

CRAMMING DOWN THE INDUBITABLE EQUIVALENCE AND OTHER CONFIRMATION CONUNDRUMS

- I. Confirmation Issues: Section 1129(a) (11) – Feasibility
- II. Litigation Issues: Feasibility
- III. Confirmation Issues: Section 1129(b)(2)(A)- Fair and Equitable/Secured Claim
- IV. Litigation Issues: Indubitable Equivalent

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I. CONFIRMATION ISSUES: SECTION 1129(A)(11)-FEASIBILITY

§1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

II. LITIGATION ISSUES: EXPERTS AND EXPERT TESTIMONY

A. FEASIBILITY

- 1. EXPERTS**
- 2. EVIDENCE**

III. CONFIRMATION ISSUES: SECTION 1129(A)-FAIR AND EQUITABLE/SECURED CLAIM

§ 1129. Confirmation of plan

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides--

(i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the **indubitable equivalent** of such claims.

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IV. LITIGATION ISSUES: EXPERTS AND EXPERT TESTIMONY

B. INDUBITABLE EQUIVALENT

- 1. EXPERTS**
- 2. EVIDENCE**

THANK YOU

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