PRESENTED AT:

37TH Annual Jay L. Westbrook Bankruptcy Conference
November 15-16, 2018
Austin, Texas

WORKOUT TACTICS AND OTHER STRATEGIES TO AVOID CHAPTER 11 BANKRUPTCY

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Introduction

The topic of declining bankruptcy filings has been on the minds of bankruptcy practitioners for quite some time. Over the past four years, the number of business bankruptcy filings has decreased by about 25 percent.[1] But chapter 11 filings generally have decreased by only about 14 percent.[2] This suggests a greater decline in business chapter 7 cases versus a smaller decline in business chapter 11 cases. And that makes sense. There is no practical alternative to a traditional chapter 11 reorganization. More specifically, there is no alternative way to cram down an uncooperative creditor. But there is more than one way to liquidate a business. Whereas the only alternative means of reorganization is a cooperative workout, known as a composition of creditors, a business can liquidate through dissolution, receivership, or an assignment for the benefit of creditors.

Workouts and Compositions with Creditors

Workouts and compositions are similar in that both are intended to restructure debts of distressed business. Typically, the goal of both is to avoid the termination of operations. A workout is a more generic term and generally refers to any debt-related settlement arrangement. A composition, however, is a contractual agreement between a debtor and two or more assenting creditors under which the creditors agree to accept less than the full amount of their claims, typically on a *pro rata* basis.[3] It is noteworthy that the composition is not just an agreement between the debtor on the one hand and its creditors on the other. It is also a binding agreement between the creditors *inter se*.[4] The creditor parties are "bound to the exercise of good faith in preserving the equality of payment of the debts of the [debtor] which the terms of the agreement contemplate[] …."[5] Workouts and compositions with creditors will likely fail if the participating creditors lack confidence in the debtor's management team or believe that the debtor is not being forthright about its finances or operations.

Another unique aspect of a composition is that "a composition contains the consideration for the agreement within itself …."[6] "The consideration for a composition of creditors is the mutual covenant of each creditor to accept the settlement."[7] "'Such an agreement, if entered into

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1 United States Courts, June 2018 Bankruptcy Filings Fall 2.6 Percent (July 24, 2018), *available at* http://www.uscourts.gov/news/2018/07/24/june-2018-bankruptcy-filings-fall-26-percent

2 *Id.*

3 *See* 17 Tex. Jur. 3d Creditors' Rights and Remedies § 60.

4 *See P.J. Willis & Bro. v. Morris*, 63 Tex. 458 (1885).

5 *Id.*

6 17 Tex. Jur 3d § 61.

7 *Cadle Co. v. Int'l Bank of Commerce*, No. 04-06-00456-CV, 2007 WL 752260, *3 (Tex. App.—San Antonio March 14, 2007).

by a debtor with a number of his creditors, each acting on the faith of the engagement of others, will be binding on them, for each in that case has the undertaking of the rest as a consideration for his own undertaking.'"[8] This characteristic distinguishes a composition from an accord and satisfaction, which requires additional consideration.[9] Thus, lack of consideration probably will not apply as a defense to enforcement of a composition.

Texas state cases discussing compositions with creditors were somewhat common in the first half of the twentieth century, especially considering it was a time before modern word processing. But there are almost none after the 1970s. The decline of compositions therefore appears to coincide with the rise of modern bankruptcy law. Just as Congress was enacting the Bankruptcy Code, one Texas Court even described Chapter XI of the former Bankruptcy Act as "provid[ing] a quick efficient method of implementing a composition among the debtor's general creditors with minimal court involvement."[10] Modernizing federal bankruptcy law might have caused debtors to abandon old fashioned state-law remedies.

That is not to say, however, that compositions are necessarily a thing of the past. But there is an obvious impediment. Any bankruptcy practitioner knows that creditors are reluctant to consent to anything. When a single undersecured creditor's claim is secured by all of the debtor's assets, including cash, there is little to negotiate from that creditor's perspective. Likewise, from the perspective of the same debtor's general unsecured creditors, the debtor has little to offer. A composition requires more than one creditor's assent, so these creditors' diametrically opposed positions leave almost no room for compromise. As the cost of chapter 11 increases, however—especially because that cost is borne by creditors—it is possible that the cost will rise enough to bring everyone back to the negotiating table.

