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Legislative Updates On The Fighting Fraud In Bankruptcy Act Of 2011

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The Chapter 11 Reset:

Can Plans Die Of Old Age?

Confirmed plans can expire.
What does that mean for the
debtor — and for the
creditor's counsel?



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Confirmed plans are money judgments, subject to the requirements of renewal under local state law — and can expire like any money judgment.

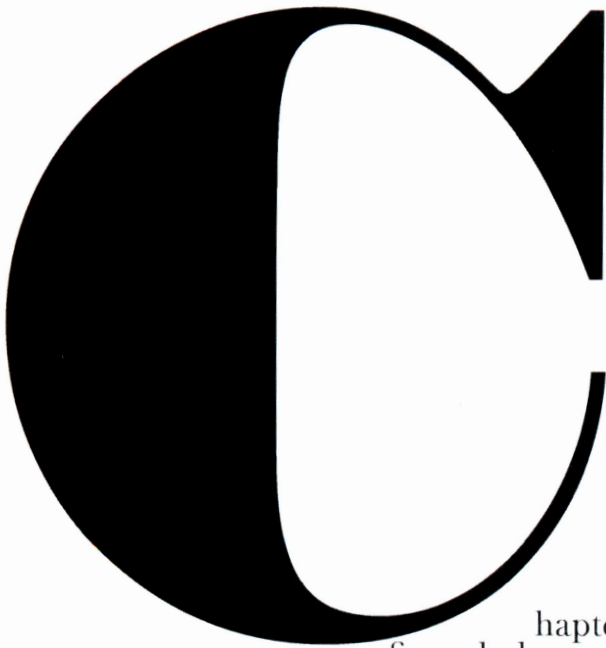
Chapter 11

Reset:

Can Plans Die Of Old Age

By David J. Cook,
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Chapter 11 confirmed plans are born, live and die of old age.

Yes, you read that right. No, thank you. I am good, and I am right. Here is why. The renewal statute of the domicile state for the bankruptcy court measures the life of a confirmed plan. Absent renewal under the state law, confirmed plans expire, freeing the debtor from the plan obligations.

Confirmed plans are money judgments that are subject to the requirements of renewal under local state law. Absent timely renewal, the Chapter 11 plan expires like any money judgment, exonerating the re-vested debtor from the ob-

ligation to make payments. If the plan expires, the debtor exits the plan debt-free.

Does this mean that the debtor escapes the plan untethered because the creditor's counsel (perhaps one of the readers) failed to renew the confirmed plan under the state renewal statute? Maybe. Let's see who benefits from this bizarre outcome.

Do I have your attention? This article will prove that a confirmed plan dies the same death as a federal or state court judgment unless renewed under the local state renewal statute. This is important. Asbestos-related confirmed plans percolate for decades while administering claims providing for a billion-dollar payout. The untimely end of an asbestos confirmed plan upsets the settled expectations of millions of claimants and damages the national compensation system.

Almost to a "t," articles on bankruptcy are pure eye glaze. These articles are difficult to write because the reader nods off after the third paragraph. This writer should be so lucky. The gamble here is to get you read the entire article.

Confirmed Plans Require Payment Of Money, Just Like Any Other Money.

Based on 11 U.S.C. § 1129(a)(7)(A)(ii),¹ confirmed plans require that the "debtor shall pay creditors." Plans provide for periodic payments, payments from a "pot," payments from profits or proceeds, payments from litigation recoveries, proceeds from the sale of assets, collection of notes or receivables, or an "earn-out" due from a third party.

A standard civil judgment declares that the "plaintiff recover money from the defendant."²

(Endnotes)

¹Unless noted otherwise, all sections refer to the Bankruptcy Code.

²Cal. Code Civ. Proc. § 680.270: "Money judgment" means that part of a judgment that requires the payment of money.

³In re *Bruce Bartleson*, 253 B.R. 75 (9th Cir. BAP 2000 (Plan as contract, judgment and consent decree).

⁴*Andrews v. Roadway Express*, 475 F.3d 565 (5th Cir. 2006).

