

DEBATE 1: INTRODUCTION

JUDICIAL DISCRETION AND THE BALANCE OF POWER BETWEEN DEBTORS, CREDITORS, AND JUDGES: SOME RELEVANT STATUTORY CHANGES SINCE 1978

*Mark Duedall**

The following chart details certain revisions to the U.S. Bankruptcy Code since it was enacted via the Bankruptcy Reform Act of 1978. These revisions, in the view of the author, have substantially changed either (or in some instances, both) (1) the balance of power among the various parties to a bankruptcy case or (2) the nature of judicial discretion available to bankruptcy courts to guide a bankruptcy case.

This chart is not intended to be comprehensive. Numerous “special interest” provisions have been omitted in the interest of space, including provisions benefiting interests ranging from aircraft lessors, *see, e.g.*, 11 U.S.C. § 1110, to the various arms of the government, *see, e.g.*, 11 U.S.C. § 1141(d)(6), to commercial fisherman, *see, e.g.*, 11 U.S.C. § 507(a)(6)(B). Indeed, a comprehensive redline of all changes to the Bankruptcy Reform Act of 1978 would likely occupy several thousand pages. Instead, this chart is intended to provide some of the statutory backdrop to the discussion and debate of panelists Ezra Cohen and Neal Batson, moderated by Wendy Hagenau.

* Mark Duedall is a partner at Alston & Bird LLP practicing primarily in bankruptcy and related litigation as well as a member of the Emory Bankruptcy Developments Journal’s Advisory Board. Before joining Alston & Bird, Mark taught at Florida State University College of Law.

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
11 U.S.C. § 105	<p>§ 105. Power of court</p> <p>(a) The court¹ may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.</p> <p>(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.</p>	<p>Added² the following as a second sentence to § 105(a):</p> <p>No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.</p>	<p>Added § 105(d):</p> <p>(d) The court, on its own motion or on the request of a party in interest, may—</p> <p>(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and</p> <p>(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—</p> <p>(A) sets the date by which the trustee must assume or reject an executory contract or</p>	n/a

¹ Original version of § 105 read “bankruptcy court.”

² In this case, it was actually the 1986 amendments that made this change to § 105(a). To make the chart somewhat simpler, however, and given that the 1986 Bankruptcy Code amendments were not extensive, such amendments are included in the 1984 Amendments column of this chart.

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
			<p>unexpired lease; or</p> <p>(B) in a case under chapter 11 of this title—</p> <p>(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;</p> <p>(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;</p> <p>(iii) sets the date by which a party in interest other than a debtor may file a plan;</p> <p>(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;</p> <p>(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or</p> <p>(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.</p>	

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
11 U.S.C. § 362(b)	<p>§ 362. Automatic stay³</p> <p>...</p> <p>(b) The filing of a petition under section 301, 302, or 303 of this title, does not operate as a stay—</p> <p>(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;</p> <p>(2) under subsection (a) of this section, of the collection of alimony, maintenance, or support from property that is not property of the estate;</p> <p>(3) under subsection (a) of this section, of any act to perfect an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title;</p>	<p>Added the following, renumbered as § 362(b)(7):</p> <p>(7) under subsection (a) of this section, of the setoff by a repo participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, arising out of repurchase agreements against cash, securities, or other property held by or due from such repo participant to margin, guarantee, secure or settle repurchase agreements;</p>	<p>Added⁴ § 362(b)(17):</p> <p>(17) under subsection (a) of this section, of the setoff by a swap participant, of any mutual debt and claim under or in connection with any swap agreement that constitutes the setoff of a claim against the debtor for any payment due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property of the debtor held by or due from such swap participant to guarantee, secure or settle any swap agreement;</p>	<p>Added several additional exceptions to § 362(b), including:</p> <p>(25) under subsection (a), of—</p> <p>(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;</p> <p>(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or</p> <p>(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not</p>

³ Section 362(b) of the Bankruptcy Code has been amended to provide for a variety of additional exclusions since 1978, such that now there are twenty-eight numbered paragraphs under § 362(b). This chart is intended to highlight only some of them.

⁴ In this case, it was actually the 1990 amendments that made this change to § 362(b). To make the chart somewhat simpler, however, and given that the 1990 Bankruptcy Code amendments were not extensive, such amendments are included in the 1994 Amendments column of this chart.