Advantages of Workouts/Compositions to Bankruptcy

- Typically less expensive
- Done out of court and thus generally less damaging to the reputation of the business
- Less disruption to operations
- Better control over the process
- Allows for more flexibility and creativity

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8 *Cade Co.*, 2007 WL 752260 at *3 (quoting *Texarkana Nat'l Bank v. Hubbard*, 114 S.W.2d 389, 392 (Tex. App.—San Antonio 1964)).

9 17 Tex. Jur. 3d at 61.

10 *Valley Int'l Props. V. Los Campeones, Inc.*, 568 S.W.2d 680, 685 (Tex. App.—Corpus Christi 1978).

Disadvantages of Workouts/Compositions to Bankruptcy

- No automatic stay
- No legal ability to avoid burdensome contracts and leases
- No cap on landlord claims
- Requires consent of creditors
- Frustrated by uncooperative creditors
- Difficult to accomplish if creditors distrust management or lack confidence in management

Assignments for the Benefit of Creditors

An assignment for the benefit of creditors ("ABC") is "an absolute, unconditional, indefeasible, and irrevocable voluntary transfer of property, made for the purpose of paying debts out of the proceeds of the property."[11] The equitable remedy of an ABC has existed in Texas for a long time. Though ABCs have long existed in equity under the common law,[12] "the [Texas] legislature passed what [was] commonly known as the 'Assignment for Benefit of Creditors' Act in 1879. *Jamison Cold Storage Door Co. v. Brown*, 218 S.W.2d 883, 885 (Tex. App.—Ft. Worth 1949). In 1967, the legislature codified ABCs in the Texas Business and Commerce Code.[13] Though one may effectuate an ABC extra-statutorily under principles of equity,[14] one must also then ascertain those principles by consultation with ancient case law. As a practical matter, it makes far more sense to proceed under the statute.

The problem is that there is effectively zero case law construing the ABC provisions of the Texas Business and Commerce Code. Nevertheless, those provisions are fairly comprehensive and warrant examination. It turns out that the process has some similarities to a chapter 7 liquidation, but with some added benefits. Like the Bankruptcy Code, the statute begins by providing definitions.[15] It then described the nature and effect of an ABC as follows:

> (a) A debtor may assign his real and personal estate under this chapter to an assignee for the benefit of the debtor's creditors.

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11 17 Tex. Jur. 3d § 67.

12 *Id.*

13 Tex. Bus. & Comm. Code §§ 23.01 *et seq.*

14 17 Tex. Jur. 3d § 69 ("Even absent the statute, the procedure it proscribes would be enforceable in equity).

15 Tex. Bus. & Comm. Code § 23.01.

> (b) An assigning debtor shall provide in the assignment for distribution of **all** his real and personal estate to each consenting creditor in proportion to each consenting creditor's claim.
>
> (c) Regardless of an expression to the contrary, an assignment passes all an assigning debtor's real and personal estate to each consenting creditor in proportion to each consenting creditor's claim.[16]

This provision is reminiscent of Bankruptcy Code section 541, governing creation of the bankruptcy estate.

An ABC differs from bankruptcy, however, in the level of formality required to make it valid. Specifically, "[f]or an assignment to be valid, (1) the assigning debtor must make the assignment in writing; and (2) it must be proved or acknowledged *and recorded in the manner provided by law for the conveyance of real estate.*"[17] A bankruptcy petition must also be in writing, and it must also be executed under penalty of perjury. But a bankruptcy petition need not be recorded in the real property records in order to be valid and binding against creditors. In bankruptcy, even bare, actual notice is sufficient to hold a creditor in contempt for violating the automatic stay.

Once there is a valid assignment, however, more similarities arise. The assigning debtor must attach an inventory to his assignment containing the following information: "(1) a list naming each creditor of the assigning debtor; (2) the resident address, if known, of each creditor; (3) the amount owed each creditor and the type of debt; (4) the consideration for the debt and the place where the debt arose; (5) a description of each existing judgment or security for the payment of the debt; (6) a schedule of all the assigning debtor's real and personal estate at the date of the assignment; (7) a description of (A) each encumbrance on the real and personal estate; and (B) each voucher and security relating to the estate; and (8) the value of the estate."[18] Like bankruptcy schedules, the ABC inventory must be sworn.[19]

A consenting creditor also has statutory standing similar to a party in interest in bankruptcy because "[a] consenting creditor is a proper party to a suit filed to enforce a right under an assignment, or to protect an interest in an assigned estate."[20] And like a bankruptcy trustee, an assignee under an ABC has the right to avoid certain fraudulent and preferential

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16 Tex. Bus. & Comm. Code § 23.02 (emphasis added).