⁵*Salinas v. Roadway Express*, 802 F.2d 787, 789 (5th Cir. 1986) (Defendant agreed to compensate multiple plaintiffs through a consent decree.)

⁶*Andrews* at 567.

⁷*Id.* at 568.

⁸*Id.* at 568-569. "Execution of a dormant judg-

ment that is not timely revived is barred forever."

⁹*Id.* at 569. (Confirmed plans and consent decrees share identical characteristics, including a "debtor" paying a sum of money to a class who timely filed claims. Confirmed plans are treated as consent decrees. In re *Penberthy*, 211 B.R. 391, 395 [Bankr. W.D.Wash. 1997].)

¹⁰*Id.* at 569-570.

¹¹Emphasis added.

¹²In re *Fifarek* (Stark v. *Fifarek*), 370 B.R. 754, 758 (Bankr. Court, W.D. Mich. 2007); In re *Hunt* (*Lillie v. Hunt*), 323 B.R. 665, 666 (Bankr. W.D. Tenn. 2005) ("Since there is no specific statute of federal statute of limitations on how long this judgment is effective, the parties agree that we must look to Tennessee law [citation omitted]").

¹³*Fed. R. Civ. Pr. 69(a)(1)*. ("(a) In General.

(1) *Money Judgment; Applicable Procedure.*

A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution — and in proceedings supplementary to and in aid of judgment or execution — must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

(2) *Obtaining Discovery.*

In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person — including the judgment debtor — as provided in these rules or by the procedure of the state where the court is located.

Fed. R. Civ. Pro. 69 is applicable in bank-

In both cases, judgments (the money judgment and the plan) require the debtor to pay the creditors. The confirmed plan makes the creditor's claim a money judgment because the bankruptcy judge, by dint of the confirmation order, renders the plan a final judgment that requires the debtor to pay the creditors according to terms of the confirmed plan. The whole point of Chapter 11, we hope, is payment to creditors incorporated into a confirmed plan of arrangement. Otherwise, what is the point of this vast machinery?

As frequently stated, plans are judgments, consent decrees and contracts.³ The confirmed plan is a money judgment, ordering the debtor to pay creditors and justify the substantial fees paid to counsel for the debtor and creditor's committee.

Consent Decrees Requiring Payment Are Subject To Renewal And Expiration If Not Renewed.

In *Andrews v. Roadway Express*,⁴ the court held that a consent decree requiring payment due the class constituted a money judgment and was therefore subject to the renewal under state law, lest it expire.

The plaintiffs had prosecuted a class action lawsuit against their employer ending in a consent decree.⁵ Seventeen years later, the plaintiffs filed suit in district court to recover benefits under the consent decree.⁶ The trial court construed the consent decree as a money judgment⁷ and held the action to be untimely under Texas state law, which mandated the renewal of a money judgment prior to its expiration under Texas law.⁸

The plaintiffs also argued that the consent or-

der was not sufficiently definite to support the issuance of a writ of execution. The plaintiffs argued that Texas state law required that the execution describe the names of the parties in whose favor and against whom judgment was entered.

Texas law also required that the execution specify the sum recovered or directed to be paid in the body and the sum actually due when it is issued.⁹

This case came as a total shocker to the claimants. Never in their wildest dreams did they consider that the consent decree could die of old age, throwing them under the bus of the state statutory renewal law.

Confirmed plan language replicates consent decree terms by compelling the debtor to pay classes of creditors who are (a) disclosed on the consent plan or (b) contained in its schedules (if undisputed and non-contingent) or timely-filed claims are allowed.

Confirmed plans nearly mirror consent decrees. In assessing whether a confirmed plan is a money judgment, the test is not necessarily per se whether a particular creditor could seek a writ of execution in favor of

The whole point of Chapter 11, we hope, is payment to creditors incorporated into a confirmed plan of arrangement. Otherwise, what is the point of this vast machinery?

ruptcy court under Bankruptcy Rule 7069.

