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Glossary

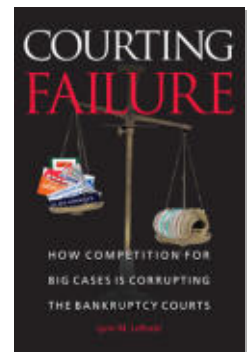
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Glossary

- 10-K** The annual report each public company files with the Securities and Exchange Commission
- 30-day prepack** A prepackaged bankruptcy case in which the court confirms a plan in about 30 days. See *prepackaged bankruptcy*.
- § 363 sale** Debtor's sale of its business during bankruptcy without the proposal or confirmation of a reorganization plan
- adequate protection** Payments or contract rights awarded to protect a secured creditor against loss or decline in the value of collateral during a bankruptcy case
- administrators** In foreign bankruptcy systems, persons appointed by the court to administer the debtor's business during bankruptcy
- affiliate** A corporation that is a member of a corporate group. See *corporate group*.
- ALI principles** Principles of Cooperation in Transnational Insolvency Cases among the Members of the North American Free Trade Association, adopted by the American Law Institute in 2002
- ancillary proceeding** In international bankruptcy, a bankruptcy case that is subordinate to a main proceeding filed in another country involving the same debtor. See *main proceeding*.
- automatic reference** An order of a U.S. district court that transfers all bankruptcy cases filed with the district court to the bankruptcy court of the same district
- automatic stay** An injunction against any attempt to collect a debt owing from the bankrupt. The stay comes into existence automatically upon the filing of every bankruptcy case.
- bankruptcy bill** See *omnibus bankruptcy bill*.
- bankruptcy case** A case pending in a bankruptcy court
- Bankruptcy Code** Title 11 of the United States Code, which contains most of the laws governing bankruptcy

- bankruptcy professionals** The lawyers, investment bankers, accountants, turnaround managers, financial advisers, and other professionals who work in large public company bankruptcy cases
- bankruptcy reorganization** A debt restructuring that takes place in connection with a bankruptcy case
- Bankruptcy Research Database (BRD)** A database maintained by the author that contains information on all large public company bankruptcy cases filed in the United States from October 1, 1979, to the present; *available at* <http://lopucki.law.ucla.edu>
- big bankruptcy** The bankruptcy case of a debtor that reported assets in excess of \$220 million (in current dollars) before filing
- BRD** See *Bankruptcy Research Database*.
- case placers** The individuals who jointly or individually choose the court in which a bankruptcy case is filed. They are usually the company's top executives, board members, and bankruptcy lawyers but may also include investment bankers, debtor-in-possession lenders, or the creditors' committee in a prepackaged case.
- caseload** The workload of a court
- center of its main interests** A test commonly used in international bankruptcy to determine the debtor's home country. See *home country*.
- Chapter 7** Provisions of current U.S. bankruptcy law under which any person or company can file for liquidation
- Chapter 11** Provisions of current U.S. bankruptcy law under which any person or company can file for reorganization or liquidation
- Chapter 11 trustee** Individual appointed by the United States Trustee to administer a bankrupt company
- Chapter X** Provisions of pre-1978 U.S. bankruptcy law under which large public companies were supposed to file. Few did, because Chapter X required the appointment of a trustee in all cases. See *trustee*.
- Chapter XI** Provisions of pre-1978 U.S. bankruptcy law under which only smaller companies were supposed to file
- charter** The document issued by a state or country to create a corporation
- circuit** The geographical area served by a U.S. court of appeals. For example, the third circuit includes the states of Delaware, New Jersey, and Pennsylvania and the Virgin Islands.
- claim** Bankruptcy terminology for a debt owing by the debtor
- clerk (of the court)** The public official who maintains the records of a court
- collateral** Property that a debtor has contractually committed to satisfy a particular debt
- company** A corporation or corporate group
- complex Chapter 11 cases** Euphemism employed by the bankruptcy courts to refer to the big Chapter 11 cases they seek to attract
- confirmation** See *confirmation order*.
- confirmation order** A court order making a Chapter 11 plan binding on the parties to the case, including those who opposed the plan

consensual reorganization plan A reorganization plan is generally considered “consensual” if the debtor, the creditors’ committee, and any other major participant in the case has agreed to it. See *reorganization plan*.

