

CRP 2006 National Meeting

Bankruptcy Abuse and Consumer Protection Act of 2005

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DEJA VU ALL OVER AGAIN IN AMERICAN CORPORATE BANKRUPTCY?

In his wonderful 1937 book *The Folklore of Capitalism*, Thurmond Arnold described corporate reorganization as “perhaps the most interesting of all our legal rituals from a ceremonial point of view, because it is the most complicated mystery of all. The fees charged,” he continued:

have been fantastic ... A corporate reorganization is a combination of a municipal election, a historical pageant, an antivice crusade, a graduate-school seminar, a judicial proceeding, and a series of horse trades, all rolled into one—thoroughly buttered with learning and frosted with distinguished names. ... Men work all night preparing endless documents, which other men read in order to make solemn arguments. At the same time practical politicians utilize every resource of patronage, demagoguery, and coercion beneath the solemn smoke screen.⁵

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- **Non-residential real property leases**
 - **Limitations on extensions.**
 - **Limitations on administrative claims.**
- **Executory contracts**
 - **Cure of non-monetary defaults**
 - **Impairment of claims with non-monetary defaults**
 - **Deletion of provisions regarding air carriers**

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- **Utilities**
 - **Adequate Assurance**
 - **Deposits**
 - **How much**
- **Preferences**
 - **DePrizio fix**
 - **Ordinary course test expanded**
 - **Time to perfect lengthened**
 - **Venue limitations**

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- **Fraudulent transfers**
 - **Extension of reachback**
 - **Employment contracts**
 - **The 10 year reachback provisions**
- **Post-petition transactions**

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- **Reclamation claims**
 - Time to demand extended
 - Administrative claim status even if demand not timely made
 - Subject to prior secured claims in reclamation goods
- **Statutory liens**
 - IRC 6323 purchasers exception

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- **Labor issues**
 - **Back pay**
 - **Property of estate**
 - **Administrator**
 - **Wage/benefits priorities**
 - **Retired employees/benefits**
- **KERPs**

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- **Small business provisions**
 - **What is a small business**
 - **Plan process fast tracking**
 - **Duties of the small business DIP**
 - **No automatic stay protection for serial filers**

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- **Single asset real estate**
 - **What is it**
 - **No more cap of \$4M**
 - **Stay litigation rules**
 - **File a reasonable plan**
 - **Make monthly payments**
 - **Interest at non-default contract, not market rate**

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- **Chapter 11 plans**
 - **Disclosure statement and adequate information**
 - **Exclusivity extensions limited**
 - **18 months for plan filing**
 - **20 months for voting process**

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- **Bankruptcy discharge**
 - **What is a discharge**
 - **When does a discharge occur**
 - **Chapter 11**
 - **Chapter 7**
 - **Chapter 13**
 - **Individual discharge changes**
 - **Corporate discharge changes**

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- **Appointment of Trustee**
 - **Fraud**
 - **Role of the US Trustee**
- **Prepackaged Plans**
 - **Prepetition solicitation**
 - **No meeting of creditors**
- **Committees**
 - **Membership changes**
 - **Information sharing**

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- **Consumer privacy**
 - Customer lists
 - Bankruptcy sales
- **Conflicts and compensation**
 - Disinterestedness
 - 327 professionals
 - 328 professionals

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- **Healthcare provisions**
 - **Exception for HHS to automatic stay**
 - **Patient records management**
 - **Patient transfers**
 - **Patient Care Ombudsman**
 - **Confidentiality of Patient Records**
 - **Nonprofit Healthcare Businesses**
- **Tax liability determination**

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- **Conversion/Dismissal**
 - **Mandatory**
 - **Absent unusual circumstances that such relief is not in estate best interests**
- **Special contracts**
 - **Forward contracts**
 - **Swaps**
 - **Protection from Title 11**

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- **Chapter 7 changes impact on CRP business**
- **Estate assets information**
- **Involuntary cases**
- **Effective dates of BAPCPA**
 - **Generally, October 17, 2005**
 - **Exceptions**