¹⁴In *Re Levander*, 180 F.3d 1114 (9th Cir. 1999)

¹⁵Id. at 1121-1122, "We have held that Federal Rule of Civil Procedure 69(a) empowers federal courts to rely on state law to add judgment-debtors under Rule 69(a), which permits judgment creditors to use any execution method consistent with the practice and procedure of the state in which the district court sits." *citing to Cigna Property & Cas. Ins. Co. v. Polaris Pictures Corp.*, 159 F.3d 412, 421 (9th Cir.1998) (quoting *Peacock v. Thomas*, 516 U.S. 349, 359 n. 7, 116 S.Ct. 862 [1996]) (internal quotation marks omitted); *see also, Andrews at 568; Crump v. Bank of America*, 235 F.R.D. 113, 115 (D.D.C. 2006); *RMA Ventures v. Sun Am. Life Ins. Co.*, 576 F.3d 1070, 1074 (10th Cir. 2009) ("Once a federal

district court issues a writ of execution, a judgment creditor must follow the procedure on execution established by the laws of the state in which the district court sits. [Citations omitted] ***). Thus, as required by FRCP 69(a)(10), defendants have turned here to the method of execution prescribed under Utah law."

¹⁶*McCarthy v. Johnson*, 172 F.3d 63 (10th Cir. 1999). Unpublished opinion but illustrative.

¹⁷*Fidelity Nat. Fin. Inc. v. Friedman*, 602 F.3d 1121, 1123 (9th Cir. 2010) ("The process for registering the judgment of one federal district court in another federal district court is outlined in 28 U.S.C. § 1963. The federal court applies state law, however, when renewing a judgment that has already been registered in that state. Thus, this renewal case centers

around the construction of three sections of Arizona law, Arizona Revised Statutes Annotated §§ 12-1551(B), 12-1611, and 1-215.")

¹⁸Fed.R.Civ.Pro 69(a) et seq. incorporates the law of the state in enforcing money judgments, including the requirement of a renewal. *McDaniel v. Signal Capital Corp.*, 198 B.R. 483, 486-487 (Bankr. S.D. Texas 1996); *see also, In re Brink*, 227 B.R. 94, 95-96 (Bankr. N.D. Texas, 1998); *In re Davis*, 323 B.R. 745, 748-749 (Bankr. D. Ariz, 2005); *In re Hunt*; (*Lillie v. Hunt*), 323 B.R. 665, 666-667 (Bankr. W.D. Texas 2005); *In re Fifarek (Stark v. Fifark)*, 370 B.R. 754, 758 (Bankr. W. D. Mich. 2007). *Also In re Romano (Romano v. LaVecchia)*, Westlaw cite unavailable, (9th Circuit BAP, 2009) ("Thus, state law governs the procedure for execution on a judgment in the absence

the creditor to enforce the plan terms against the debtor from the Clerk of the United States Bankruptcy Court.

As stated in *Andrews*, the test is whether the consent decree required the debtor to pay the creditor(s), which it did¹⁰ — and which is the key characteristic in any confirmed plan.

Casting a confirmed plan as a federal judgment compels further assessment, whether a confirmed plan or any portion thereof is actually a money judgment and subject to renewal. At their core, Chapter 11 plans seek to rehabilitate the distressed debtor. Plans require a minimum recovery due creditors based on their potential recovery in a Chapter 7 liquidation, as mandated by Section 1129(a)(7)(A)(ii). The part of the confirmed plan that requires payment of money are the terms compelling the debtor to pay creditors who hold allowed claims under Section 1129(a)(7)(A)(ii). This mirrors payments due under a consent decree as seen in *Andrews*.

California defines a money judgment as “...that part of a judgment that requires the payment of money.”¹¹ The key language is “that part of

a judgment.” This limits the requirements of a statutory renewal to the part of the judgment which requires payment of money.

Federal Judgments Are Subject To Renewal Under F.R.C.P. 69(a)(1): Federal Money Judgments Lack Any Specific Statute Of Limitations Or Statute Of Repose.

