

Das U.S. Insolvenzrecht seit Lehman, Chrysler und GM

A. Überblick über das amerikanische Reorganisationsrecht

U.S. CODE – TITLE 11—BANKRUPTCY

CHAPTER 1—GENERAL PROVISIONS

CHAPTER 3—CASE ADMINISTRATION

CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

CHAPTER 7—LIQUIDATION

CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY

CHAPTER 11—REORGANIZATION

CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER OR FISHERMAN WITH REGULAR ANNUAL INCOME

CHAPTER 13—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

§ 1104. Appointment of trustee or examiner

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor;

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or

(3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.

§ 1107. Rights, powers, and duties of debtor in possession

(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106 (a)(2), (3), and (4) of this title, of a trustee serving in a case under this chapter.

§ 1113. Rejection of collective bargaining agreements

(a) The debtor in possession, or the trustee if one has been appointed under the provisions of this chapter, other than a trustee in a case covered by subchapter IV of this chapter and by title I of the Railway Labor Act, may assume or reject a collective bargaining agreement only in accordance with the provisions of this section.

§ 1114. Payment of insurance benefits to retired employees

(e)

(1) Notwithstanding any other provision of this title, the debtor in possession, or the trustee if one has been appointed under the provisions of this chapter (hereinafter in this section “trustee” shall include a debtor in possession), shall timely pay and shall not modify any retiree benefits, except that—

(A) the court, on motion of the trustee or authorized representative, and after notice and a hearing, may order modification of such payments, pursuant to the provisions of subsections (g) and (h) of this section, or

(B) the trustee and the authorized representative of the recipients of those benefits may agree to modification of such payments,

after which such benefits as modified shall continue to be paid by the trustee.

SUBCHAPTER II—THE PLAN

§ 1121. Who may file a plan

§ 1122. Classification of claims or interests

§ 1123. Contents of plan

§ 1124. Impairment of claims or interests

§ 1125. Postpetition disclosure and solicitation

§ 1126. Acceptance of plan

§ 1127. Modification of plan

§ 1128. Confirmation hearing

§ 1129. Confirmation of plan

§ 363. Use, sale, or lease of property

(b)

(1) The trustee, after notice and a hearing, may use, sell, or lease, **other than in the ordinary course of business**, property of the estate, except that if ...

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

B. Die Insolvenz der Lehman Brothers Holdings Inc.

www.lehman-docket.com

15.09.2008 – Antrag auf Verfahren nach Chapter 11

16.09.2008 – Antrag auf Genehmigung des Verkaufs aller wesentlichen Investmentbank- und Kapitalmarkt-Abteilungen an Barclays nach § 363 (b)

19.09.2008 – Genehmigung des Verkaufs durch das Gericht (B.C. S.D. NY)

22.09.2008 – Antrag auf Genehmigung des Verkaufs der restlichen Investmentbank- und Kapitalmarkt-Abteilungen an Nomura nach § 363 (b)

29.09.2008 – Genehmigung des Verkaufs durch das Gericht (B.C. S.D. NY)

15.03./14.04.2009 – Vorlage eines Liquidationsplans und disclosure statements

Abstimmung demnächst zu erwarten – Abwicklungshorizont von mind. 3 Jahren

C. Die Reorganisation der Chrysler Group LLC

www.chryslerrestructuring.com

30.04.2009 – Antrag auf Verfahren nach Chapter 11

04.05.2009 – Antrag auf Genehmigung des Verkaufs aller wesentlichen Unternehmensgegenstände an eine Auffanggesellschaft (Chrysler LLC) nach § 363 (b)

07.05.2009 – Genehmigung des Verkaufs durch das Gericht (B.C. S.D. NY)

09.06.2009 – Genehmigung des Verkaufs wird rechtskräftig – Verkauf erfolgt gemäß „Verkaufsverfahren“ an einzigen Bieter (Fiat); Kaufpreisverteilung ist bereits bestimmt

→ erste bedeutende planmäßige Insolvenz ohne Chapter 11-Plan

Liquidationsplan für „Old Carco LLC“ demnächst zu erwarten (conversion in Chapter 7 ist unüblich)

C. Die Reorganisation der General Motors Corporation (GM)

www.motorsliquidationdocket.com

01.06.2009 – Antrag auf Verfahren nach Chapter 11

- Antrag auf Genehmigung des Verkaufs aller wesentlichen Unternehmensgegenstände an eine Auffanggesellschaft (Vehicle Acquisition Holdings LLC) nach § 363 (b)

05.07.2009 – Genehmigung des Verkaufs durch das Gericht (B.C. S.D. NY)

10.07.2009 – Der Verkauf erfolgt gemäß „Verkaufsverfahren“. Die Kaufpreisverteilung ist bereits bestimmt. Die Auffanggesellschaft firmiert sich um in „General Motors Company LLC“.

→ planmäßige Insolvenz ohne Chapter 11-Plan nach dem Vorbild von Chrysler

Liquidationsplan für „Motors Liquidation Company“ demnächst zu erwarten .
(conversion in Chapter 7 ist unüblich)

D. Fazit

1. Das neue Verfahren ist im Kern eine übertragende Sanierung wie in § 160 Abs. 2 Nr. 1 InsO, allerdings ohne jede Gläubigerzustimmung. Die hinreichende Wahrung der Gläubigerinteressen durch den Bankruptcy Judge ist umstritten.
2. Aus Gläubigersicht findet ein Rückschritt in die Zeiten der Equity Receivership statt.