17 Tex. Bus. & Comm. Code § 23.08(a).

18 Tex. Bus. & Comm. Code § 23.08(b).

19 Tex. Bus. & Comm. Code § 23.08(c).

20 Tex. Bus. & Comm. Code § 23.09(a).

transfers.[21] Under the ABC statute, "[e]xcept as to an innocent purchaser for value, a transfer of property made in contemplation for an assignment with an intent to defeat, delay, defraud, or give preference to a creditor is void and the property passes under the assignment rather than by the transfer."[22] This provision is similar to sections 547 and 548 of the Bankruptcy Code.

When it comes to discharge, Texas ABCs once again diverge from bankruptcy. In bankruptcy, of course, a corporate debtor can obtain a discharge in chapter 11 but not in chapter 7. With an ABC, it appears a corporate debtor can obtain a discharge in connection with liquidation. The only two catches are that the discharge only applies to consenting creditors and only if such creditors receive at least one-third of the amount of their allowed claims.[23] If a debtor's property is insufficient to pay creditors at least one-third of their claims, then a chapter 7 is probably the better option.

This begs the question, why would a creditor consent to an ABC? The answer is simple and straightforward. As discussed above, an ABC involves an absolute and irrevocable assignment of all a debtor's real and personal property. The assignee then liquidates that property for the benefit of *consenting* creditors. "If a creditor does not consent to an assignment, he is not entitled to receive any of the assigned estate under the assignment."[24] A nonconsenting creditor's only remedy is to garnish the assignee for any funds that remain after paying all consenting creditors in full, along with the cost of carrying out the assignment.[25]

Furthermore, an assignee under an ABC is required to make distributions to consenting creditors each time he has sufficient funds to return ten percent of allowed claims.[26] That means creditors could see a return much sooner in an ABC than a chapter 7, where there is typically only one distribution at the end of the case. Meanwhile, a nonconsenting creditor will probably have to wait even longer in an ABC than he would in a chapter 7, and even then he will have to undertake a garnishment to obtain any return at all.

There are still more similarities between ABCs and bankruptcy. In an ABC, the assignee must both publish notice of the assignment and notify each scheduled creditor by mail.[27] This is similar to the notice process in bankruptcy, if not more thorough. The ABC statute also provides

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21 Tex. Bus. & Comm. Code § 23.09(c).

22 Tex. Bus. & Comm. Code § 23.09(b).

23 Tex. Bus. & Comm. Code § 23.10.

24 Tex. Bus. & Comm. Code § 23.30(d).

25 Tex. Bus. & Comm. Code § 23.33.

26 Tex. Bus. & Comm. Code § 23.19.

27 Tex. Bus. & Comm. Code § 32.17.

a mechanism for bifurcating secured claims[28] and discounting non-mature claims to their present value.[29]

The ABC statute even has a mechanism similar to rule 2004, and perhaps even better. Like rule 2004, the statute provides that the court may compel any person to answer questions under oath on the application of a creditor or its own motion. But there are two significant differences. First, the written answers are "filed with the clerk for use by anyone interested in the proceeding."[30] Second, and more importantly, "[t]he assigning debtor may not be prosecuted or punished for any answer given by him during the examination." Though there does not appear to be case law construing this provision, Texas Jurisprudence describes it as a statutory grant of immunity.[31] Given a chapter 7 trustee's obligation to make appropriate criminal referrals, this provision could be enticing to a select few individual debtors.

There are many similarities between and ABC and a chapter 7 bankruptcy, and there are significant differences as well. Given all the similarities to chapter 7, it is interesting that debtors appear not to utilize ABCs in Texas. A century ago, it appears they were more common, but there is almost no case law interpreting the ABC statutes since the legislature enacted chapter 23 of the Texas Business and Commerce Code in 1967.

Advantages of Assignment for the Benefit of Creditors to Bankruptcy

- Typically less expensive
- Typically a quicker process
- Potential to quickly liquidate the assets
- Process is less formal
- Flexibility
- Distressed company may select the assignee

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28 Tex. Bus. & Comm. Code § 23.20(b) ("If a creditor holds collateral to secure his claim worth less than his claim, the assignee may estimate the value of the collateral and allow the creditor as a claim against the assigned estate only the difference between the value of the collateral and the amount of the claim.").

