

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

December 20, 2011 | Articles & Books

Before the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), indefinite extensions of a debtor's initial 120-day exclusive period in which to file a plan were commonly granted, making competing plans a rare occurrence. Judges could open the plan process for cause, but in practice they did so rarely. While many viewed debtor control of the plan process as helpful to case resolution (and judges that extended exclusivity presumably viewed it as the appropriate path), some felt it contributed to excessive delay and cost in the restructuring process.¹ In an apparent attempt to address these concerns, a BAPCPA provision now codified as Section 1121(d)(2)(A) of the Bankruptcy Code imposed an unalterable 18-month outside limit on a debtor's plan exclusivity (allowing an additional two months to obtain plan approval). The goals of this inflexible rule seem self-evident: faster reorganizations, reduced administrative burden and costs, and stronger motivations for parties to achieve a swift, consensual resolution. Recent experience with competing plans in large cases, however, raises the question of whether a fixed cap on exclusivity is the best means of achieving these goals.

Related materials

[schaible vonnegut nylj article jan12.PDF](#)