

Contents

	Preface xxxv	
	Acknowledgments xxxix	
	About the Author xli	
PART ONE	BANKRUPTCY AND INSOLVENCY ENVIRONMENT	1
	1 Accountant's and Financial Advisor's Role in Perspective, 3	
	§ 1.1 Introduction, 3	
	§ 1.2 Scope of Coverage, 4	
	Accounting Services, 5	
	§ 1.3 Need for Financial Advisor's Services, 5	
	§ 1.4 <i>Financial Advisor</i> Defined, 6	
	Topical Overview, 7	
	§ 1.5 Economic Causes of Business Failure, 7	
	§ 1.6 Business Turnaround, 7	
	§ 1.7 Alternatives Available to a Financially Troubled Business, 7	
	(a) Out-of-Court Settlements, 8	
	(b) Assignment for Benefit of Creditors, 8	
	(c) Chapter 11: Reorganization, 9	
	(d) Chapter 12: Adjustment of Debts of Family Farmers, 10	
	(e) Chapter 13: Adjustment of Debts of an Individual with Regular Income, 10	
	(f) Chapter 7: Liquidation, 11	
	§ 1.8 Comparison of Title 11 of the United States Code with the Bankruptcy Act, 11	
	§ 1.9 Retention of the Financial Advisor and Fees, 13	

§ 1.10	Accounting Services, 14
§ 1.11	Special Investigation and Financial Reporting, 14
§ 1.12	Tax Awareness, 14
Responsibilities of Independent Accountant, 15	
§ 1.13	Responsibilities in General, 15
§ 1.14	Observation of Business Decline, 15
§ 1.15	Responsibility to Client, 16
§ 1.16	Advice on Selection of Attorneys, 17
§ 1.17	Other Steps to "Manage" the Proceedings, 18
Professional Certification, 18	
§ 1.18	Certified Insolvency and Restructuring Advisors, 18
	(a) Purpose, 19
	(b) Requirements for Certification, 19
	(c) Course of Study, 20
§ 1.19	Certification in Distressed Business Valuation, 20
2 Economic Causes of Business Failures, 21	
§ 2.1	Introduction, 21
Definition of Successful and Unsuccessful Business, 21	
§ 2.2	Failure Defined, 21
§ 2.3	Business Failure Statistics, 23
Causes of Financial Difficulty, 24	
§ 2.4	Introduction, 24
§ 2.5	Size of Business Failures, 26
§ 2.6	Geographic Distribution of Business Failures, 29
§ 2.7	Age of Business Failures, 30
§ 2.8	Business Failures and Economic Conditions, 30
§ 2.9	Characteristics of the Economic System, 33
§ 2.10	Casualties, 34
§ 2.11	Inside Underlying Causes, 34
	(a) Overextension of Credit, 34
	(b) Inefficient Management, 35
	(c) Under-Management, 40
	(d) Lack of Management Depth, 41
	(e) Inbred Bureaucratic Management, 41

- (f) Unbalanced Top Management Team, 41
- (g) Nonparticipating Board of Directors, 41
- (h) Insufficient Capital, 41
- § 2.12 Dishonesty and Fraud: Planned Bankruptcies, Sham, 42
- § 2.13 Other External Causes, 42
 - (a) Change in Competition, 42
 - (b) Impact of Government, 42
 - (c) Social Changes, 43
 - (d) Technological Change, 43
- Stages of Financial Failure, 43**
- § 2.14 Introduction, 43
- § 2.15 Period of Incubation, 44
- § 2.16 Cash Shortage, 45
- § 2.17 Financial or Commercial Insolvency (Equity Definition), 45
- § 2.18 Total Insolvency (Bankruptcy Definition), 45
- § 2.19 Bankruptcy or Out-of-Court Workout, 45
- Detection of Failure Tendencies, 46**
- § 2.20 Introduction, 46
- § 2.21 Trend Analysis, 46
 - (a) Historical Data, 46
 - (b) Actual versus Forecast, 47
 - (c) Comparison with Industry, 47
- § 2.22 Analysis of Accounting Measures, 48
 - (a) Liquidity Ratios, 49
 - (b) Coverage Ratios, 53
 - (c) Leverage Ratios, 55
 - (d) Operating Ratios, 56
 - (e) Altman's Model, 60
- § 2.23 Analysis of Management, 64
- § 2.24 Importance of Forecasts, 64
- § 2.25 Other Factors, 65

**PART TWO LEGAL ASPECTS OF BANKRUPTCY AND
INSOLVENCY PROCEEDINGS**

3 Turnaround Process, 69

- § 3.1 Objectives, 69

Stages of Turnaround Process, 69

- § 3.2 Introduction, 69
- § 3.3 Stage 1: Management Change, 71
 - (a) Replacing Existing Management, 72
 - (b) Replacing Board Members, 72
- § 3.4 Stage 2: Situation Analysis, 72
 - (a) Nature of Turnaround Situation, 73
 - (b) Preliminary Viability Analysis, 73
 - (c) Strategic and Operating Turnarounds, 74
 - (d) Detailed Viability Analysis: Strengths and Weaknesses, 74
 - (e) Detailed Viability Analysis: Environment and Competitive Ability, 77
 - (f) Overall Viability Assessment, 78
- § 3.5 Stage 3: Design and Selection of Turnaround Strategy, 78
 - (a) Types of Turnaround Strategies: Operating, 78
 - (b) Establishment of a Framework for Integration of Strategy into business Plan, 80
- § 3.6 Stage 4: Emergency Action Stage, 81
 - (a) Taking Charge, 81
 - (b) Control of Cash and Cash Flows, 82
 - (c) Financial Management, 83
 - (d) Marketing Management, 86
 - (e) Manufacturing/Operations Management, 86
 - (f) Engineering and Research and Development, 87
 - (g) Changing the Culture, 87
- § 3.7 Stage 5: Business Restructuring Stage, 87
 - (a) Financial Management, 88
 - (b) Marketing Management, 88
 - (c) Manufacturing/Operations Management, 88
 - (d) Management of Engineering and Research and Development, 88
 - (e) People and Organizational Management, 89
- § 3.8 Stage 6: Return-to-Normal Stage, 89
 - (a) Marketing Management, 89
 - (b) Manufacturing/Operations Management, 89
 - (c) Engineering and Research and Development, 89
 - (d) Financial Management, 90
 - (e) People and Organizational Management, 90