“There is ‘no specific federal statute of limitations on how long [a federal] judgment is effective.’ (citation omitted). When no federal statute applied, state practices and procedures are utilized...”¹² State law provides a judgment creditor with the rights and remedies to enforce a federal money judgment under F.R.C.P. 69(a)(1), including the renewal of a money judgment.¹³

In *Re Levander*,¹⁴ the Ninth Circuit held that the federal courts utilize the law of the domicile when enforcing a judgment.¹⁵ Similarly, in *McCarthy v. Johnson*,¹⁶ the court held that Utah state law provided the mechanism renewing federal judgments. In *Fidelity Nat. Fin. Inc. v. Friedman*, the Ninth Circuit also held that state law applies in measuring the life of judgments.¹⁷

Federal and bankruptcy courts apply state law when renewing a judgment because federal judgments lack a federal expiration date.¹⁸ While *Fidelity* dealt with a registered judgment, the principle that a registered judgment is deemed a judgment for all purposes under 28 U.S.C. § 1963 is nevertheless applicable.

Ninth Circuit cases consistently hold that the federal courts should apply state law to determine the statute of limitations.¹⁹ Likewise, the Fifth Circuit applied Texas state law in *Andrews*, holding that a consent decree was time barred as

of an applicable federal statute. There is no relevant federal statute we have been able to locate with regard to the renewal of judgment. The parties agree that Nevada law governs the enforcement of the judgment.” [6 years], *aff’d* 2010 Ap. Lex 5444 (9th Circuit, 2010).

Non-money judgments are potentially subject to different treatment. See *Hamilton v. MacDonald*, 503 F.2d 1138, 1147-1149 (9th Cir. 1974) (“Rule 69(a) adopts state procedures on execution and supplementary proceedings only when the judgment is for payment of money. [Citations omitted] Final process on equitable decrees ordering performance of specific acts is governed by Fed.R.Civ.Pro. 70, which does not provide for conformity to state practice.”). In *Hamilton*, the court held that Rule 69(a) imports state supplemental procedures, including renewals,

into federal court for money judgment, even though local state law (Arizona Revised Statute Ann. §§ 12-1551[B]) extinguishes the right to execution on all judgment, whether for payment of money or performance of specific acts. *Id.* at 1149. Chapter 11 plans require the debtor to pay creditors, which constitutes a money judgment.

¹⁰See *Marx v. Go Publ. Co., Inc.*, 721 F.2d 1272, 1273 (1983); *see also* In the Estate of Ferdinand E. Marcos Human Rights Litigation v. Estate of Ferdinand Marcos, 536 F.3d 980, 988 (2008); *Duchek v. Jacobi*, 646 F.2d 415, 417 (1981).

¹¹*Andrews* at 567-568 (collection of cases). Note the discussion - whether the issue is the time limits for the issuance of a writ of execution is subject to state law and whether the judgment is extinguished.

¹²See *Donellan Jerome Inc. v. Trylon Metals Inc.*, 996 F. Supp. 996 (USDC, N.D. Ohio 1967 (Collection of cases)).

¹³See n. 35 (Mississippi provides for statute of repose, not statute of limitations for judgment renewals. [Mississippi Code § Ann 15-1-43]).

¹⁴*United States v. Tacoma Gravel & Supply Co.*, 376 F.2d 343, 344-345 (9th Cir. 1967) (“Consequently, the judgment becomes inoperative for any purpose after expiration of six years.) Please note that, while Washington has extended the life of a judgment to 10 years, the holding in *Tacoma* that the Washington statute is one of repose, extinguishing the judgment, still applies. Cf. RCW 4.16.020 and 4.56.210

¹⁵A statute of repose cuts off a right of action after a specified period of time, irrespective of accrual or even notice that a legal right has

a result of the plaintiffs' failure to timely renew the judgment.²⁰ Unless a federal statute provides otherwise, the practice relative to the revival of dormant judgment is governed by state law.²¹

Some states have held that a time-barred judgment is extinguished and ceases to exist at all, as opposed to having a procedural rule that merely bars recovery in the enforcement of judgments.²² These statutes are called statutes of repose. In *United States v. Tacoma Gravel & Supply Inc.*,²³ the Ninth Circuit, construing Washington state law, held that Washington's limit on the enforceability of judgments is a statute of extinguishment (i.e., a statute of repose),²⁴ not a statute of limitations.

