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**SUMMATIVE (FORMAL) ASSESSMENT: MODULE 3A**

**THE INSOLVENCY SYSTEM OF THE UNITED STATES**

This is the **summative (formal) assessment** for **Module 3A** of this course and is compulsory for all candidates who **selected this module as one of their compulsory modules from Module 3**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

**The mark awarded for this assessment will determine your final mark for Module 3A**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

**INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT**

**Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.**

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.

2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters – **please do not change the document settings in any way**. **DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.

3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).

4. You must save this document using the following format: **[studentID.assessment3A]**. An example would be something along the following lines: 202223-336.assessment3A. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “student number” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked**.

5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words**.

6.1If you selected Module 3A as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2024**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2024. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.

6.2 If you selected Module 3A as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2024** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. If you elect to submit by 1 March 2024, you **may not** submit the assessment again by 31 July 2024 (for example, in order to achieve a higher mark).

7. Prior to being populated with your answers, this assessment consists of **9 pages**.

**ANSWER ALL THE QUESTIONS**

**QUESTION 1 (multiple-choice questions) [10 marks in total]**

Questions 1.1. – 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and mark your selection on the answer sheet by highlighting the relevant paragraph **in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

**Question 1.1**

Car Corp, incorporated and headquartered in Michigan, owes Parts Inc, incorporated and headquartered in Mexico, USD 10,000 on a past-due invoice for components used to build Car Corp vehicles. May Parts Inc file an involuntary petition to place Car Corp into chapter 11 bankruptcy proceedings?

(a) Yes, regardless of the circumstances.

(b) Yes, if Car Corp has fewer than 12 non-contingent, non-insider creditors.

(c) Yes, if other creditors owed at least USD 5,775 join in the petition.

(d) No, because Parts Inc does not know whether Car Corp is insolvent.

(e) No, because Parts Inc is not a US company.

**Question 1.2**

Answer this question with reference to the set of facts set out in question 1.1 above: Which of the following is likely to be a party in interest in the bankruptcy of Car Corp?

(a) A shareholder in Parts Inc, to which Car Corp is indebted.

(b) A journalist writing about Car Corp’s bankruptcy.

(c) A shareholder in Investment Corp, Car Corp’s parent company.

(d) A retired employee of Car Corp who receives payments from the company’s pension plan.

(e) A non-profit organization that advocates for companies like Car Corp to be held responsible for climate change

**Question 1.3**

Which of the following entities does not satisfy the minimum presence requirement to be a debtor under any chapter of the Bankruptcy Code?

(a) A foreign domiciled company that pays a US attorney a retainer.

(b) A company with several US bank accounts, but no physical presence in the United States.

(c) A company with US patents, but no physical presence in the United States.

(d) Options (a) to (c) above satisfy the minimum requirement for presence in the United States.

(e) None of the above (options (a) to (d)) satisfy the minimum requirement for presence in the United States.

**Question 1.4**

Who may serve as a foreign representative to seek recognition of a foreign proceeding under chapter 15?

(a) An officer of the debtor if it is a debtor-in-possession in the foreign proceeding.

(b) The board of directors of the debtor if it is a debtor-in-possession in the foreign proceeding.

(c) An insolvency professional appointed by the court overseeing the foreign proceeding.

(d) An insolvency professional appointed by a creditor where the foreign proceeding is an involuntary receivership.

(e) All of the above.

**Question 1.5**

Which of the following regarding executory contracts is **false**?

(a) A court will generally defer to a debtor’s business judgment regarding whether to assume or reject an executory contract.

(b) Executory contracts are clearly defined by the Bankruptcy Code.

(c) In the most common formulation, executory contracts are defined as those where both sides to a contract have material unperformed obligations.

(d) Chapter 11 debtors have greater flexibility than chapter 7 debtors on when they may assume, assign or reject an executory contract.

(e) Under the hypothetical test, a debtor cannot assume an executory contract if the debtor could not also assign the contract.

**Question 1.6**

Which of the following is not a requirement to confirm a “cramdown” plan?

