncle?
  - ☉ With an entirely new investor, do we need to give up exclusivity or conduct an auction?
  - ☉ Do we have to prove necessity and fair equivalent?
  - ☉ How much of the reorganized company does the new investor get to own versus

unsecured creditors? Does the case law concerning fair equivalent value shed any light here?

**Panelists will include:**

**Debtor Advocate:** Alfredo Perez, Weil, Gotshal & Manges

**Creditor Advocate:** Robin Phelan, Haynes & Boone  
Doug Draper, Heller, Draper

**Financial Expert:** Dean Swick, Alvarez & Marsal

**Judge Moderator:** Honorable Kevin Carey, Chief Judge District of Delaware

12 noon - 1:30 p.m. Lunch - box lunches can be pre-ordered on the online registration form

1:30 p.m.

**Panel 3**

*Can we sell my company before it dies?*

☀ **Can we sell my company really fast through a Section 363 sale?**

- ☉ Can Section 363 be used to sell substantially all assets?
- ☉ Do we need secured lender consent under Section 363 (f)?
- ☉ What does it mean that the bidder must be in good faith under Section 363 (m)?  
Can it be my uncle? Can it be someone who will take care of me?
- ☉ Do we have to run an auction and give the secured lender the right to credit bid under Section 363 (k)?
- ☉ What can we offer a "stalking horse" bidder to get this process started?

☀ **Can we sell my company almost as fast through a sale pursuant to a plan of reorganization?**

- ☉ Can we run Disclosure Statement and Plan deadlines simultaneously?
- ☉ Do we have more or less voting and consent problems if we sell under a plan?
- ☉ Do we still need to show that the purchaser is in good faith? They voted to sell to my uncle didn't they?
- ☉ Do we still have to run an auction? They voted to sell to this purchaser didn't they?
- ☉ Do we still need a "stalking horse" bidder?

☀ **Can I hibernate in Chapter 11 while I wait to merge with my friends as we all emerge strong enough to compete? (A roll up out of multiple bankruptcies?)**

- ☉ Basis to extend exclusivity?
- ☉ Procedural consolidation of similar cases?

**Panelists will include:**

**Debtor Advocate:** Zack Clement, Fulbright & Jaworski

**Creditor Advocate:** Charlie Beckham, Haynes & Boone  
Pat Vance, Jones, Walker

**Financial Expert:** Becky Roof, Alix Partners

**Judge Moderator:** Honorable Jeff Bohm, Southern District of Texas

## Panel 4

*What can we do with indubitable equivalence and reinstatement these days?*

- ☉ Can we use indubitable equivalence to sell their collateral for cash based on a judicially determined fair market value and take away their right to credit bid? (*Pacific Lumber and Philadelphia Newspaper*)
  - ☉ Do you have to use an auction to determine fair market value?
  - ☉ What if they make the § 1111(b) election?
- ☉ Can we abandon some but not all of their collateral to them and take credit for reducing their claim by the value of the abandoned collateral?
- ☉ Can we reinstate them even though some of their covenant breaches have not been/cannot be cured?
- ☉ Once we reinstate them, can we make an exchange offer to them?

### Panelists will include:

<b>Debtor Advocate:</b>	Henry Kaim, King & Spalding
<b>Creditor Advocate:</b>	Rhett Campbell, Thompson & Knight Mitchell Seider, Latham & Watkins
<b>Financial Expert:</b>	Scott Davido, FTI
<b>Judge Moderator:</b>	Honorable Arthur Gonzalez, Chief Judge S.D. New York

### The Driskill Hotel

604 Brazos St. | Austin, TX 78701

For room reservations, contact the Driskill Hotel directly at (800) 252-9367

### Online Registration Form

Registration fee: \$150.00

Reception and Breakfast are included in registration fee. Boxed Lunch is optional for an additional \$20 fee.

For more information, contact Debbie Langehennig at [trustee@CH13AUSTIN.com](mailto:trustee@CH13AUSTIN.com) or (512) 916-9162

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### About The American College of Bankruptcy:

The American College of Bankruptcy is an honorary association of bankruptcy and insolvency professionals. Its Fellows include: Commercial Bankruptcy Attorneys, Consumer Bankruptcy Attorneys, Corporate Turnaround Specialists, United States Trustees, Bankruptcy Trustees, Investment Bankers, Insolvency Accountants, Law Professors, Judges, Government Officials, Appraisers, and others involved in the bankruptcy and insolvency community.

### Planning Committee:

Zack Clement, ACB Fifth Circuit Regent  
Charlie Beckham, ACB Fifth Circuit Educational Programs Chair  
Berry Spears, ACB Austin Host Committee Chair  
Chief Judge Ronald King, Austin Host Committee  
Judge Christopher Mott, Austin Host Committee  
Professor Jay Westbrook, Austin Host Committee  
Evelyn Biery, Austin Host Committee  
Debbie Langehennig, Austin Host Committee

*Saturday, January 15, 2011 | Austin, Texas*