The Ninth Circuit unequivocally held that "... this is not a statute of limitations but of extinguishment; after six years a Washington judgment has no force or effect—it ceases to exist. [collection of Washington state cases]"²⁵ The Tacoma court applied Washington state law to bar enforcement brought by the United States, stating that the "Appellant had no judgment left to renew," a conclusion predicated in part on the government's filing in state court.²⁶

The court did not leave the government empty-handed, leaving open the prospect that the underlying claim was still viable under *United States v. Summerlin*.²⁷ Tacoma demonstrates that a renewal statute is also a statute of repose that may extinguish the judgment completely.

The confirmed plan specifies what remedies, if any, are available to the creditors in the event of default and accrues a right of action in state court²⁸ to enforce the terms of the plan or in Bankruptcy Court to the creditors through a motion to convert under 11 U.S.C. § 1112(b)(4)

A confirmed plan (or the part providing for requiring payment due creditors), as a federal money judgment, is likewise subject to the same state-mandated rules.

(M) and (N).²⁹

Confirmed plans require the debtor to pay creditors at a specific date and create rights of enforcement due to creditors in the event of a default in plan payments.³⁰ The right of enforcement for the amounts due to creditors under Section 1127(a)(7)(A)(ii) is at the core of all judgments.

Federal Money Judgments Are Subject To Renewal; And Therefore, Confirmed Plans Are Subject To Renewal.

Federal money judgments are subject to law of the domicile requiring the renewal of a money judgment.³¹ Therefore, a confirmed plan (or the part providing for requiring payment due creditors), as a federal money judgment,³² is likewise subject to the same

been invaded. *Giest v. Sequoia Ventures*, 83 Cal.App.4th 300, 305 (Cal.App.1 Dist., 2000).

²⁰Tacoma at 344.

²¹Id. at p. 345.

²²In re Penberthy, 211 B.R. 391, 395 (Bankr.W.D. Wash. 1997).

²³Judgments are subject to enforcement upon entry. See Cal. Code Civ. Proc. § 683.010 ("Except as otherwise provided by statute or in the judgment, a judgment is enforceable under this title upon entry.") Under Fed.R.Civ.Pro. 62 (a), the judgment debtor is entitled to a 14-day stay of enforcement and, thereafter, the judgment creditor may proceed to enforce the judgment, absent a discretionary stay (on appeal) under Rule 62(d).

²⁴11 U.S.C. § 1112(b)(4)(M) & (N). See, e.g., *Consolidated Pioneer* at 808-809; *In re Mobile*

Freezers Inc., 146 B.R. 1000, 1003-1004 (S.D. Ala. 1992). While outside the scope of this article, concerning post-confirmation conversion motions (11 U.S.C. § 1112(b)), this tests what assets become available to the Chapter 7 trustee.

²⁹Nothing stops the creditor from filing suit on the plan in converting the plan terms into a state court judgment and seeking enforcement to the extent that the debtor is in default. This would be an action based on a contract and would entitle the creditor to seek pre-judgment relief, such as an attachment or potentially an injunction. Plan terms might alter or modify these rights and provide for contractual terms, such as a mandatory forum selection clause, choice of law, notice of default, right to cure, mediation, arbitration

provisions, attorneys' fees, waiver of rights to a jury trial, and other routine commercial terms. Sometimes, a renewal right accrues in the default of installments as provided in the judgment, as opposed to the date of entry. Most plans provide for installment payments in which the due date of the past-due installment resets the renewal period. See Cal. Code Civ. Pro § 683.130(b)(1).

³¹In Re Levander. Id.

³²11 U.S.C. § 1129(a) (7) measures the minimum recovery due creditors. In many instances, skillful committee counsel generates a more favorable return and, upon the filing of nearly every major Chapter 11, counsel seeking appointment as committee counsel will remind all concerned about their prior achievements (à la *The Beauty Contest*).

state-mandated rules to renew a money judgment.

Andrews, in holding that a consent decree is a money judgment and subject to renewal under local law, supports the proposition that the confirmed plan (or that part providing of payment)³³ is subject to renewal under state court process like any other money judgment.