29 Tex. Bus. & Comm. Code § 23.20(a) ("The assignee may allow a claim which is not due at is present value by discounting it at the legal rate.").

30 Tex. Bus. & Comm. Code § 23.22(b).

31 21 Tex. Jur. 3d Criminal Law: Defenses § 4 (2018).

Disadvantages of Assignment for the Benefit of Creditors to Bankruptcy

- No automatic stay
- No free and clear sell of property
- No court oversight/approval of transfers
- Transfers by the assignee are subject to avoidance if a bankruptcy is subsequently filed
- No legal ability to avoid burdensome contracts and leases
- No cap on landlord claims
- Purpose is to liquidate assets and not reorganize
- The statutory discharge only applies to consenting creditors who receive at least one-third of the amount of their allowed claims
- ABC may not be enforceable with respect to property outside of Texas
- Case law in Texas construing the ABC statutory provisions is somewhat limited and old

Dissolution

Another way to liquidate a business is under the winding-up provisions of the Texas Business Organizations Code. These provision only apply to entities organized under Texas law (*i.e.*, domestic entities), but other states have similar provisions. An entity may wind up based on a voluntary decision to do so.[32] Upon making the decision to wind up an entity, the entity must "(1) cease to carry on its business, except to the extent necessary to wind up its business; (2) if the domestic entity is not a general partnership, send a written notice of the winding up to each known claimant against the domestic entity; (3) collect and sell it property to the extent the property is not distributed in kind to the domestic entity's owners or members; and (4) perform any other act required to wind up its business and affairs."[33] During this process, the entity may continue to prosecute and defend legal actions.[34]

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[32] Tex. Bus. Orgs. Code § 11.051(2). There may be additional considerations depending on the type of entity involved. *See* Tex. Bus. Orgs. Code §§ 11.056-059.

[33] Tex. Bus. Orgs. Code § 11.052(a).

[34] Tex. Bus. Orgs. Code § 11.052(b); 11.055.

Both bankruptcy and an ABC provide for pro rata distributions to creditors, the former more thoroughly than the latter. And winding up provides for an even less definitive distribution of an entity's assets:

> (a) Except as provided by Subsection (b) and the title of this code governing the domestic entity, a domestic entity in the process of winding up shall apply and distribute its property to discharge, or make adequate provision for the discharge of, all of the domestic entity's liabilities and obligations.
>
> (b) Except as provided by the title of this code governing the domestic entity, if the property of a domestic entity is not sufficient to discharge all of the domestic entity's liabilities and obligations, the domestic entity shall:
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> > (1) apply its property, to the extent possible, to the just and equitable discharge of its liabilities and obligations, including liabilities and obligations owed to owners or members, other than for distributions; or
> >
> > (2) make adequate provision for the application of the property described by Subdivision (1).
>
> (c) Except as provided by the title of this code governing the domestic entity, after a domestic entity has discharged, or made adequate provision for the discharge of, all of its liabilities and obligations, the domestic entity shall distribute the remainder of its property, in cash or in kind, to the domestic entity's owners according to their respective rights and interests.
>
> (d) A domestic entity may continue its business wholly or partly, including delaying the disposition of property of the domestic entity, for the limited period necessary to avoid unreasonable loss of the entity's property or business.[35]

Another thing that sets winding up apart from bankruptcy and an ABC is that an entity can wind itself up. There is no mandatory transfer of all assets to a newly created estate. On the other hand, upon application of an owner or member of the entity, a court may supervise the winding up or appoint someone to carry out the winding up.[36]

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35 Tex. Bus. Orgs. Code § 11.053.

36 Tex. Bus. Orgs. Code § 11.054.

Once the winding up process is complete, the entity must file a certificate of termination with the Texas Secretary of State.[37] After termination, the entity continues in existence on a limited basis only for purposes of:

> (1) prosecuting or defending in the terminated filing entity's name an action or proceeding brought by or against the terminated entity;
>
> (2) permitting the survival of an existing claim by or against the terminated filing entity;
>
> (3) holding title to and liquidating property that remained with the terminated filing entity at the time of termination or property that is collected by the terminated filing entity after termination;
>
> (4) applying or distributing property, or its proceeds, as provided by Section 11.053; and
>
> (5) settling affairs not completed before termination.[38]

