

The Law of Unintended Consequences: Competing Plans in the Post-BAPCPA World

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In an apparent attempt to address delay and cost in the restructuring process, a provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) has imposed an unalterable 18-month outside limit on a debtor's plan exclusivity. The intended goals of the provision seem to be faster reorganizations, reduced administrative costs and stronger motivation for parties to achieve a swift, consensual resolution. Recent experience with competing plans of reorganization in large Chapter 11 cases, however, raises the question of whether a fixed limit on exclusivity is the best means of achieving these goals.

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