Characteristics of Effective Turnaround Managers, 90

- § 3.9 Introduction, 90

- § 3.10 Organizational Leader, 91
- § 3.11 Ability to Develop and Implement Strategy, 91
- § 3.12 Entrepreneurial Instincts, 91
- § 3.13 “Hands-On” Operating Experience, 91
- § 3.14 Effective Negotiating Skills, 92
- § 3.15 Good Interviewing Skills, 92
- § 3.16 Action Orientation, 92
- § 3.17 Trustworthiness and Fairness, 93
- Techniques Used in Business Turnarounds, 94**
- § 3.18 Introduction, 94
- § 3.19 Lean Manufacturing, 94
 - (a) Just-in-Time Philosophy, 95
 - (b) System Engineering, 97
 - (c) Total Productive Maintenance, 97
- § 3.20 Activity-Based Costing, 98
 - (a) Major Trends, 101
 - (b) Updated Cost Systems, 102
- § 3.21 Retail Store “Four-Wall” Analysis, 102
 - (a) Overview of Four-Wall Contribution Analysis Data Requirements, 104
 - (b) Treatment of Expense Allocations, 104
 - (c) Sales and Margins, 105
 - (d) Reallocation of Direct Expenses, 106
 - (e) Using the Four-Wall Contribution Information, 106
 - (f) Nonqualitative Considerations, 107
 - (g) Identify Markets That Should Be Exited, 107
 - (h) Compute the Cost of Capital and Return on Investment, 108
 - (i) Other Items to Examine, 108
- § 3.22 Business Process Reengineering, 108
- Summary and Recommendations, 109**
- § 3.23 Summary, 109
- 4 Nonbankruptcy Proceedings, 111**
- § 4.1 Introduction, 111
- Out-of-Court Settlements, 111**
- § 4.2 Nature of Proceedings, 111
- § 4.3 Importance of an Early Meeting Date, 113

- § 4.4 Preparation for the Creditors' Meeting, 113
- § 4.5 Appointment of Creditors' Committee, 114
- § 4.6 Duties and Functions of Creditors' Committee, 115
- § 4.7 Interim Management, 116
- § 4.8 Committee Management, 116
 - (a) Management Control Problems, 117

Preparation of a Plan of Settlement, 118

- § 4.9 Introduction, 118
- § 4.10 Conditions of Agreement, 119
- § 4.11 Out-of-Court Agreement Prior to Chapter 11 (Prepackaged Bankruptcy), 120

Advantages and Disadvantages, 121

- § 4.12 Advantages, 121
- § 4.13 Disadvantages, 121

Assignment for the Benefit of Creditors (State Court), 122

- § 4.14 Introduction, 123
- § 4.15 Duties, Functions, and Procedures of Assignee, 122
- § 4.16 Discharge of Debts, 123
- § 4.17 Advantages, 124
- § 4.18 Disadvantages, 125

5 Nature of Bankruptcy and Insolvency Proceedings, 127

Origin, 127

- § 5.1 Introduction, 127
- § 5.2 United States, 128
- § 5.3 Insolvency and Bankruptcy Laws Today, 130
- § 5.4 Current Bankruptcy Statistics, 132

Nature of Insolvency, 134

- § 5.5 Types of Insolvency, 134
- § 5.6 Equity versus Bankruptcy Meanings of Insolvency, 135
- § 5.7 Determination of Assets and Liabilities, 135
- § 5.8 Valuation of Assets, 136
- § 5.9 Insolvency and the Bankruptcy Code, 136

§ 5.10	Should There Be a Threshold Test?,	137
§ 5.11	Alternatives Available to a Financially Troubled Business,	139
Assignment for the Benefit of Creditors (State Court), 140		
§ 5.12	Introduction,	140
§ 5.13	Duties, Functions, and Procedures of Assignee,	140
§ 5.14	Discharge of Debts,	141
§ 5.15	Advantages,	142
§ 5.16	Disadvantages,	142
Provisions Common to all Proceedings, 143		
§ 5.17	Introduction,	143
§ 5.18	Bankruptcy Courts,	144
§ 5.19	U.S. Trustee,	146
	(a) Functions of U.S. Trustee,	148
§ 5.20	Sovereign Immunity,	149
§ 5.21	Commencement of Cases,	154
	(a) Voluntary,	154
	(b) Involuntary,	154
§ 5.22	Filing and Quarterly Fees,	156
§ 5.23	Partnership,	157
§ 5.24	Meeting of Creditors,	158
§ 5.25	Meeting of Equity Security Holders,	159
§ 5.26	Adequate Protection,	159
	(a) Equity Cushion,	162
	(b) Analysis of Specific Risks,	163
§ 5.27	Automatic Stay,	164
	(a) Duration of the Stay,	168
	(b) Relief from the Stay,	169
§ 5.28	Use of the Estate's Property,	174
§ 5.29	Executory Contracts and Leases,	175
	(a) Assumption and Assignment,	176
	(b) Assumption,	180
	(c) Acceptance and Rejection,	184
	(d) Lease Rejection,	185
	(e) Real Property Cap,	186
	(f) Employment Contracts,	190
	(g) Rents Prior to Rejection of Lease,	191
	(h) Rejection by Lessor,	192

- § 5.30 Utility Service, 193
 - (a) Adequate Assurance, 195
 - (b) Application of Pre-2005 Cases, 196
- § 5.31 Allowance of Claims or Interests, 196
 - (a) Secured Claims, 200
- § 5.32 Expense of Administration, 202
 - (a) Examples, 202
 - (b) Critical Vendors, 203
- § 5.33 Priorities, 205
- § 5.34 Exemptions, 207
- § 5.35 Discharge of Debts, 211
- § 5.36 Property of the Estate, 213
 - (a) Farmout Agreements, 215
 - (b) Pensions, 216
 - (c) Lender Liability, 218
- § 5.37 Avoiding Power of Trustee, 220
 - (a) Trustee as Judicial Lien Creditor, 221
 - (b) Trustee as Purchaser of Real Property, 221
 - (c) Trustee as Successor to Actual Creditors, 221
- § 5.38 Reclamation and 503(b)(9) Claim, 222
 - (a) Reclamation, 222
 - (b) Goods Received within 20 Days, 224
- § 5.39 Preferences, 226
 - (a) Insolvency, 227
 - (b) Determination, 229
 - (c) Insider Guarantee, 234
 - (d) Exceptions, 236
 - (e) Strategy from Vendor's Perspective, 248
- § 5.40 Fraudulent Transfers, 249
 - (a) State Laws, 250
 - (b) Time to Bring Action, 250
 - (c) Meaning of *Transfer*, 252
 - (d) Reasonable Equivalent Value, 253
 - (e) Insolvency or Small Capital, 254
 - (f) Foreclosure as Fraudulent Transfer, 254
 - (g) Leasehold Assignment as Fraudulent Transfer, 256
 - (h) Leveraged Buyout as Fraudulent Transfer, 256
- § 5.41 Postpetition Transfers, 258
- § 5.42 Postpetition Effect of Security Interest, 259
- § 5.43 Setoffs, 260

