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MCLE Self-Study:

The Impact of Chapter 11 Bankruptcies on Wage and Hour Class and Collective Actions

By Patricia Prince & Elizabeth Franklin

BACKGROUND ON CHAPTER 11 BANKRUPTCIES

The last few years have been some of the most economically difficult in recent history. Companies that have long been considered the backbone of the U.S. economy have not only faltered, but collapsed. Indeed, some of the largest Chapter 11 bankruptcy proceedings in U.S. history occurred in the last several years: Lehman Brothers, with pre-bankruptcy assets of \$639 billion, filed September 15, 2008; Washington Mutual, with pre-bankruptcy assets of \$327.9 billion, filed September 26, 2008; Chrysler, with pre-bankruptcy assets of \$39.3 billion, filed April 30, 2009; General Motors, with pre-bankruptcy assets of \$91 billion, filed June 1, 2009; and CIT Group, with pre-bankruptcy assets of \$71 billion, filed November 1, 2009.

When a business is unable to pay its creditors or its debt, either the business or its creditors can file for protection with the federal bankruptcy court under Chapter 7 or Chapter 11 of the United States Code. Under

Chapter 7, the business normally ceases operations. In Chapter 11 proceedings, the debtor typically retains control of its operations as a "debtor-in-possession" subject to the oversight of the court.¹ Chapter 11 allows the debtor-in-possession to restructure or reorganize its business.² A debtor may exit from a Chapter 11 bankruptcy proceeding within a few months or years, depending upon the complexity of the proceeding. The objective typically is met through the use of a bankruptcy plan, which may be proposed by any party-in-interest.³ Some of the key features of a Chapter 11 proceeding are the acquisition of financing and loans on more favorable terms by providing new lenders first priority on earnings,⁴ rejection or cancellation of contracts,⁵ and protection from other litigation by imposition of an automatic stay.⁶

In bankruptcy law, an automatic stay is essentially an injunction that prevents actions by creditors and litigants (with certain limited exceptions) to collect debts from a debtor who has filed a petition for bankruptcy protection.⁷

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