

## **PREFACE**

Buying and selling businesses through bankruptcy is still as interesting and confusing an area of the law as ever. It poses practical and legal problems like no other. I have attempted to cover the recent cases that relate to this area, but it is by definition a difficult task—those faced with buying assets out of a Chapter 11 where the sale will be accomplished in a plan of reorganization will need the latest cases on the viability of the new value exception to the absolute priority rule, but those cases will be irrelevant to the practitioner seeking to represent a buyer at a bankruptcy auction. Given the restrictions of time and space, there is no way to fully cover all of the cases which may impact this practice area. Hopefully, we have provided a useful starting point for further research on the particular subject matter which is of interest to the reader. Also, we have continued to attempt to make this book readable and enjoyable to the businessperson caught up in an asset acquisition from a debtor company. Bankruptcy practitioners continue to appreciate the many forms on the disc. These are perhaps the most practically useful item in the book, representing many hours of work by the authors thereof.

Moreover, this is an enormously interesting time in which to practice bankruptcy law generally. For those of us that started in the early 80's, the greatest reward is to see and be involved in the explosive growth and development in the case law, particularly at the appellate court level. Since the Supplement was last updated, there have been many reported cases issued by the Courts of Appeal across the country and from the U.S. Supreme Court. The result of this newly issued case law is the clarification, at least partially, of several difficult legal issues that have vexed Chapter 11 practitioners since the “early days” of the Code. Several of these rulings, (far from being resolved) are in direct opposition. Depending upon which Circuit, in which, you happen to be practicing, this can be very interesting. This pattern sets up a situation where the

U.S. Supreme Court may be faced with resolving the issue, or the matter may be changed altogether by Congress.

For example, when I was a first year lawyer, I researched the issue of the new value exception to the absolute priority rule. At that time I can recall only one case and it was issued by a Bankruptcy Court dealing with the issue in post-Code terms. This is still “the issue” in reorganizations large and small, particularly the case where the alternatives to old equity buying its rights to own the equity in the reorganized company are few. The issue is being dealt with by the Circuits Courts now and is probably ripe for resolution by the Supreme Court, if Congress does not get there first.

One area that is not covered in this Supplement is the report issued by the National Bankruptcy Review Commission and the pending legislation that it spawned. No doubt this activity will drastically alter the practice, but the problem with a discussion at this time is that it is impossible to tell how or when or what will finally result from this flurry of attention that the Code has received in the last several months. As ever, I conclude with a lawyerly caveat: the work on this Supplement has been done at a time when the author was practicing law full time and had just opened his own office in a new city—so if we missed the mark, it is my fault and now you know why.

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