corporate group Two or more corporations in common ownership and control. For example, if a corporation owns and controls three subsidiaries, the four corporations together are a corporate group.

corruption Dysfunctional condition resulting from loss of integrity

court opinion An official explanation of a court’s decision, written by the judge or judges

creditors’ committee See *unsecured creditors’ committee*.

critical vendor A supplier whose voluntary cooperation is said to be critical to the continued operation of the debtor’s business

critical vendor order A court order often entered at the beginning of a bankruptcy case authorizing the debtor-in-possession to pay prepetition debts to critical vendors. See *critical vendor*.

debt restructuring A reduction in the amount that must be repaid on a debt, an extension of the debtor’s time in which to pay, an exchange of the debt for stock, or some combination of the three

debtor (1) Person or company that owes a debt. (2) Person or company that is the subject of a bankruptcy case.

debtor-in-possession (DIP) Upon the filing of a bankruptcy case, the debtor becomes a debtor-in-possession and continues to operate the business unless the court orders the appointment of a trustee.

Delaware bankruptcy court The United States Bankruptcy Court for the District of Delaware

DIP See *debtor-in-possession*.

DIP lender A bank or financial institution that lends money to a debtor-in-possession. See *debtor-in-possession*.

disclosure statement A document filed in a bankruptcy case in which the debtor provides creditors with the information they need to make informed decisions in connection with voting on a Chapter 11 plan

district The geographical area served by a district court or bankruptcy court

district court Ordinarily, the U.S. district court is a trial court. In bankruptcy cases, however, the district court often functions as an appeals court.

division The portion of a district served by a panel of district court or bankruptcy court judges. See *district*, *district court*, *panel of judges*.

docket (1) The list of cases pending before a court. (2) A list of the documents in the court’s file for a particular case.

domicile A person’s permanent home

draw See *random draw*.

efficient In economics, wealth maximizing for society as a whole

estate The property owned by a bankrupt company

EU regulation European Union Regulation on Insolvency, adopted in 2000

- examiner** An individual appointed by the United States Trustee to conduct an investigation during the pendency of a Chapter 11 case
- exclusivity** The debtor's exclusive right to file a Chapter 11 plan during the first 120 days of a Chapter 11 case or such extensions of that period as the court may allow
- extraterritorial law** A law intended to apply to persons or events outside the borders of the country enacting the law
- feasibility** The requirement in Bankruptcy Code § 1129(a)(11) that "confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor . . ."
- fee caps** Top limits placed by a bankruptcy court or judge on the rates bankruptcy professionals can charge for their services
- financial advisers** Investment bankers or other professionals authorized by the bankruptcy court to give financial advice to a debtor or an official committee
- first-day motions** Requests to the court made by the debtor on the day the Chapter 11 case is filed (or shortly thereafter). Typical first-day motions seek approval to use secured creditors' cash collateral, to pay current wages and salaries or prepetition debts owing to critical vendors, and to employ specified bankruptcy professionals.
- first-day orders** Bankruptcy court orders made in response to first-day motions. See *first-day motions*.
- forum shopping** Choosing from alternatives the court in which a case will be filed
- franchise tax** A tax imposed on the privilege of carrying on a business
- haven** A state or country that increases its revenues or improves its economy by enacting laws protecting foreigners from the laws of the foreigners' own countries
- headquarters** The geographical location of a company's principal executive offices. Public companies must specify their principal executive offices in filings with the Securities and Exchange Commission.
- holding company** A corporation that owns a controlling stock interest in one or more corporations and does not itself conduct a business
- home country** A phrase commonly used in international bankruptcy to specify the country whose courts should have jurisdiction over the assets of a multinational debtor worldwide
- homestead** A residence that a bankrupt debtor is permitted to keep free of unsecured creditors' claims
- incorporation** The creation of a corporation by a state's or country's issuance of a charter. See *charter*.
- injunction** An order by a court that some specified person not do some specified act
- insolvent** Not solvent. See *solvent*.
- integration** A test employed in international bankruptcy to determine which

country's courts should have jurisdiction. If the business of a foreign subsidiary is integrated into the business of the domestic parent or group, the domestic court has jurisdiction over the foreign subsidiary. See *extraterritorial law*.