District court consent decrees

The plan dying of old age may free the debtor from continuing plan obligations at the time.

and key provisions of Chapter 11 confirmed plans are identical in requiring a debtor to pay a group of creditors. Under 11 U.S.C. § 1129(a)(7), the plan provides for payments due to creditors based on the jurisdiction of the court as their sole judicial recompense.³⁴

The confirmed plan, being a judgment, would have the same force and effect as any other money judgment (to the extent of payment)³⁵ and would be subject to the same require-

ments of statutory renewal that apply to judgments.³⁶

Absent timely renewal, the confirmed plan (or the part providing for payment to creditors) expires.³⁷ The rights of action, whether as an action in state court to enforce the plan or as motion to convert pursuant to 11 U.S.C. § 1112(b)(4)(M) and (N), are extinguished if based on a default in payments.³⁸

The Enemy Of My Enemy Is My Friend

Is this a bad result? That depends upon which plan's ox gets gored. The plan dying of old age may free the debtor from continuing plan obligations at the time. Because a plan is a contract, conceivably, the creditors could file suit in state court based on a breach of the contract.

The creditor would face the statute of limitations under state law if the debtor had not made payments in the last 4 years (or there was an application of statute of limitations under local state law for breach of a written agreement). The result could be different if the state law provides for a statute of repose that extinguishes the judgment completely and bars any attempt to renew or extend.

Assuming a statute of repose, the creditors might face a complete bar to revive the plan through a new lawsuit based on a breach of contract claim. The statute of repose literally extinguishes the judgment and renders it a complete nullity. Other statutes mandate a timely renewal but offer the creditor the prospect of a filing a new suit, even though the statutory renewal is inaccessible.³⁹

This result is different if the plan pays pre-petition creditors with stock in the newly revested

³³The plan provides for a potpourri of terms, some of which are clearly monetary, while others are not. This article focuses upon the expiration of the confirmed plan through state law mandates of renewal of money judgments and whether the failure to renew terminates the debtor's obligation to make plan payments. Whether the passage of time would terminate the debtor's non-monetary obligations is the subject of another article. These non-monetary obligations may include the cleanup of toxic sites, the issuance of which, among other mandates, serve national, state and local environmental goals.

³⁴11 U.S.C. § 1141(d) (discharge of all pre-petition debts).

³⁵The effect of confirmation is to discharge the entire pre-confirmation debt, replacing

it with a new indebtedness as provided in the confirmed plan." In re Pernod, 169 B.R. 910, 916 (Bankr. N.D. Ind. 1994) ("***this had the effect of replacing the obligations under the promissory notes with the obligation provided in that plan." See also, In re Consumers Realty & Development Company, 238 B.R. 418 (8th Cir. BAP (Minn) 1999). These cases (and all others) uniformly hold that the plan embodies the obligations due the creditors and, therefore, constitutes a final, binding money judgment, subject to the right of appeal.

³⁶California mandates the renewal of a money judgment (Cal. Civ. Pro. § 683.020(a)) and leaves intact non-money judgments. Plans provide for both monetary relief due creditors, and non-monetary relief, such as discharge, revesting, claims filings procedures, post-con-

formation issues, continuing (limited or unlimited) jurisdiction of the bankruptcy court. Each state is different and given the limits to the length of this article, parceling out whether a non-monetary judgment is subject to expiration is the subject of further research for each state. Delaware judgments do not expire. Gamles v. Gibson, 939 A.2d 1269, 1272 (Del., 2007). See also http://www.bernsteinlaw.com/news/50_State_Judgment.pdf (compilation of renewal for each state). Each state has its own renewal statute in which money judgments are subject to renewal. Notably, Arizona, Idaho, Kansas, Nebraska, Oklahoma, Pennsylvania, Puerto Rico and Wyoming require a renewal within five years, while Chapter 11 plans routinely extend well over five years.