Chapter 7 Liquidation, 263

- § 5.44 Filing the Petition, 263
- § 5.45 Trustee, 264
 - (a) Election of Trustee, 264
 - (b) Duties of Trustee, 265
 - (c) Compensation of Trustee, 266
- § 5.46 Creditors' Committee, 266
- § 5.47 Partnerships, 267
- § 5.48 Treatment of Tax Liens, 269
- § 5.49 Liquidation of Assets, 269
- § 5.50 Discharge, 271
 - (a) Avoidance of Liens, 273
- § 5.51 Discharge of Environmental Claims, 278

SIPC Liquidation, 278

- § 5.52 Introduction, 278
- § 5.53 Determination of Need of Protection, 279
- § 5.54 Appointment of Trustee, 280
- § 5.55 Court Jurisdiction, 280
 - (a) Bankruptcy Court, 280
 - (b) Role of the District Court, 281
 - (c) Removal to Bankruptcy Court, 282
- § 5.56 Powers and Duties of Trustee, 283
- § 5.57 Satisfaction of Claims, 284
 - (a) Advance of Funds, 284
 - (b) Distribution, 285
 - (c) Direct Payment under SIPA Outside the Bankruptcy Court, 286
- § 5.58 Prohibited Acts, 286
 - (a) Failure to Pay Assessment, 286
 - (b) Engaging in Business after Appointment of Trustee or Initiation of Direct Payment Procedure, 286
 - (c) Concealment of Assets; False Statements or Claims, 287
- § 5.59 Role of Securities and Exchange Commission, 287
- § 5.60 Compensation in an SIPA Action, 288

**6 Rehabilitation Proceedings Under the
Bankruptcy Code, 289**

§ 6.1 Introduction, 289

§ 6.2 Purpose of Chapter 11, 289

Operating Under Chapter 11, 290

§ 6.3 Role of the Court and U.S. Trustee, 290

(a) The Court, 290

(b) U.S. Trustee Administration, 291

§ 6.4 KERPs, 292

(a) Impact of the 2005 Act, 293

(b) Recent Cases, 293

(c) Payments Outside Ordinary Course of
Business, 295

(d) Prepetition Contracts, 296

§ 6.5 Consolidation of Chapter 11 Petitions, 296

(a) Substantive Consolidation, 296

(b) Administrative Consolidation, 302

§ 6.6 Creditors' and Equity Holders'
Committees, 302

(a) Creditors' Committee, 303

(b) Equity Security Holders' Committee, 309

§ 6.7 Appointment or Election of Trustee, 309

§ 6.8 Appointment of Examiner, 314

§ 6.9 Operation of the Business, 318

§ 6.10 Automatic Stay, 319

§ 6.11 Impact of *Timbers*, 319

§ 6.12 Use of Collateral, 320

§ 6.13 Use of Cash Collateral, 320

§ 6.14 Obtaining Credit, 322

(a) Priming Prepetition Liens, 325

(b) Cross-Collateralization, 326

(c) Other Issues, 327

§ 6.15 Claims and Interests, 330

(a) Application of OID to Debt
Exchanges, 330

(b) Pension Claims, 339

(c) Rejection of Collective Bargaining
Agreements, 339

§ 6.16 Special Provisions for Partially Secured
Creditors, 340

Developing the Plan, 342

- § 6.17 Negotiating a Chapter 11 Plan, 343
 - (a) Basic Rules, 344
 - (b) Factors Determining Success of the Plan, 344
- § 6.18 Exclusivity Period, 344
 - (a) Small Business, 347
- § 6.19 Classification of Claims, 348
- § 6.20 Claim Subordination, 351
 - (a) Contractual Subordination, 351
 - (b) Co-Debtor Claims Subordination, 352
 - (c) Securities Fraud Claims Subordination, 353
 - (d) Equitable Subordination, 353
 - (e) Reclassification as Equity, 355
- § 6.21 Secured Claim Classification, 356
- § 6.22 Interest Classification, 357
- § 6.23 Content of the Plan, 357
- § 6.24 Permissible Provisions, 359
- § 6.25 Impairment of Claims, 361
- § 6.26 Disclosure Statement, 364
 - (a) Adequate Information, 365
 - (b) Objectives of Statement, 366
 - (c) Prepetition Solicitation, 367
 - (d) Content of Disclosure Statement, 368
 - (e) U.S. Trustee Evaluation, 372
 - (f) Safe Harbor Rule, 373
 - (g) Illustration of Content of Disclosure Statements, 373
- § 6.27 Modification of the Plan, 373

Confirmation of the Plan, 375

- § 6.28 Acceptance of the Plan, 375
- § 6.29 Confirmation Hearing, 375
- § 6.30 Confirmation Requirements, 376
- § 6.31 Best Interest of Creditors, 378
- § 6.32 Priority Treatment, 379
- § 6.33 Feasibility, 381
 - (a) Factors to Consider, 382
 - (b) Liquidating Plans, 384
 - (c) Example of Feasibility Statement, 384

- § 6.34 Cramdown, 385
 - (a) Modification of Secured Claims, 386
 - (b) Unsecured Creditors' Test, 389
 - (c) Stockholders' Interest Test, 389
 - (d) Value Exception, 390
 - (e) Examples, 392
- § 6.35 Chapter 11 Cases Filed by Individuals, 394
 - (a) Property Acquired Postpetition Including Earnings, 394
 - (b) Future Earnings in Plan, 395
 - (c) Plan Confirmation, 395
 - (d) Domestic Support Obligations, 396
 - (e) Discharge of Debts, 396
 - (f) Plan Modification, 396
- Postconfirmation, 397**
- § 6.36 Impact, 397
- § 6.37 Distribution, 400
- § 6.38 Discharge of Debts, 401
- § 6.39 Postconfirmation Recovery, 401
- § 6.40 Securities Law Exemption, 402
 - (a) Resale of Securities, 404
- § 6.41 Final Decree, 404
- § 6.42 Conversion to Chapter 7 or Dismissal, 405
- § 6.43 Advantages and Disadvantages of Chapter 11, 407
- Chapter 12: Adjustment of Debts of a Family Farmer with Regular Annual Income, 407**
- § 6.44 Purpose, 407
- § 6.45 Requirements for Use, 408
- § 6.46 Operation of Farm, 408
- § 6.47 Chapter 12 Plan, 409
- Chapter 13: Adjustment of Debts of an Individual with Regular Income, 411**
- § 6.48 Nature, 411
- § 6.49 Filing of Petition, 411
- § 6.50 Operation of Business, 413
- § 6.51 The Plan, 413
 - (a) Contents of Plan, 414
 - (b) Confirmation of Plan, 415
- § 6.52 Discharge of Debts, 417

- § 6.53 Use of Chapter 13 by Business, 418
- § 6.54 Chapter 15: Ancillary and Other Cross Border Cases, 419