internal affairs doctrine Law providing that courts adjudicating disputes regarding the internal affairs of a corporation should apply the law of the state or country of incorporation, not the law of the state or country where the events in litigation occurred. See *incorporation*.

involuntary bankruptcy A bankruptcy case filed by creditors

Judicial Conference of the United States A federal agency composed of federal judges that makes policy with regard to the administration of the U.S. courts

jurisdiction The power or right of a court to decide a particular dispute

large company A company that reported assets in excess of \$220 million (in current dollars) before filing its bankruptcy case

liquidation (1) The sale of a company. (2) The dismantling of a company followed by the sale of its parts.

liquidators In some foreign countries, the official term for the persons appointed by the court to liquidate a bankrupt company

local rules Rules made by the judges of a district. These rules apply only to cases in the district.

main proceeding In international bankruptcy, a bankruptcy case in a court of the debtor's home country. In a main proceeding it is considered legitimate for the court to attempt to administer the debtor's worldwide assets.

managers The top executives and members of the board of directors of a company

motion A request to a court

multinational bankruptcy The bankruptcy of a multinational company

multinational company A corporation or corporate group that operates in more than one country

National Bankruptcy Review Commission An independent commission established pursuant to Public Law No. 103-394 (1994) to investigate and study issues relating to the Bankruptcy Code and prepare a report to the president, Congress, and the chief justice making recommendations for legislative or administrative action. The commission completed its work in 1997.

New York bankruptcy court The Manhattan division of the United States Bankruptcy Court for the Southern District of New York

official creditors' committee An unsecured creditors' committee appointed by the United States Trustee and whose professionals are entitled to payment from the debtor's estate. See *unsecured creditors' committee*.

omnibus bankruptcy bill The Bankruptcy Abuse Prevention and Consumer

- Protection Act of 2003, the provisions of which have been enacted by both the House and Senate at various times over the past five years but have never become law
- omnibus hearings** The practice of holding hearings biweekly or monthly on all pending matters in big bankruptcy cases. Regular scheduling is particularly convenient for out-of-town lawyers.
- opinion** See *court opinion*.
- panel of judges** Two or more judges assigned to hear cases in the same district or division. See *district, division, random draw*.
- parallel proceedings** In international bankruptcy, cases of equal rank and dignity filed by or against the same debtor in different countries
- parent corporation** A corporation that owns and controls a subsidiary corporation
- petition** The document filed with a bankruptcy court to commence a bankruptcy case
- plan** See *reorganization plan*.
- plan failure** A category of bankruptcy outcomes created by the author and Joseph W. Doherty in the course of their research. The outcomes in this category are the bankruptcies or distressed mergers of companies that emerged from bankruptcy reorganization less than five years earlier. A *distress merger* is a merger by a previously bankrupt company that has not reported an annual profit since emerging from bankruptcy.
- postpetition** After the filing of the petition. See *petition*.
- prenegotiated bankruptcy** A bankruptcy case that is not commenced until after the debtor has reached at least a tentative agreement with one or more major creditors on the terms of the plan
- prepack** A prepackaged bankruptcy case. See *prepackaged bankruptcy*.
- prepackaged bankruptcy** A bankruptcy case that is not commenced until after the debtor has proposed a plan to its creditors and the creditors have accepted the plan by the majorities required for confirmation. See *confirmation order*.
- prepetition** Before the filing of the petition. See *petition*.
- principal place of business** Legal term of art referring to a company's headquarters. See *headquarters*.
- priority** The right of a creditor to be paid in full before creditors of lower priority are paid anything at all
- professional fees** The fees of bankruptcy professionals. See *bankruptcy professionals*.
- professionals** See *bankruptcy professionals*.
- protocols** Agreements entered into between the bankruptcy courts of countries where cases are pending against the same debtor, in order to coordinate the courts' conduct of the cases
- public company** A company whose stock or bonds are so widely traded that the company is required to file annual reports with the Securities and Exchange Commission