Otherwise, the terminated entity "may not continue its existence for the purpose of continuing the business or affairs for which the terminated filing entity was formed unless the terminated filing entity is reinstated …."[39]

The reason winding up may be less popular than chapter 7 liquidation probably resides in the provisions on the liability of governing persons. During the three-year post-termination period, the entity's governing persons continue to manage the entity's affairs for the limited purposes described above. But the problem is that each governing person: "(1) has the same duties to the terminated filing entity that the person had immediately before the termination; and (2) is liable to the terminated filing entity for the person's actions taken after the entity's termination to the same extent that the person would have been liable had the person taken those actions before the termination."[40]

A chapter 7 has the added advantage of washing one's hands of the entity on the petition date and allowing a third-party trustee to administer the entity's assets at no additional cost. Bankruptcy also comes with a stay of any pending litigation, which would continue during an out-of-court wind down. On the other hand, if equity is in the money, then it might not make

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37 Tex. Bus. Orgs. Code § 11.101.

38 Tex. Bus. Orgs. Code § 11.356(a).

39 Tex. Bus. Orgs. Code § 11.356(b).

40 Tex. Bus. Orgs. Code § 11.357(b).

sense to hand over the failing business to a bankruptcy trustee and surrender all control over the potential upside.

Advantages of Dissolution to Bankruptcy

- Less costly
- Company's management can maintain control over the process, including distribution of the proceeds

Disadvantages of Dissolution to Bankruptcy

- No automatic stay
- No free and clear sell of property
- Transfers subject to avoidance if a bankruptcy is subsequently filed
- No legal ability to avoid burdensome contracts and leases
- No cap on landlord claims
- No court oversight of management decisions
- Purpose is to liquidate assets and not reorganize

Receivership

The final common bankruptcy alternative is receivership. The Texas Business Organizations Code contains separate provisions for a receiver appointed to rehabilitate a domestic entity versus a receiver appointed to liquidate an entity. The provisions governing appointment of a rehabilitation receiver are as follows:

> (a) Subject to Subsection (b), a court that has jurisdiction over the property and business of a domestic entity under Section 11.402(b) may appoint a receiver for the entity's property and business if:
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> (1) in an action by an owner or member of the domestic entity, it is established that:
>
> (A) the entity is insolvent or in imminent danger of insolvency;
>
> (B) the governing persons of the entity are deadlocked in the management of the entity's affairs, the owners or

members of the entity are unable to break the deadlock, and irreparable injury to the entity is being suffered or is threatened because of the deadlock;

(C) the actions of the governing persons of the entity are illegal, oppressive, or fraudulent;

(D) the property of the entity is being misapplied or wasted; or

(E) with respect to a for-profit corporation, the shareholders of the entity are deadlocked in voting power and have failed, for a period of at least two years, to elect successors to the governing persons of the entity whose terms have expired or would have expired on the election and qualification of their successors;

(2) in an action by a creditor of the domestic entity, it is established that:

(A) the entity is insolvent, the claim of the creditor has been reduced to judgment, and an execution on the judgment was returned unsatisfied; or

(B) the entity is insolvent and has admitted in writing that the claim of the creditor is due and owing; or

(3) in an action other than an action described by Subdivision (1) or (2), courts of equity have traditionally appointed a receiver.

(b) A court may appoint a receiver under Subsection (a) only if:

(1) circumstances exist that are considered by the court to necessitate the appointment of a receiver to conserve the property and business of the domestic entity and avoid damage to interested parties;

(2) all other requirements of law are complied with; and

(3) the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity under Section 11.402(a), are inadequate.

> (c) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, the management of the domestic entity shall be restored to its managerial officials, and the receiver shall redeliver to the domestic entity all of its property remaining in receivership.[41]

And the provisions governing the appointment of a liquidating receiver are as follows:

> (a) Subject to Subsection (b), a court that has jurisdiction over the property and business of a domestic entity under Section 11.402(b) may order the liquidation of the property and business of the domestic entity and may appoint a receiver to effect the liquidation:
>
> (1) when an action has been filed by the attorney general under this chapter to terminate the existence of the entity and it is established that liquidation of the entity's business and affairs should precede the entry of a decree of termination;
>
> (2) on application of the entity to have its liquidation continued under the supervision of the court;
>
> (3) if the entity is in receivership and the court does not find that any plan presented before the first anniversary of the date the receiver was appointed is feasible for remedying the condition requiring appointment of the receiver;
>
> (4) on application of a creditor of the entity if it is established that irreparable damage will ensue to the unsecured creditors of the domestic entity as a class, generally, unless there is an immediate liquidation of the property of the domestic entity; or
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> (5) on application of a member or director of a nonprofit corporation or cooperative association and it appears the entity is unable to carry out its purposes.
>
> (b) A court may order a liquidation and appoint a receiver under Subsection (a) only if:

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[41] Tex. Bus. Orgs. Code § 11.404.