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
	<p>(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;</p> <p>(5) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;</p> <p>....</p>			<p>meet applicable regulatory requirements;</p> <p>(27) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, under the control of, or due from such master netting agreement participant to margin,</p>

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
11 U.S.C. § 363(b)	<p>§ 363. Use, sale, or lease of property</p> <p>...</p> <p>(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business,</p>	n/a	n/a	<p>guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and</p> <p>(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).</p>
				<p>Added the following exception to § 363(b)(1):</p> <p>(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 the debtor in connection</p>

<p>Bankruptcy Code Section</p>	<p>Original Text as Enacted by the Bankruptcy Reform Act of 1978</p> <p>property of the estate.</p>	<p>1984 Bankruptcy Code Amendments</p>	<p>1994 Bankruptcy Code Amendments</p>	<p>2005 Bankruptcy Abuse Prevention and Consumer Protection Act</p>
				<p>with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—</p> <p>(A) such sale or such lease is consistent with such policy; or</p> <p>(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—</p> <p>(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and</p> <p>(ii) finding that no showing was made that such sale or such lease would violate</p>

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
11 U.S.C. § 363(d)	<p>§ 363. Use, sale, or lease of property</p> <p>...</p> <p>(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent not inconsistent with any relief granted under section 362(c), 362(d), 362(e), or 362(f) of this title.</p>	n/a	n/a	<p>applicable nonbankruptcy law.</p> <p>Revised § 363(d) to add the following exception as set forth in new § 363(d)(f):</p> <p>(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only—</p> <p>(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and</p> <p>(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.</p>
11 U.S.C. § 365(d)	<p>§ 365. Executory contracts and unexpired leases</p> <p>...</p> <p>(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of the debtor</p>	<p>Added § 365(d)(3)-(4):</p> <p>(3) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property.</p>	n/a	<p>Section 365(d)(4) was revised to read as follows:</p> <p>(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall</p>

<p>Bankruptcy Code Section</p>	<p>Original Text as Enacted by the Bankruptcy Reform Act of 1978</p> <p>within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.</p> <p>(2) In a case under chapter 9, 11, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of the debtor at any time before the confirmation of a plan, but the court, on request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.</p>	<p>1984 Bankruptcy Code Amendments</p> <p>until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.</p> <p>(4) Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such</p>	<p>1994 Bankruptcy Code Amendments</p>	<p>2005 Bankruptcy Abuse Prevention and Consumer Protection Act</p> <p>immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—</p> <p>(i) the date that is 120 days after the date of the order for relief; or</p> <p>(ii) the date of the entry of an order confirming a plan.</p> <p>(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.</p> <p>(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.</p>
---------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
		additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.		
11 U.S.C. § 365(d)(10)	No such provision existed until 1994.	n/a	<p>Added § 365(d)(10):</p> <p>(10) The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This</p>	n/a

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
11 U.S.C. § 366	<p>§ 366. Utility Service</p> <p>(a) Except as provided in subsection (b) of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a cause under this title or that a debt owed by the debtor to such utility service rendered before the order for relief was not paid when due.</p> <p>(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance</p>	n/a	<p>subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.</p> <p>n/a</p>	<p>Added a new subsection (c) to § 366:</p> <p>(c)(1)(A) For purposes of this subsection, the term 'assurance of payment' means—</p> <ul style="list-style-type: none"> (i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee. <p>(B) For purposes of this</p>

<p>Bankruptcy Code Section</p>	<p>of payment, in the form of a deposit or other security, for service after such date. On request of a party interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.</p>	<p>1984 Bankruptcy Code Amendments</p>	<p>1994 Bankruptcy Code Amendments</p>	<p>2005 Bankruptcy Abuse Prevention and Consumer Protection Act</p>
<p>subsection an administrative expense priority shall not constitute an assurance of payment.</p> <p>(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.</p> <p>(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).</p> <p>(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider—</p> <p>(i) the absence of security</p>				

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
11 U.S.C. § 503(b)(9)	No such priority existed until 2005.	n/a	n/a	<p>before the date of the filing of the petition;</p> <p>(ii) the payment by the debtor of charges for utility service in a timely manner before the date of the filing of the petition; or</p> <p>(iii) the availability of an administrative expense priority.</p> <p>(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of the filing of the petition without notice or order of the court.</p>
				<p>Section 503(b)(9) added to create the following additional administrative priority:</p> <p>(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the</p>

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
11 U.S.C. § 503(b)(1)(A), (c)	<p>§ 503. Allowance of administrative expenses . . .</p> <p>(b) After notice and a hearing, there shall be allowed administrative expenses . . . , including—</p> <p>(1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case;</p>	n/a	n/a	<p>goods have been sold to the debtor in the ordinary course of such debtor's business.</p> <p>Added an exception to § 503(b)(1)(A) with respect to employee retention and severance plans:</p> <p>(c) Notwithstanding subsection (b), there shall neither be allowed, nor paid—</p> <p>(1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent a finding by the court . . . that—</p> <p>(A) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;</p> <p>(B) the services provided by the person are essential to the survival of the business; and</p>

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
				<p>(C) either—</p> <p>(i) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or</p> <p>(ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before . . . ;</p> <p>(2) a severance payment to an insider of the debtor, unless—</p> <p>(A) the payment is part of a</p>

