

NATIONAL BANKRUPTCY CONFERENCE

(a voluntary organization composed of persons interested in the improvement of the Bankruptcy Code and its administration)

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January 24, 2003

Honorable Orrin Hatch, Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Honorable James Sensenbrenner, Jr., Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hatch and Chairman Sensenbrenner:

On behalf of the National Bankruptcy Conference ("NBC"), we write to renew the NBC's continuing offer of assistance with respect to the evaluation and reconsideration of this nation's bankruptcy laws. As we have always done, we stand willing to provide both policy and technical assistance in the formulation and drafting of legislation. In this regard, the NBC would appreciate the opportunity to testify at any hearings you might schedule on bankruptcy matters.

The National Bankruptcy Conference is a voluntary, non-profit, self-supporting, non-partisan group of fifty-seven law professors, judges and practicing lawyers that has been working with Congress on bankruptcy legislation since the Great Depression. Our members are all recognized experts in bankruptcy law and procedure who are committed to the improvement and integrity of the bankruptcy system. During the last six years, we have followed closely the development of comprehensive bankruptcy legislation in Congress; we have testified on various versions of the legislation, provided comprehensive written analyses of its policies and effects, and made our members available to the Judiciary Committees and subcommittees, members of Congress and their staffs for consultation.

Bills closely patterned on prior legislative efforts apparently will be introduced in both chambers during this session, continuing a process Congress began in 1994. To date, that effort has produced many proposals we support, including proposed Chapter 15 with respect to transnational bankruptcy issues, making chapter 12 permanent, enhanced data collection with respect to all bankruptcy cases and additional bankruptcy judges.

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Whether or not we may agree with any particular proposal or policy, we stand ready to work with you and your staff to ensure that any bankruptcy legislation achieves its goals without unintentionally compromising other important objectives that Congress seeks to realize.

While the legislation approved by the conference committee in the last Congress had bipartisan support, the framework of that proposal is now more than five years old. During that time -- indeed, even since the bankruptcy bills last passed the House and the Senate almost two years ago -- dramatic changes have directly affected our nation's economy. Unemployment, the number one cause of personal bankruptcy filings, has more than doubled. In addition, during 2002, more than 186 public companies filed for Chapter 11. Five of these cases are among the ten largest bankruptcies ever filed; these five cases alone involve over \$386 billion in assets and thousands of jobs. In addition to the issue of how these cases might have fared under the conference report or other prior bills, these cases and others raise new and serious questions regarding such matters as the level of compensation for executives in reorganizing companies and fair treatment of employee and retiree wages and benefits, including 401(k) and other retirement accounts -- issues that were not addressed in the prior bills.

Few people would doubt the simple, practical benefits of beginning the legislative process in the new Congress with last year's conference report. We suggest, however, that as part of their consideration of the prior legislation, the relevant subcommittees promptly address in public hearings the emerging issues raised by recent cases, including cases for a number of major corporations, and today's economic conditions.

Just in the last month, for example, President Bush expressed particular concern about the economic well-being of small businesses. While public debate on prior bankruptcy bills has often focused, appropriately, on their consumer provisions, we think insufficient attention has been paid to the sections of those bills that create new and more complicated bankruptcy procedures for businesses with less than \$2 million in debts. It is possible that a consensus on modification of the conference report provisions on small business can be reached among groups that have been working with the staff in the past.

There are undoubtedly many additional areas in which the Congress or its staff may think that the NBC could be helpful and useful in the reconsideration and reformation of this nation's bankruptcy laws. We welcome the opportunity to be of assistance.

We are sending a copy of this letter to each member of the Senate and House Judiciary Committees, and to Senators Kerry and Bond because of their leadership on small business issues generally. We thank you for your time, and stand ready to assist in any

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way you think advisable. Please feel free to contact me, Ron Trost (Chair of the NBC), Prof. Doug Baird (Vice Chair of the NBC) or Marcia Goldstein (Co-Chair of the NBC) Committee on Legislation.

Sincerely,



Sally S. Neely, Co-Chair
Committee on Legislation
National Bankruptcy Conference

cc by fax:

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