7 Retention of the Financial Advisor and Fees, 427

- § 7.1 Introduction, 427

Retention of the Financial Advisor, 428

- § 7.2 The Accountant or Financial Advisor's Role in the Proceedings, 428
- § 7.3 Obtaining the Engagement, 428
 - (a) Debtor, 428
 - (b) Other Parties, 428
- § 7.4 Retention Procedure, 429
 - (a) Section 327(a), 429
 - (b) Under 328(a), 429
 - (c) Prepetition Services, 430
 - (d) Application Process, 431
- § 7.5 Creditors' Committee, 432
- § 7.6 Source of Payment, 433
- § 7.7 Affidavit of Proposed Financial Advisor, 434
 - (a) Connection, 436
 - (b) Service, 437
 - (c) Indemnification, 437
- § 7.8 Survey of Work to Be Performed, 440
- § 7.9 Application for Retention, 441
- § 7.10 Retention Order, 444
- § 7.11 Retention on a Retainer Basis, 444
- § 7.12 Deviations from Retention Order, 445
- § 7.13 Accountants as Consultants or Financial Advisors, 445
- § 7.14 Prepetition Retention, 446
- § 7.15 Retention Procedure—Informal, 446
- § 7.16 Accountants as Quasi-Officers of the Court, 447
- Determination of Financial Advisor's Fees, 447**
- § 7.17 Introduction, 447
- § 7.18 SEC May Object to Fees, 448
- § 7.19 Compensation Reviewed by U.S. Trustee, 449
- § 7.20 Compensation Must Be Approved by the Court, 449

- § 7.21 Factors to Consider When Estimating Fees, 453
- § 7.22 Compensation Based on Comparable Services, 458
- § 7.23 Prepetition Fees, 460
 - (a) Debtor, 460
 - (b) Creditors' Committee, 460

Time Records, 461

- § 7.24 Requirements, 461

Petition for Fee Allowance, 462

- § 7.25 Court Discretion in Ruling on Fees, 462
 - (a) Travel Time, 463
 - (b) Other Adjustments, 463
- § 7.26 Procedure for Filing the Petition, 465
- § 7.27 Payment for Services Rendered, 466

8 Accounting and Financial Services for Debtors-in-Possession or Trustee, 469

Nature of Accounting Services, 469

- § 8.1 Introduction, 469
- § 8.2 Parties Retaining Accountants and Financial Advisors, 469
- § 8.3 Summary of Services, 471

Profiling Stage of Chapter Proceedings, 472

- § 8.4 Importance of Early Meetings, 472
- § 8.5 Advice on Selection of Counsel, 473
- § 8.6 Conference with Attorney, 473
- § 8.7 Determine Alternatives, 474
- § 8.8 Prebankruptcy Planning, 475
 - (a) Cash Management (Accumulation), 475
 - (b) Operations Management, 477
 - (c) Legal Requirements, 478
 - (d) Financial Reporting and Taxes, 479
 - (e) Public Relations, 479

Accounting/Financial Reporting Requirements, 481

- § 8.9 Introduction, 481
- § 8.10 Affidavits in Support of Petition, 483
- § 8.11 Supporting Schedules, 484
 - (a) Assets of the Debtor, 484
 - (b) Secured Creditors, 485

- (c) Priority Claims, 485
- (d) Unsecured Creditors, 486
- (e) Statement of Executory Contracts, 486
- § 8.12 Statement of Financial Affairs, 487
- § 8.13 Monthly Reporting, 488
 - (a) Local Requirements, 488
- § 8.14 U.S. Trustee's Requirements, 489
- § 8.15 Operating Statements, 490
- § 8.16 SEC Reporting in Chapter 11, 492
 - (a) Overview, 492
 - (b) Authoritative Documentation, 492
 - (c) Modified Reporting, 493
 - (d) Deferred or Permanent Relief, 493
 - (e) Other Observations, 494
- § 8.17 Bankruptcy Claims Management Process, 495
 - (a) Overview, 495
 - (b) Claims Management Process, 495
- Formulation of a Plan of Reorganization, 499**
- § 8.18 Introduction, 499
- § 8.19 Liquidation Value of Assets, 500
- § 8.20 Projection of Future Operations, 501
- § 8.21 Reorganization Value, 501
- § 8.22 Pro Forma Balance Sheet, 502
- § 8.23 Formulating an Amended Plan, 503
- § 8.24 Disclosure Statement, 503
- Accountant and Financial Advisor as Examiner, 504**
- § 8.25 Nature of Service, 504
- Additional or Other Accounting Services, 505**
- § 8.26 Introduction, 505
- § 8.27 Normal Accounting Services, 505
- § 8.28 Special Investigation, 505
- § 8.29 Accounting Services and the Granting of New Credit, 507
- Professional Conduct of Accountants and Financial Advisors, 508**
- § 8.30 Introduction, 508

§ 8.31	Personal Liability: Preparation of Financial Statements, 508
§ 8.32	Professional Conduct of Debtor's Accountant—Toward Client, 509
§ 8.33	Professional Conduct of Debtor's Accountant—Toward Creditors' Accountant/Advisors, 510
§ 8.34	Direct Liability to Third Parties, 511
§ 8.35	Other Professional Ethical Factors, 511
9	Other Financial Advisory Services for Debtors-in-Possession or Trustee, 513
§ 9.1	Introduction, 513
	Management Advisory Services, 513
§ 9.2	Introduction, 513
§ 9.3	Long-Range Business Plan, 514 (a) Illustration of Business Plan, 515
§ 9.4	Financial Projections, 516
	Interim Management Services, 516
§ 9.5	Introduction, 516
§ 9.6	Retention, 517
§ 9.7	Billing, 517
	Balloting and Noticing Agent Services, 517
§ 9.8	Noticing Overview, 517
§ 9.9	Solicitation Overview, 518
§ 9.10	Pre-Balloting Services, 519
§ 9.11	Plan Classes, 519
§ 9.12	Solicitation Process, 520
§ 9.13	Plan Information and Ballots, 520
	Chapter 7 and Chapter 11 Liquidations, 521
§ 9.14	Introduction, 521
§ 9.15	Items Requiring Immediate Attention, 521
§ 9.16	Performance of Audits and Other Special Investigations, 522
§ 9.17	SIPC Liquidation, 522
	Postconfirmation Services, 523
§ 9.18	Overview, 523

§ 9.19 Litigation Trusts, 523

§ 9.20 Tort Trusts, 523

10 Accounting and Financial Services for the Creditors' Committee, 525

Nature of Creditors' Committee, 525

§ 10.1 Introduction, 525

§ 10.2 Creditors' Committees, 526

(a) Composition, 527

(b) Change of Committee, 530

(c) Reimbursement of Expenses, 531

(d) Eligibility Issues, 531

(e) Disclosure Obligations, 532

(f) Solicitation and Receipt of Comments, 533

(g) Function, 534

§ 10.3 Directing Committee Activities, 534

§ 10.4 Data, 535

§ 10.5 Bargaining Process, 535

§ 10.6 Role of Creditors' Financial Advisor in the Bargaining Process, 536

§ 10.7 Form of Consideration, 537

Monitoring Debtor's Activities, 537

§ 10.8 Introduction, 537

§ 10.9 Areas Requiring Immediate Attention, 537

§ 10.10 Importance of Speed, 538

§ 10.11 Establishment of Proper Controls, 539

§ 10.12 Investigation of Causes of Failure and Development of Controls to Limit Further Impairment of Assets, 540