> (1) the circumstances demand liquidation to avoid damage to interested persons;
>
> (2) all other requirements of law are complied with; and
>
> (3) the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity and appointment of a receiver to rehabilitate the domestic entity, are inadequate.
>
> (c) If the condition necessitating the appointment of a receiver under this section is remedied, the receivership shall be terminated immediately, the management of the domestic entity shall be restored to its managerial officials, and the receiver shall redeliver to the domestic entity all of its property remaining in receivership.[42]

These provisions are significantly more abbreviated than the Bankruptcy Code, the ABC statute, and the statutory provisions governing winding up (listed in order of longest to shortest). But the real distinguishing aspect of a receivership is the broad potential scope of a receiver's power. In addition to having the power to sue and be sued and all the powers and duties provided by other laws applicable to receivers, a receiver "has the powers and duties that are stated in the order appointing the receiver or that the appointing court: (A) considers appropriate to accomplish the objective for which the receiver was appointed; and (B) may increase or diminish at any time during the proceedings."[43] A receiver may be an individual or a domestic or foreign entity.[44]

It also appears that the standard for involuntarily appointing a receiver is much easier to satisfy than the standard for filing an involuntary bankruptcy petition. Given the comparative ease of obtaining an involuntary receivership versus an involuntary bankruptcy, coupled with the potentially broad, sweeping authority of a receiver, it is not surprising that entities regularly file bankruptcy to obtain relief from state court receiverships. On the other hand, that rationale does not apply if the receivership is voluntary. Under those circumstances, a receivership could be preferable if the entity is permitted a say in the choice of receiver.

Despite these differences, there are also some similarities between a receivership and a bankruptcy. For example, "the court may require all claimants of the domestic entity to file with the clerk of the court or the receiver, in the form provided by the court, proof of their respective

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[42] Tex. Bus. Orgs. Code § 11.405.

[43] Tex. Bus. Orgs. Code § 11.406(a)(5).

[44] Tex. Bus. Orgs. Code § 11.405(a)(1), (b).

claims under oath."[45] The court may then set a bar date and disallow untimely claims.[46] Like in bankruptcy, "[a] court that appoints a receiver under this subchapter for the property or business of a domestic entity has exclusive jurisdiction over the domestic entity and all of its property, regardless of where the property is located." This is similar to the provisions of 28 U.S.C. § 1334(e), which provides that "[t]he district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate …."

Advantages of Receivership to Bankruptcy

- Typically less costly
- Typically a quicker process
- Flexibility
- Management is replaced by receiver
- Less reporting requirements

Disadvantages of Receivership to Bankruptcy

- No automatic stay
- No free and clear sell of property
- Transfers subject to avoidance if a bankruptcy is subsequently filed
- No legal ability to avoid burdensome contracts and leases
- No cap on landlord claims
- Difficult to administer out of state assets
- Receiver not bound to distribution or priority schemes

Conclusion

There is no genuine alternative to a chapter 11 reorganization when one desires to cram down an uncooperative creditor. A composition of creditors is the closest thing to an alternative, but it requires creditor cooperation and consent. But there are alternatives for disposing of a

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[45] Tex. Bus. Orgs. Code § 11.407(a).

[46] Tex. Bus. Orgs. Code § 11.407(b)-(d).

business's assets in an orderly and equitable manner. They include an assignment for the benefit of creditors, dissolution or winding up, and a receivership. While it is possible to obtain a receivership for the purpose of reorganization, the receiver's powers are subject to the court's whims and will likely be broad. The receivership statute also lacks the Bankruptcy Code's detailed provisions governing reorganization, so the outcome of a receivership is difficult to predict. Nevertheless, a creative and resourceful practitioner may be able to utilize one or more of these options to address her client's needs without resorting to an expensive and burdensome bankruptcy.