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
11 U.S.C. § 546(c)	<p>§ 546. Limitations on avoiding powers</p> <p>...</p> <p>(c) The rights and powers of a trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common-law right of a seller, in the ordinary course of such seller's business, of goods to</p>	n/a	<p>Made some technical changes to the language of § 546(c), but also extended the period covered by § 546(c)(1) to read as follows:</p> <p>(1) such a seller may not reclaim any such goods unless such seller demands in writing reclamation of such goods—</p>	<p>program that is generally applicable to all full-time employees; and</p> <p>(B) the amount of the payment is not greater than 10 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or</p> <p>(3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to . . . officers, managers, or consultants hired after the date of the filing of the petition.</p>
			<p>Substantially revised § 546(c) to read as follows:</p> <p>(1) Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections</p>	

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
	<p>the debtor to reclaim such goods if the debtor has received such goods while insolvent, but—</p> <p>(1) such a seller may not reclaim any such goods unless such seller demands in writing reclamation of such goods before 10 days after receipt of such goods by the debtor; and</p> <p>(2) the court may deny reclamation to a seller with such a right of reclamation that has made such a demand only if the court—</p> <p>(A) grants the claim of such a seller priority as an administrative expense; or</p> <p>(B) secures such claim by a lien.</p>		<p>(A) before 10 days after receipt of such goods by the debtor; or</p> <p>(B) if such 10-day period expires after the commencement of the case, before 20 days after receipt of such goods by the debtor.</p>	<p>544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—</p> <p>(A) not later than 45 days after the date of receipt of such goods by the debtor; or</p> <p>(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.</p> <p>(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).</p>

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
11 U.S.C. § 1113	Not enacted until 1984.	<p>Added § 1113:</p> <p>§ 1113. Rejection of collective bargaining agreements</p> <p>(a) The debtor in possession, or the trustee . . . may assume or reject a collective bargaining agreement only in accordance with . . . this section.</p> <p>(b)(1) . . . prior to filing an application seeking rejection of a collective bargaining agreement, the debtor in possession or trustee . . . shall include a debtor in possession), shall—</p> <p>(A) make a proposal . . . based on the most complete and reliable information available . . . which provides for those necessary modifications in the employees benefits and protections that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and</p>	n/a	n/a

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
		<p>(B) provide . . . the representative of the employees with such relevant information as is necessary . . .</p> <p>(2) During the period beginning on the date of the making of a proposal . . . and ending on the date of the hearing . . . , the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith</p> <p>(c) The court shall approve an application for rejection . . . only if the court finds that—</p> <p>(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (b)(1);</p> <p>(2) the authorized representative of the employees has refused to accept such proposal without good cause; and</p> <p>(3) the balance of the equities clearly favors rejection of such agreement.</p> <p>(d)(1) . . . the court shall</p>		

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
		<p>schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and representative agree.</p> <p>(2) The court shall rule on such application for rejection within thirty days after the date of the commencement of the hearing.</p> <p>...</p> <p>(e) If during a period when the collective bargaining agreement continues in effect, and if essential to the</p>		

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
11 U.S.C. § 1121	<p>§ 1121. Who may file a plan</p> <p>(a) The debtor may file a plan with a petition commencing a voluntary case, or at any time in a voluntary case or an involuntary case.</p> <p>(b) Except as otherwise provided in this section, only the debtor may file a plan until after 120 days after the date of the order for relief under this chapter.</p>	<p>continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim changes in the . . . collective bargaining agreement. . . .</p> <p>(f) No provision of this title shall be construed to permit a trustee to unilaterally terminate or alter any provisions of a collective bargaining agreement prior to compliance with the provisions of this section.</p>	n/a	<p>Added a new subsection 1121(d)(2), to read as follows:</p> <p>(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.</p> <p>(B) The 180-day period specified in paragraph (1) may not be extended beyond a date</p>

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
	<p>(c) Any party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may file a plan if an only if—</p> <p>(1) a trustee has been appointed under this chapter;</p> <p>(2) the debtor has not filed a plan before 120 days after the date of the order for relief under this chapter; or</p> <p>(3) the debtor has not filed a plan that has been accepted, before 180 days after the date of the order for relief under this chapter, by each class of claims or interests that is impaired under the plan.</p> <p>(d) On request of a party in interest made within the respective periods specified in subsections (b) and (c) . . . and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period</p>			<p>that is 20 months after the date of the order for relief under this chapter.</p>

Bankruptcy Code Section	Original Text as Enacted by the Bankruptcy Reform Act of 1978	1984 Bankruptcy Code Amendments	1994 Bankruptcy Code Amendments	2005 Bankruptcy Abuse Prevention and Consumer Protection Act
28 U.S.C. § 158(a)	<p>28 U.S.C. § 158. Appeals</p> <p>...</p> <p>(a) The district courts of the United States shall have jurisdiction to hear appeals:</p> <p>(1) from final judgments, orders, and decrees; and</p> <p>(2) with leave of the court, from other interlocutory orders</p> <p>...</p>	n/a	<p>Amended § 158(a) to add a new subsection (a)(2) (and redesignated old subsection (a)(2) to (a)(3)):</p> <p>(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title;</p>	n/a