§ 10.13 Review of Receipts and Disbursements Control, 540

(a) Receipts, 540

(b) Disbursements, 540

(c) Review of Cash Flow Reports, 541

§ 10.14 Review of Debtor's Accounting System, 541

§ 10.15 "Insider" Problem, 542

§ 10.16 Review of Weekly/Monthly Reporting, 544

(a) Key Statistics, 544

(b) Operating Statements, 544

Special Investigations and Reviews, 545

- § 10.17 Investigation of Debtor's Books and Records, 545
 - (a) Discovery of Assets, 545
 - (b) Discovery of Malfeasance, 545
- § 10.18 Review of Debtor's Transactions, 546
- § 10.19 Evaluation of Debtor's Projections, 546
 - (a) Reorganization Value, 547
- § 10.20 Review of Plan of Reorganization and Disclosure Statement, 547

Other Accounting Services, 550

- § 10.21 Introduction, 550
- § 10.22 Secured Creditor, 550
- § 10.23 Major Stockholder or Equity Committee, 550
- § 10.24 Responsibilities of Creditors' Financial Advisor, 551

11 Valuation of a Business in Bankruptcy Proceedings, 553

Importance of Valuation, 553

- § 11.1 Introduction, 553
- § 11.2 Adequate Protection under Section 361, 554
 - (a) Need for Valuation Services, 554
 - (b) Valuation Approach, 555
 - (c) Date of Valuation, 557
- § 11.3 Claims Determination, 558
 - (a) Secured Claims, 558
 - (b) Date of Determination of Value, 560
 - (c) Nonrecourse Considered Recourse, 560
 - (d) Election to Have Entire Claim Considered Secured (Section 1111(b)(2)), 560
 - (e) Valuation Approach, 561
- § 11.4 Recovery Action, 561
 - (a) Preferences (Section 547), 562
 - (b) Fraudulent Transfers (Sections 548 and 544), 562
 - (c) Reclamation (Section 546), 564
 - (d) Need for Valuation Services, 565
 - (e) Valuation Approach, 565
- § 11.5 Chapter 13 Secured Claims, 567
- § 11.6 Determining Best Interest of Creditors and Stockholders under Chapter 11, 568

- § 11.7 Determining Whether a Plan Is Fair and Equitable to a Dissenting Class in Chapter 11, 569
 - (a) Bankruptcy Act Provisions, 569
 - (b) Bankruptcy Code Provisions, 570
- § 11.8 Determining Feasibility, 573
- § 11.9 Codification of Value, 573
- Liquidation Values, 575**
- § 11.10 Introduction, 575
 - (a) Purpose of Liquidation Analysis, 575
 - (b) Premise of Value, 576
- § 11.11 Approaches, 577
- Going-Concern (Reorganization) Valuation, 578**
- § 11.12 Introduction, 578
- § 11.13 Cost of Capital, 579
 - (a) Cost of Debt, 580
 - (b) Cost of Preferred Stock, 582
 - (c) Cost of Equity, 582
 - (d) Cost of Equity Using Modified Capital Asset Pricing Model, 585
 - (e) Cost of Equity Using the Buildup Method, 587
 - (f) Special Troubled Business/Bankruptcy Considerations, 587
- § 11.14 Appraisal Value or Replacement Cost, 588
- § 11.15 Market Value of Securities, 588
- § 11.16 Income Approach (Discounted Cash Flows), 589
 - (a) Factors to Consider, 590
 - (b) Cash Flow from Operations, 591
 - (c) Residual Value, 592
 - (d) Present Value of Nonoperating Assets, 594
 - (e) Midyear Discounting Convention, 594
 - (f) Uses, 594
 - (g) Summary, 596
- § 11.17 Market Approach, 596
 - (a) Guideline Public Company Valuation Method, 596
 - (b) Mergers and Acquisitions Transactions Method, 603
 - (c) Historical Internal Transactions, 605
 - (d) Lessons from the Bench, 605
 - (e) Summary, 606
- § 11.18 Asset-Based (Cost) Approach, 607
 - (a) Use of the Asset Approach, 607

	(b) Valuing Individual Assets, 609	
	(c) Asset Approach and Liquidation Analysis, 612	
§ 11.19	Discounts and Premiums, 612	
	(a) Discount for Lack of Control, 613	
	(b) Discount for Lack of Marketability, 615	
	(c) Other Discounts: Blockage Discount, 616	
	(d) Summary, 618	
§ 11.20	Synthesizing Results, 618	
	(a) Level of Value, 619	
	(b) Standard of Value, 619	
	(c) Premise of Value, 619	
	(d) Weighting of Each Indication of Value, 620	
	(e) Reaching a Conclusion, 622	
§ 11.21	Determining Liabilities, 622	
PART THREE	INVESTIGATION AND REPORTS	625
12	Special Areas of Inquiry, 627	
	Nature of Investigation, 627	
§ 12.1	Introduction, 627	
§ 12.2	Objectives, 628	
§ 12.3	Balance Sheet Emphasis, 629	
§ 12.4	Modifications of Investigation, 629	
	Introduction to the Special Areas of Inquiry, 631	
§ 12.5	Irregularities, 631	
	(a) Fraudulent Transfers, 631	
	(b) Transactions with Related Parties Such as Insiders, Officers, Employees, and Relatives, 632	
	(c) Concealment of Assets, 632	
	(d) False Entries and Statements, 632	
	(e) Financing Irregularities, 632	
	(f) Preferential Payments, 632	
	(g) Other Types of Transactions, 633	
§ 12.6	Fraud, 633	
§ 12.7	Proof of Fraud, 634	
§ 12.8	Auditor's Responsibility for the Detection of Irregularities, 634	
	(a) Fraudulent Financial Reporting, 635	
	(b) Misappropriation of Assets, 638	

§ 12.9 Methods of Discovering Irregularities and Fraud, 640

Availability of Books and Records, 641

§ 12.10 Locating and Obtaining Possession of the Records, 641

§ 12.11 Scheduling the Books; Procedure Followed for Missing Records, 642

Fraudulent Transfers, 642

§ 12.12 Transfer of Assets without Fair Consideration, 642

§ 12.13 Sales of Assets Below Market Values, 643

§ 12.14 Transfer of Assets to Insiders, Officers, Employees, Relatives, and Others, 643
(a) Analysis of Related-Party Transactions, 644
(b) Padding, 646
(c) Cash Expenses, 647
(d) Nondeposit or Diverting of Receipts, 647
(e) Improper Purchases, 647
(f) Improper Loans, 648
(g) Improper Sales of Merchandise, 648
(h) Sale-and-Leaseback Arrangements, 648

