

SERVING ON A CREDITORS' COMMITTEE

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NACM Midwest

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Chapter 11 Overview

- Objective to reorganize a financially troubled debtor while maximizing return to creditors
- Retain employment and other economic benefits to community
- Maintain customer or channel of distribution

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Chapter 11 Overview

- Key Players
 - Judge
 - U.S. Trustee
 - Secured Creditors
 - Equity Security-Holders
 - Debtor
 - Unsecured Creditors
 - Trade (no longer bound to offer the same terms)
 - Note holders
 - PBGC
 - Unions

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Chapter 11 Overview

- Initiation of Case
 - Filing of petition
 - Automatic stay
 - Debtor operates as Debtor In Possession (DIP)
 - Goal to confirm a plan providing for amount and manner in which creditors will be paid

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Chapter 11 Overview

- Creditors Divided Into Separate Classes
 - Each class entitled to separate treatment which is fair, equitable & non-discriminatory
 - Certain classes of creditors entitled to preferred treatment
 - Unless senior classes are paid in full or agree to accept less, junior creditors are not entitled to receive any payment

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Chapter 11 Overview

- Exclusive Period
 - 120 days during which debtor has exclusive right to file plan
 - May be lengthened to 18 months by court order

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Chapter 11 Overview

- Acceptance of Plan
 - Both majority in number and 2/3 in dollar amount of those voting accept plan
 - If no class of impaired claims accepts, the plan can be confirmed by “cram down”

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Serving on a Creditors Committee

- Why Serve On The Committee?
 - Influence outcome
 - No one else is going to look out for unsecured creditors (particularly trade)
 - Ability to know about Debtor's financial condition
- How are committees chosen?
 - Varies by jurisdiction
 - Large v. small
 - National v. local

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Committee Powers, Responsibilities & Rights

- Fiduciary obligation to all general unsecured creditors
- Object to lender's overreaching
- Investigate debtor's affairs
 - Ability to examine Debtor
 - Ability of management & recommended changes
 - Gain a full understanding of debtor's assets & liabilities, cash flow, profitability & operations

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Committee Powers, Responsibilities & Rights

- Evaluate Claims Against Third Parties (insiders, preferences, fraudulent transfers)
- Committee Has Right To Sue If Debtor Fails To Do So
- Right to monitor activities of Debtor
- Seek Appointment of Trustee or Examiner

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Committee Operation

- Selecting the chair
- Committee bylaws & operating procedures
- Defining and Achieving Objectives
 - Use of subcommittees
 - Role of Ad Hoc committees
- Intra-committee negotiations

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Committee Operation

- Selection of Professionals
 - Power to engage professionals needed to perform committee duties
 - Costs of Professionals are paid by debtor's estate as administrative expense
- Who?
 - Attorneys
 - Accountants
 - Financial advisors

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Committee Operation

Helpful Factors to Consider

- Experience
 - Successfully represented other committees
 - Knowledge of the industry
 - Knowledge of judge and debtor's counsel
- Time
 - To devote to the case?

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Committee Operation

- Represented Major Players
 - In the case
(may be negative and conflict of interest)
- Interest in Handling the Case
- Fees

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Committee Operation

- Effective use of Professionals
 - Works with chair person to set agenda
 - Explain option for Committee actions
 - Primary communications with Debtor's professionals
 - Drafts Minutes & By-Laws

Committee is the client

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Committee Dynamics

- 5 to 7 of largest unsecured creditors of debtor selected by UST to serve
- Some committee members bring their own attorneys
- Professional “Committee Members”
- Level of prior committee experiences
- Ability to commit time

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Committee Dynamics

- Diversity of Interests Within a Committee
 - Disclosure of claims
 - Different levels of experience or knowledge
 - Hidden agendas

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Committee Role in Chapter 11

- Critical First Stages
 - DIP Financing
 - Reclamation
 - 20-day administrative claims
 - KERPS/MIPS
 - Trade credit
 - Feasibility of reorganization
 - Evaluation of sale if proposed

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Committee Role in Chapter 11

- Regular Meetings with Debtor and Operating Reports
- Claims Settlement Process
- Plan Negotiations
 - Structure of plan
 - Payout (Cash, Debt, Stock)
 - Who administers the plan?
 - Substantive consolidation

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Committee Role in Chapter 11

- Communicating with Constituency
 - External Communications
 - Committee protocols & new local rules
 - Sharing information with those not on committee
 - Soliciting comments from creditors
 - Protecting confidential information
 - Letter concerning plan

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Post Confirmation

- After There Is A Plan – WHAT HAPPENS?
 - Post confirmation committee
 - Supervision of creditor's trustee
 - Counsel releases
 - Will the distributions be safe?
 - Bond for Trustee?

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ANY QUESTIONS?**

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