³⁷That portion of the plan providing for payment.

debtor. Asbestos bankruptcies and many large, publicly-traded corporate plans pay creditors in stock.⁴⁰ These plans provide for new stock and a nearly controlling interest in the reorganized debtor as the payment due to the creditor.⁴¹

These new classes of creditors would rejoice at the prospect that the newly organized debtor could walk away from pre-petition debt. The discharge of the plan liability based on the expiration of the plan constitutes a de facto recapitalization of the reorganized debtor and massive appreciation of its net worth reflected through its improved balance sheet.

From the shareholders' viewpoint, the extinguishment of legacy debt wipes out "old debt" that constitutes a drag on the company's financial condition — and worse, a complete drain on cash flow to pay off legacy debt without contemporaneous value in exchange. In the mammoth asbestos cases, the largest groups of creditors are the victims who receive stock in the new reorganized entity. This group would cheer the discharge of the plan obligations, as their investment in the new reorganized entity (often a publicly-traded company) would skyrocket.

Odd as that might sound, pre-petition creditors, now stockholders, would welcome the plan's demise by relieving the reorganized creditor of continuing payments that burden the revested debtor's balance sheet. On the other hand, pre-petition creditors, cheated out of continuing payments, would battle any claim that the plan might expire and find themselves aggrieved.⁴²

The punch line is simple: if the confirmed plan expires, unpaid creditors absorb the big hit, particularly if local state law characterizes their

renewal statute as a statute of repose. Maybe the creditors could file suit in state court⁴³, but if the state statute provides for statute of repose, this is unlikely.

On the other hand, if the creditors received stock, which is routine in asbestos cases, the newly minted stockholders would embrace this result because a plan expiration discharges the plan's future obligations and restores the revested debtor to a level of financial health that's near equivalent to its pre-petition state, unburdened by pre-petition debt.

If *Local Loan vs. Hunt*⁴⁴ labels the bankruptcy discharge a "fresh start," the expiration of a confirmed plan is a "new start," or better yet, a "much better start." ●

David J. Cook, Esq. Copyright, 2011



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³⁸Critics would complain that under the plan, the bankruptcy court retains the authority to convert the case to a Chapter 7 liquidation in the event of a default under 11 U.S.C. § 1112(b) (4) (M) & (N). However, as the plan has expired due to the lapse of time and is unenforceable based on the extinguishment of the obligation, the bankruptcy court could never find a default. If the plan has expired and been extinguished under local law, the bankruptcy court would be bereft of subject matter jurisdiction to entertain 11 U.S.C. § 1112(b)(4)(M) & (N).

³⁹*Goldman vs. Simpson* 160 Cal App. 4th 255, 260-261 (Cal App. 2 Dist. 2009) "Thus, a judgment creditor has two distinct methods by which to continue to pursue collection of a judgment as it nears expiration of the

10-year period of enforceability: the renewal of judgment provisions set forth in sections 683.110 et seq., or an independent action on the judgment. Although the two methods are distinct, the defenses available to the judgment debtor in the statutory procedure are the same as in an independent action on the judgment. As here relevant, section 683.170, subdivision (a), provides that "[t]he renewal of a judgment pursuant to this article may be vacated on any ground that would be a defense to an action on the judgment ..."

⁴⁰This is called channeling because the plan channels claimants into a form of alternative dispute forum. If the claimants prevail, the trust pays from the plan proceeds, consisting of segregated cash flow, impounded insurance policies, cash from the sale of corporate assets

and stock in the revested entity. See *Prepackaged Asbestos Bankruptcies: Down but not Out*, at 750 ("After a bankruptcy court issues a channeling injunction, however, the value of such stock typically appreciates immediately as the effect of the asbestos overhang is eliminated.") *Id.* at 769-770, n 189-194. If the plan expired, the asbestos overhang is extinguished, along with the duty to fund the trust.

⁴¹In nearly all asbestos cases, the plan pays claimants with stock in the revested entity through claimant's trust. See e.g. www.asbestosnetwork.com/tools/tl_bankruptcy.htm.

⁴²Maybe looking to sue committee counsel.

⁴³*Goldman vs. Simpson, Id.*, and *In Re Bartleson, Id.*, treating plan as contract.

⁴⁴*Local Loan vs. Hunt* 292 U.S. 234 (193