Concealment of Assets, 648

§ 12.15 Merchandise, 648
(a) Misappropriation of Inventory, 649
(b) Unrecorded Sales, 649

§ 12.16 Cash Surrender Value of Officers' Life Insurance Policies, 650

§ 12.17 Deposits and Security, 651

§ 12.18 Investments and Real Estate, 651

§ 12.19 Machinery and Equipment, 652

False Entries and Statements, 652

§ 12.20 Mutilation and Alteration of Records, 652

§ 12.21 Concealment and Destruction of Records, 653

§ 12.22 Forgery, 653

§ 12.23 Issuance of False Statements, 653

Financing Irregularities, 657

§ 12.24 Receivables, 657

§ 12.25 Inventory, 659

Preferential Payments, 660

- § 12.26 Introduction, 660
- § 12.27 Recovery of Preferential Payments, 661
- § 12.28 Search for Preferential Payments, 662
- § 12.29 Inflated Claims, 663

Applicability of Generally Accepted Auditing Standards, 664

- § 12.30 Auditing Standards, 664
- § 12.31 Auditing Procedures, 665
- § 12.32 Audit Program Guide, 666

13 Financial Reporting During Bankruptcy, 667

- § 13.1 Introduction, 667

Form and Substance of Financial Statements, 668

- § 13.2 Financial Data Required at the Date of Filing of Petition in Chapter 11, 668
 - § 13.3 Balance Sheet, 668
 - (a) Petition Date, 669
 - (b) Issued to Creditors' Committee, 669
 - (c) Classification of Prepetition Liabilities, 670
 - (d) Liability Amount, 676
 - § 13.4 Rejected Leases, 677
 - § 13.5 Warranty Reserves and Similar Liabilities, 678
 - § 13.6 Pension Liability, 679
 - (a) Nonvested Benefits, 680
 - (b) Vested Benefits, 680
 - § 13.7 Pro Forma Statement of Financial Position, 681
 - § 13.8 Notes to Statements, 681
 - § 13.9 Statement of Operations, 682
 - (a) Reorganization Items, 682
 - (b) Professional Fees, 684
 - (c) Debt Forgiveness, 686
 - § 13.10 Statement of Cash Flows, 687
 - § 13.11 Statement of Capital Deficiency, 689
 - § 13.12 Statement of Affairs, 689
 - § 13.13 Special-Purpose Statements, 693
- Accounting for a Chapter 11 Filing, 694**
- § 13.14 Use of New Accounts, 694

§ 13.15 Illustration of Entries, 696

§ 13.16 Accrued Interest, 697

14 Reporting Results of the Plan, 699

§ 14.1 Introduction, 699

Chapter 11, 699

§ 14.2 Requirements for Fresh-Start Reporting, 699

§ 14.3 Allocation of Reorganization Value, 701
(a) Asset Values, 702
(b) Liability Values, 704
(c) Deferred Taxes, 704
(d) Net Operating Loss, 704

§ 14.4 Disclosures, 704

§ 14.5 Recording the Adoption of Fresh-Start Reporting, 705

§ 14.6 Deferred Taxes, 708

§ 14.7 Disclosure Statement, 710

§ 14.8 Subsequent Events and Preconfirmation Contingencies, 711

§ 14.9 Reporting by Entities Not Qualifying for Fresh Start, 714

§ 14.10 Comparison with Prior Periods, 714

Out-of-Court Workouts, 715

§ 14.11 Introduction, 715

§ 14.12 Debt Discharge under FASB Statement No. 15, 715
(a) Debt Forgiveness No Longer an Extraordinary Item, 716
(b) Modification of Terms, 717
(c) Full Satisfaction through Transfer of Assets or Grant of Equity Interest, 720
(d) Partial Satisfaction, 722
(e) Contingent Interest, 722
(f) Disclosure, 723

§ 14.13 Reporting of Income from Debt Discharge When FASB Statement No. 15 Is Not Applicable, 723

§ 14.14 Determining the Amount of Income from Debt Discharge When FASB Statement No. 15 Is Not Applicable, 724

xxx

Contents

Quasi-Reorganization, 724

- § 14.15 Introduction, 724
- § 14.16 Adjustment of Equity Section Only
("Mini Quasi"), 725
- § 14.17 Adjustment of All Accounts, 726
- § 14.18 Conditions Necessary for
Quasi-Reorganization, 729
- § 14.19 Quasi-Reorganization and the SEC, 729

15 Reporting on an Insolvent Company, 731

- § 15.1 Introduction, 731

Litigation Services, 734

- § 15.2 Application of Litigation Services to
Bankruptcy, 734
- § 15.3 Disclosure Requirements, 736
- § 15.4 Operating Reports, 736
- § 15.5 Investigative Services, 737
- § 15.6 Financial Projections, 738

Accountant's Report: Nonlitigation Services, 739

- § 15.7 Introduction, 739
- § 15.8 Limitations on Scope, 740
- § 15.9 Unique Disclosures in Report, 741
- § 15.10 Full Disclosure, 742
- § 15.11 Accountant's Responsibility for Disclosure, 743

Going-Concern Concept, 743

- § 15.12 Introduction, 743
- § 15.13 *Going-Concern Concept* Defined, 744
- § 15.14 Absence of Evidence to the Contrary, 745
 - (a) Elements of Contrary Evidence, 745
- § 15.15 Auditor's Responsibility for Evaluation, 746
- § 15.16 Audit Procedures, 746
- § 15.17 Consideration of Management's Plans, 747

Types of Opinions, 748

- § 15.18 Unqualified Opinion, 748
- § 15.19 Qualified Opinion, 749

- § 15.20 Disclaimer of Opinion, 750
- § 15.21 Adverse Opinion, 750
- § 15.22 Reports Relating to the Results of Applying Agreed-On Procedures, 751

Unaudited Financial Statements, 753

- § 15.23 Introduction, 753
- § 15.24 Public Entity Report, 753
 - (a) Required Procedures, 754
 - (b) Comparative Statements, 755
- § 15.25 Nonpublic Entity Reports, 756
 - (a) *Financial Statements* Defined, 756
 - (b) Compilation of Financial Statements, 757
 - (c) Review of Financial Statements, 759

Reporting on a Liquidation of the Debtor, 762

- § 15.26 Introduction, 762
- § 15.27 Single-Year Report, 763
- § 15.28 Comparative Financial Statements, 764
- § 15.29 Solvency Letters, 764
- § 15.30 Reports on Prospective Financial Statements, 765
- § 15.31 Liquidation Analysis, 765

