

## CHAPTER 7 CONVERSION

Under certain circumstances, it may be permissible to have a Chapter 11 case converted to a Chapter 7 case. See Section 1112:

"On request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause."

Section 1112(b)(4)(A)-(B) discusses the definition of "cause":

"Furthermore, 'cause' includes, in part:

- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;
- (B) gross mismanagement of the estate ...

Cause is a flexible standard and the determination of whether cause exists is subject to the Court's sound discretion. See *In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008):

"... cause is a flexible standard, subject to the Court's discretion and does not necessarily involve one or all of the factors set forth in section 1112(b)(4)."

The moving party bears the initial burden of demonstrating cause exists to convert a chapter 11 case to a chapter 7 case. See *In re The SCO Group, Inc.*, 2009 WL 2425755 at \*5 (Bankr. D. Del. Aug 5, 2009):

Noted that the court must dismiss or convert the case if the moving party establishes cause

The purpose of enabling conversion of a case to a chapter 7 case or enabling dismissal of a chapter 11 case is to prevent debtors "from gambling on the enterprise at the creditors' expense when there is no hope of rehabilitation." (See *In re Loop Corp. v. U.S. Trustee*, 379 F. 3d 511, 516 (8th Cir. 2004).

It may be the case the the proposed disposition of whether these claims and causes of action is fair or consistent with applicable law is a question to be answered in connection with the Debtors' request for confirmation of the Plan of Reorganization

The Debtors' intention to pursue their Plan, albeit in the face of strenuous objections from those who would move to use Section 1112 to convert the case to a Chapter 7 or to dismiss the case, does not constitute, in and of itself, "gross mismanagement" warranting conversion of the case. See *In re Stone Container Finance Company of Canada II*, US Bankruptcy Court, Delaware, Mar 30, 2010.