- random draw** Process by which the clerk of the court randomly assigns a bankruptcy case to a particular bankruptcy judge in a district or division where the panel of judges consists of more than one judge. See *district, division, panel of judges*.
- recognition** Acceptance by a court of the legitimacy of a foreign bankruptcy proceeding
- reference** See *automatic reference*.
- refiling** The filing of a bankruptcy case by or against a company that has already been through bankruptcy reorganization. See *bankruptcy reorganization*.
- refiling rate** The percentage of companies emerging from bankruptcy that file another bankruptcy. See *refiling*.
- reorganization** See *bankruptcy reorganization*.
- reorganization plan** A document filed in a bankruptcy case that provides the terms of a debt restructuring
- restructure** See *debt restructuring*.
- retention bonuses** Bonuses paid to executives or other employees of a bankrupt company to increase the chances they will remain in the company's employ for some period of time
- retention loans** Loans made to executives or other employees of a bankrupt company with the intention on the part of the company to forgive repayment if the executive or employee remains in the company's employ for some period of time
- schedules** Lists of all assets and debts that each bankrupt company is required to file with the bankruptcy court
- secured creditor** A creditor who is the beneficiary of a debtor's contractual commitment to satisfy a particular debt from particular property. A mortgage holder is an example of a secured creditor.
- shop in** The choice of a company with headquarters in some other district or division to file its bankruptcy case in this district or division
- shop out** The choice of a company with headquarters in this district or division to file its bankruptcy case in some other district or division
- solvent** (1) Having assets in excess of debts. (2) Being able to pay one's debts as they become due.
- stakeholders** All persons whose interests are at risk in a company, including not just creditors and shareholders but also employees, taxing authorities, communities, affiliated companies, and others
- statistically significant** Unlikely to have occurred by chance
- stay** See *automatic stay*.
- subsidiary** A corporation that is owned or controlled by another corporation. See *parent corporation*.
- tainted managers** The managers who were in charge of the company during the period of onset of financial distress
- territoriality** In international bankruptcy, the philosophy that each country

- should administer the assets of a multinational debtor that are within its borders
- toxic judges** Derogatory term used to refer to judges who are unacceptable to case placers. See *case placers*.
- trustee** A person appointed by the region's United States Trustee to administer the property of a bankrupt in Chapter 7 or Chapter 11. See also *Chapter 11 trustee*; *United States Trustee*.
- turnaround managers** Managers hired after the company is in financial distress, particularly if the managers do not intend to remain with the company after bankruptcy
- UNCITRAL Model Law on Cross-Border Insolvency** A law drafted and promulgated by the United Nations Commission on International Trade Law for adoption by countries. Where adopted, the law controls a country's response to bankruptcies involving foreign parties.
- United States trustee** An agency of the U.S. government, located in the Department of Justice. The U.S. trustee is authorized by law to participate in certain aspects of Chapter 11 cases, including the appointment of trustees and examiners, the approval of plans and disclosure statements, and the control of professional fees.
- universalism** In international bankruptcy, the philosophy that a single court should administer the assets of a multinational debtor worldwide
- unofficial creditors' committee** An unsecured creditors' committee that is not an official creditors' committee. See *official creditors' committee*, *unsecured creditors' committee*.
- unsecured creditor** A creditor that is not a secured creditor. See *secured creditor*.
- unsecured creditors' committee** A committee, usually consisting of the debtor's largest unsecured creditors, formed to represent the unsecured creditors or some subgroup of unsecured creditors in connection with a Chapter 11 case
- venue** The geographical location where a bankruptcy case proceeds
- venue hook** A subsidiary with links to a bankruptcy court that qualify the subsidiary to file there, which filing will in turn qualify all members of the corporate group to file there. See *corporate group*, *parent corporation*, *subsidiary*.