16 Tax Awareness, 767

- § 16.1 Introduction, 767

Notification of Proceedings and Filing of Returns, 767

- § 16.2 Notice to Governmental Agencies, 767
- § 16.3 Responsibility for Filing Income Tax Returns: Corporations, 768
 - (a) Responsibility for Payment of Tax, 768
 - (b) When to File a Corporate Tax Return, 768
 - (c) Liquidating Trustee, 769
- § 16.4 Responsibility for Filing Income Tax Returns and Other Information Required by the Bankruptcy Court: Individual and Partnership, 769
 - (a) Partnerships, 770
 - (b) Individuals, 770
 - (c) Requirements Added by the 2005 Act for Individuals, 771
 - (d) Filing Requirements before Obtaining Confirmation of a Chapter 13 Plan, 772

- (e) Creation of a New Entity in Chapter 12, 772
- (f) Prompt Determination of Unpaid
Tax Liability, 772

Special Rules for Individuals, 774

- § 16.5 Introduction, 774
- § 16.6 Income and Deductions, 774
- § 16.7 Transfers between Debtor and Estate, 775
- § 16.8 Attribute Carryover to Estate, 778
- § 16.9 Attribute Carryover to Debtor, 778
- § 16.10 Carryback of Net Operating Losses and Other
Credits Incurred Subsequent to Commencement
of Case, 779
- § 16.11 Administrative Expenses, 779
- § 16.12 Change in Accounting Period, 782

Minimization of Tax and Related Payments, 782

- § 16.13 Estimated Taxes, 782
- § 16.14 Prior Year Taxes, 782
- § 16.15 Pension Funding Requirements, 782

Treatment of Income During Bankruptcy Period, 782

- § 16.16 Income Required to Be Reported, 782
- § 16.17 Deductions Allowed, 783
- § 16.18 Discharge of Debts, 784
 - (a) Election to Reduce Basis First, 787
 - (b) Alternative Minimum Tax, 787
- § 16.19 Debt Discharge by Farmers, 788
- § 16.20 Cancellation of Real Property Business
Indebtedness, 789
- § 16.21 Basis Adjustment, 790
 - (a) Limitation on Deduction, 792
 - (b) Individual's Estate, 792
 - (c) Recapture: Sections 1245 and 1250, 792
- § 16.22 Debt Discharge by Partnerships, 793
- § 16.23 Debt Discharge by S Corporations, 793
- § 16.24 Exchange of Stock for Debt, 793
- § 16.25 Purchase-Money Debt Reduction, 794
- § 16.26 Tax Planning, 794

Corporate Reorganizations, 794

- § 16.27 Introduction, 794
- § 16.28 Tax-Free G Reorganization, 795
 - (a) Requirements for G Reorganization, 795
 - (b) Additional Rules for G Reorganization, 796
 - (c) Triangular Reorganizations, 796
 - (d) Transfer to Controlled Subsidiary, 797
 - (e) Treatment of Accrued Interest, 797
- § 16.29 Personal Holding Company, 797

Availability of New Operating Losses, 797

- § 16.30 Introduction, 797
- § 16.31 Section 382 Limitation, 798
- § 16.32 Special Rules for Corporations in Bankruptcy, 799
- § 16.33 Other Provisions, 800

Effects on Earnings and Profits, 801

- § 16.34 Introduction, 801
- § 16.35 Account Adjustment, 801
- § 16.36 Earnings and Profits Carryover, 801

Administrative Aspects of Taxes, 802

- § 16.37 Tax Priorities, 802
 - (a) Administrative Expenses, 802
 - (b) "Involuntary Gap" Claims, 804
 - (c) Prepetition Wages, 804
 - (d) Prepetition Taxes, 805
 - (e) Income and Gross Receipts Taxes, 805
 - (f) Property Taxes, 806
 - (g) Withholding Taxes, 807
 - (h) Employer's Taxes, 808
 - (i) Excise Taxes, 809
 - (j) Customs Duties, 809
- § 16.38 Tax Penalty, 809
- § 16.39 Interest, 810
- § 16.40 Erroneous Refunds or Credits, 810
- § 16.41 Chapter 11 Reorganization, 810
- § 16.42 Chapters 12 and 13 Adjustments, 811
- § 16.43 Tax Discharge, 811
 - (a) Individual Debtors, 811
 - (b) Corporate Debtors, 812

§ 16.44 Tax Preferences, 813
§ 16.45 Tax Procedures, 813
§ 16.46 State and Local Tax Provisions, 814

Appendix: Statement of Position, 815

Statutes Citations, 849

Case Index, 855

Name Index, 865

Subject Index, 867

<http://www.pbookshop.com>

Contents

About the Author vii

Preface xv

PART ONE Bankruptcy and Insolvency Environment 1

1 Accountant's Role in Perspective, 3

1.1 Parties Served by Accountants and Financial Advisors, 3

1.2 Services Often Rendered by Accountants and Financial Advisors in Business Turnarounds, Bankruptcies, and Reorganizations, 4

2 Economic Causes of Business Failures, 7

2.1 Illustration of Altman's Z-Scores (REVCO), 7

PART TWO Legal Aspects of Bankruptcy and Insolvency Proceedings 17

3 Turnaround Process, 19

3.1 Turnaround Tool Box, Situation Analysis, First Few Weeks, 19

3.2 Turnaround Tool Box, Situation Analysis Checklist, 20

3.3 Turnaround Tool Box, Peer Group Analysis, 38

3.4 Turnaround Tool Box, Cash Flow Analysis, 43

4 Out-of-Court Settlements, 49

4.1 Composition or Extension Agreement with Creditors, 49

4.2 Agreement with Creditors and Debtor and Debtor's Solicitation Letter (Disclosure Statement), 60

- 4.3 Settlement Agreement with Creditors—
Out-of-Court, 66
- 4.4 Restructuring Significant Amount of Debt Out
of Court, 79
- 4.5 Recapitalization of Partners Interest with
Purchase of New Equity, 81
- 4.6 Court Order Approving Blue Bird's Prepackaged
Bankruptcy, 87

5 Nature of Bankruptcy and Insolvency Proceedings, 97

- 5.1 Voluntary Petition, 97
- 5.2 Section 503(b)(9) Motion and Order to Pay
Critical Vendor Claims, 117
- 5.3 Section 503(b)(9) Motion and Order to Pay
503(b)(9) Expenses, 131

PART THREE Accounting Services

143

**6 Rehabilitation Proceedings under the Bankruptcy
Code, 145**

- 6.1 Motion and Order Authorizing the KMIP Plan
of Reorganization Metric Payment, 145
- 6.2 Checklist for Determining the Merits of
Substantive Consolidation, 160
- 6.3 U.S. Trustee's Opposition to Appointment of
Interim CEO and Request for Trustee
Appointment, 163
- 6.4 Application for Order Approving Appointment
of Trustee, 171
- 6.5 Appointment of Examiner with Expanded
Powers, 178
- 6.6 Appointment of Examiner or Mediator in Plan
Negotiations, 185
- 6.7 Cash Collateral Order, 193
- 6.8 Use of Cash Collateral and
Debtor-in-Possession Financing for Tower
Automotive, 197
- 6.9 Priming of Prepetition, First Lien, 218
- 6.10 Bankruptcy Court Guidelines/Orders for
Motions Relating to Financing Agreements, 218

