

Testimony of
A. Thomas Small
on behalf of the
National Bankruptcy Conference
before the
Senate Judiciary Committee's Subcommittee on
Administrative Oversight and the Courts
111th Congress, 2nd Session
on the subject of
"Could Bankruptcy Reform Help Preserve Small Business Jobs"
March 17, 2010

The National Bankruptcy Conference is grateful for the opportunity to participate in this hearing and to present its recommendation to expand chapter 12 to include small business enterprises. The National Bankruptcy Conference is a voluntary, non-profit, non-partisan, self-supporting organization of approximately sixty lawyers, law professors and bankruptcy judges who are leading scholars and practitioners in the field of bankruptcy law. Its primary purpose is to advise Congress on the operation of bankruptcy and related laws and on any proposed changes to those laws. Attached to this statement is a Fact Sheet about the Conference, including a list of its Conferees. Also attached is the Conference's proposal.

Today, many small businesses are in financial distress – and they need and deserve a fair and efficient vehicle to reorganize their capital structures. Unfortunately, the federal bankruptcy laws, as currently written, do not serve this purpose well. If a small business that is organized as a corporation, a limited liability company or a partnership wishes to avoid liquidation, it must use Chapter 11 of the Bankruptcy Code. However, Chapter 11 was designed for large companies, and works poorly, or not at all, for small businesses.

Recognizing this problem, the National Bankruptcy Conference has studied the current situation and now proposes an alternative, which is described in the attached "Proposal for Amending Chapter 12 to Accommodate Small Business Enterprises Seeking Reorganization." As we explain in the Proposal, Chapter 12 of the Bankruptcy Code – which is currently available to family farmers and family fishermen – provides a time-

tested, fair and effective means to reorganize businesses, which should be expanded to apply to small businesses.

Once again, thank you for inviting the National Bankruptcy Conference to testify at this important hearing. Allowing small business enterprises access to chapter 12 will not help all small businesses that are in financial distress, but it will provide many with a chance to survive and prosper, preserving going concern values for the benefit of creditors and saving jobs for their employees. The Conference would be happy to provide any additional information if the Committee would find it helpful. The Conference also would be pleased to formulate drafting proposals and assist in technical matters.

A. Thomas Small

United States Bankruptcy Judge – Retired
Co–Chair Small Business Working Group
National Bankruptcy Conference
tomsmall@nc.rr.com