



Bankruptcy Reform Panel Eyes Updates to Ch. 11

By Lisa Uhlman

Law360, New York (December 03, 2012, 7:05 PM ET) -- An American Bankruptcy Institute commission designed to take stock of the state of Chapter 11 anticipates that any changes to the Bankruptcy Code would likely focus on the altered world of bankruptcy since the code's 1978 enactment, commission members said Monday.

One year into its mandate, the 19-member commission, which is eyeing an April 2014 completion date for its definitive report, has found that the climate of bankruptcy when the code was created was vastly different from and simpler than the insolvency issues debtors face today, and three commission members said at a press conference that some of the major issues they had identified early on involved secured credit and claims trading, as well as governance and small-business issues.

"We've taken in a ton of information, and it's safe to say that we're well under way on this issue of study," commission co-chair Robert J. Keach of [Bernstein Shur Sawyer & Nelson PA](#) said. "The discussion has provoked thought, and we'll continue that process."

The commission has conducted six public hearings this year and has seven more planned for the remainder of its work. It features 13 advisory committees on 13 topics, with the intention to hear from all aspects of the insolvency community.

"We're very pleased at the input and the high level of interest from the bankruptcy community, the investor community, bankruptcy professors from academia," Keach said. "The entire universe of interests affected by potential bankruptcy reform is aware of it [and] is active, and we couldn't be more pleased about that."

Going forward, the commission will be organized around specific topics, including labor and benefits issues, valuation issues, issues of interest to unsecured creditors, trade credit issues and derivative safe harbors, he said.

Labor issues have been of particular interest to the commission since they have gotten a lot of attention in recent larger Chapter 11 cases like those of [Hostess Brands Inc.](#) and [AMR Corp.](#), Keach said, adding that he expected the commission would hear from both labor and management about the way the Bankruptcy Code treats collective bargaining agreements and pension issues.

According to commission member Richard B. Levin of [Cravath Swaine & Moore LLP](#), the world of 21st-century finance is different from that of the 1970s, and the Bankruptcy Code

needs modernization to account for the changed circumstances. While the community agrees that the code is strong and durable, “It is somewhat like using a typewriter to write a letter, rather than a word processor,” he said.

The commission also included Michelle M. Harner of the University of Maryland Francis King Carey School of Law. Monday’s press conference followed the commission’s Friday field hearing.

Chapter 11 reform has been getting a good deal of attention lately. On Nov. 20, leaders from one of the most important bankruptcy districts in the country — U.S. Bankruptcy Judges Shelley Chapman and Stuart Bernstein of the Southern District of New York, joined on a panel by moderator Gary Holtzer of [Weil Gotshal & Manges LLP](#) — spoke about the state of Chapter 11, noting that while the utility and efficiency of corporate bankruptcy proceedings today are hotly debated topics, Chapter 11 is a tool that is changing, rather than dying.

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