- 6.11 Debtor-in-Possession Financing Agreement:
No. 1, 227
- 6.12 Disclosure Statement, 244
- 6.13 Data Checklist for DIP Financing, 275
- 6.14 Factors Determining Success of Plan, 276
- 6.15 Plan of Reorganization, 280
- 6.16 Disclosure Statement Review Checklist,
320
- 6.17 Sample Disclosure Statement by Unsecured
Creditors' Committee (Selected Items), 323
- 6.18 Sample Disclosure Statement for Involuntary
Filed Petition (Selected Data), 370
- 6.19 Standing Chapter 12 Trustee's Instructions to
Debtor's Counsel, 389

7 Retention of the Accountant and Fees, 393

- 7.1 Protocol: Separating Interim Management
from Financial Advisory Functions, 393
- 7.2 Declaration of Financial Advisor in Support of
Debtors' Application to Be Retained to Provide
Fresh Start Reporting and Valuation Services, 396
- 7.3 Affidavit for Retention of Financial Advisor
for Debtor, 420
- 7.4 Affidavit of Accountant for Unsecured
Creditors' Committee, 437
- 7.5 Affidavit of Investment Banker Filed Prior to
Retention by Debtor, 441
- 7.6 Debtors' Application for Retention of
Financial Advisor to Provide Fresh Start
Reporting and Valuation Services, 478
- 7.7 Application by Debtors for Authorization to
Retain Financial Advisor, 488
- 7.8 Application for Order Authorizing Retention
of Accountants and Financial Advisors for
Trustee, 492
- 7.9 Application Retaining Financial Advisor for
Unsecured Credit Committee, 499
- 7.10 Declaration of Subsequent Connections, 544

- 7.11 Order Authorizing Retention of Financial Advisor to Provide Fresh Start Reporting and Valuation Services to Debtors, 577
- 7.12 Order for Retention of Financial Advisor for Debtors, 580
- 7.13 Order Authorizing Retention of Accountants and Financial Advisors for Trustee, 583
- 7.14 Accountant for Debtor, 585
- 7.15 Accountant's Affidavit Requesting Retention on a Retainer as Accountant for the Debtor, 590
- 7.16 Procedures for Establishing Monthly Compensation and Reimbursement of Expenses of Professionals, 592
- 7.17 Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses, 596
- 7.18 District of Delaware Local Rule 2016-2 Motion for Compensation and Reimbursement of Expenses, 602
- 7.19 Petition for Fee Allowance and Reimbursement of Expenses, 604

8 Accounting and Financial Services for the Debtor-in-Possession or Trustee: Part I, 635

- 8.1 Order Authorizing Use of Present Cash Management System and Bank Accounts, 635
- 8.2 Sample Application for Order to Pay Prepetition Wages, 659
- 8.3 Sample Application Allowing Payments to Retail Customers (Warranty Claims), 694
- 8.4 Sample Application for Order to Honor Accrued Vacation Days, Sick Leave, and Other Personnel Policies, 696
- 8.5 Employee Questions and Answers, 698
- 8.6 Schedules, 701
- 8.7 Statement of Financial Affairs, 754
- 8.8 Rules for Filing Operating Statements, 795
- 8.9 U.S. Trustee Requirements, 807
- 8.10 Compensation for Insiders, 810

- 8.11 Operating Statements Guidelines, 812
- 8.12 SEC Reporting, 820
- 8.13 Pro Forma Financial Statements and Projections, 826
- 8.14 Excerpts from Report on "Investigation of Related Party Transactions and Perquisites", 839

9 Accounting Services for the Debtor-in-Possession or Trustee: Part 2, 847

- 9.1 Business Plan, 847
- 9.2 Motion for Protective Order Authorizing Debtor to File Part of Business Plan Under Seal, 859
- 9.3 Valuation and Financial Projections, 866
- 9.4 Voting Procedures, 871

10 Accounting Services for the Creditors' Committee, 881

- 10.1 Sample Report to Creditors' Committee, 881

11 Valuation of a Business in Bankruptcy Proceedings, 889

- 11.1 Selection of Interest Rate for Valuation?, 889
- 11.2 Liquidation Value Under Chapter 7, 903
- 11.3 Example of Reorganization Value Determined by Discounted Cash Flows, 919
- 11.4 Determination of Value in Chapter 11 Case, 925
- 11.5 Present Fair Salable Value, Liquidation in Place, and Orderly Liquidation, 968

PART FOUR Auditing Procedures and Reports

12 Audit Procedures and Special Areas of Inquiry, 977

- 12.1 Report on Special Investigation, 977
- 12.2 Audit Program Guide, 983

13 Financial Reporting During Bankruptcy, 1003

- 13.1 First Financial Statements Issued During Chapter 11: Buffets, 1003
- 13.2 Financial Statements Issued During Chapter 11: Dura Automotive, 1011
- 13.3 Liabilities Subject to Compromise, 1033

14 Reporting Results of the Plan, 1037

- 14.1 Fresh-Start Reporting: Sunbeam-Oster, 1037
- 14.2 Financial Statements Based on SOP 90-7, 1044
- 14.3 Pro Forma Balance Sheet of USG Corporation, 1071

15 Reporting on an Insolvent Company, 1083

- 15.1 Example of Unqualified Opinion Containing Uncertainty About Going Concern, 1083
- 15.2 Example of Unqualified Opinion Explaining the Ability to Continue as a Going Concern, 1084
- 15.3 Sample of a Qualified Opinion with "Except for" Wording for Departure from GAAP, 1088
- 15.4 Sample of a Disclaimer of Opinion Issued to Creditors' Committees and in Chapter 11 Reorganizations, 1089
- 15.5 Example of Adverse Opinion for Material Departures from GAAP, 1097
- 15.6 Report in Connection with Claims of Creditors, 1098
- 15.7 Report for Agreed-on Procedures Relating to Leveraged Buyout Transactions, 1099
- 15.8 Examination Report for Projected Financial Statements, 1102
- 15.9 Compilation Report for Projected Financial Statements, 1103
- 15.10 Disclaimer of Opinion on Projected Financial Statements, 1104

PART FIVE Taxes

1107

16 Tax Awareness, 1109

- 16.1 IRS Form 1041, 1109
- 16.2 IRS Form 982, 1109
- 16.3 Impact of Taxes on Potential Plan of Liquidation in Chapter 11 Proceeding, 1109
- 16.4 Tax Impact of Plan of Chapter 11 Corporate Reorganization, 1121