

H O N O R A B L E M E N T I O N

GOING CONCERNS AND ENVIRONMENTAL CONCERNS: MITIGATING CLIMATE CHANGE THROUGH BANKRUPTCY REFORM

by Alexander Gouzoules

Alexander Gouzoules is an Associate Professor of Law at the University of Missouri School of Law.

This Article examines how legislative reforms to the Bankruptcy Code could mitigate the effects of climate change, speed the adoption of renewable energy, and contribute to the United States' compliance with the Paris Agreement of 2015. This Article analyzes the benefits derived by the fossil fuel industry from Chapter 11 of the Bankruptcy Code, which allows firms that extract fossil fuels to survive boom-and-bust cycles caused by volatile oil and gas prices. Through reorganization proceedings, insolvent polluters are preserved as going concerns during price collapses, only to resume and expand production as prices recover. This Article proposes novel legislative reforms to the Bankruptcy Code that would require insolvent fossil fuel producers to liquidate under Chapter 7 rather than reorganize under Chapter 11. These proposed reforms would also mandate the appointment of an environmental trustee during these liquidation proceedings, whose considerations would focus on the public interest. The public interest would weigh in favor of reserving

certain assets for climate remediation, rather than selling them to other extractive firms for the benefit of creditors. This Article explores models for these proposals in existing insolvency law. Under the Securities Investor Protection Act and accompanying bankruptcy provisions, stockbrokers are required to liquidate rather than reorganize to protect the investing public. In railroad bankruptcies, special trustees and judicial consideration of the public interest have long been required, primarily due to the historical significance of railroads in the U.S. economy. Finally, the bankruptcy system has reorganized entities responsible for mass torts into those able to mitigate the harms they once imposed. This Article advances legislative reforms to the Bankruptcy Code that would facilitate the key societal goal of combatting climate change by bringing the treatment of insolvent fossil fuel firms more in line with the Code's treatment of entities in the critical industries identified above.

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