1. That the plan is fair and equitable to dissenting classes of creditors.
2. Acceptance of the plan by at least one class of impaired, non-insider creditors.
3. Acceptance of the plan by all classes of secured creditors.
4. That the plan does not discriminate unfairly against dissenting classes of creditors.
5. That the dissenting creditors receive no less than they would under a liquidation scenario.

**Question 1.7**

Which of the following statements about “pre-packs” is false?

1. A pre-pack cannot be used if the debtor wishes to reject executory contracts.
2. Creditors must have sufficient information about the debtor and the plan to make an informed voting decision.
3. A pre-pack debtor may spend as little as a single day in bankruptcy.
4. The proposed plan of reorganization is submitted to the bankruptcy court together with the voluntary petition.
5. Creditors’ commitment to vote in favor of the plan may be memorialized in a restructuring support agreement.

**Question 1.8**

If a debtor rejects an executory trademark license agreement under which the debtor licenses its trademark to a manufacturer, which of the following is true:

1. The manufacturer has a claim for damages for breach of contract.
2. The manufacturer must immediately stop using the trademark.
3. The manufacturer can continue using the trademark for the remaining period of the license.
4. Both options (a) and (b).
5. Both options (a) and (c).

**Question 1.9**

Which of the following about 363 sales is false?

1. A good faith purchaser at a 363 sale may retain the property notwithstanding a subsequent reversal of court approval for the sale on appeal.
2. The debtor-in-possession must establish that the transaction is in the best interests of the estate as a whole.
3. In chapter 15 proceedings, a foreign court’s approval alone suffices for a 363 sale.
4. Debtors must carry out a robust marketing process for the sale.
5. A creditor’s lien on assets sold in a 363 sale attaches to the proceeds of the sale.

**Question 1.10**

Which of the following regarding substantive consolidation is true?

1. It respects the boundaries of corporate separateness.
2. If a creditor can show it extended credit on the basis of corporate separateness, it has a valid objection to substantive consolidation.
3. It is the treatment of two or more creditors as a single creditor to simplify the claims process.
4. Substantive consolidation is commonly used to resolve bankruptcies of corporate groups.
5. Authority for substantive consolidation comes from the Bankruptcy Code.

**QUESTION 2 (direct questions) [10 marks]**

**Question 2.1 (1 mark)**

What is setoff and why is it not permitted in many circumstances?

Setoff is the process by which a creditor who is owed money by the debtor and who also owes money to the debtor can net out the obligations. It is often prohibited as it tends to improve the position of the "setoff" creditor compared to other unsecured creditors (as the setoff creditor can reap the benefit of reducing its own liability by the full amount of the debtor's liability, which reduces the net recovery by the debtor's estate).

**Question 2.2 [2 marks]**

What is a “priming lien” and what requirements must be met for such a lien to be granted to secure DIP financing?

A priming lien is a lien that is senior, or equal, to existing liens on the property in question. It is something of a "last resort" in DIP financing where there is no other means of the debtor obtaining financing. For the court to grant a priming lien, the debtor must demonstrate that a) it has been unable to secure funding through less drastic measures and the priming lien is therefore necessary and b) the interests of the primed creditors (i.e. the creditors who hold existing liens) are adequately protected.

**Question 2.3 [2 marks]**

What are two potential consequences of a violation of the automatic stay?

* The violator will be in contempt of court. Contempt sanctions could include payment of the debtor's legal fees or requiring the violator to take any action necessary to undo the effect of the violation. In some cases, the Court could even impose a daily fine on the violator, to be paid to Court, until the stay violation has been rectified.
* The violating act is void or voidable (different circuits take different views as to whether the act is void or voidable)

**Question 2.4 [2 marks]**

In voting on a plan of reorganization, which class(es) of creditors are (i) deemed to accept the plan, (ii) deemed to reject the plan and (iii) permitted to vote on the plan? What vote is necessary for a class of creditors to accept a plan?

1. An unimpaired class of creditors (i.e. a class whose "legal, equitable, and contractual rights" are unaltered by the plan) is deemed to accept the plan.
2. A class who will receive nothing under the plan are deemed to reject it.
3. Only impaired classes of creditor (which includes those who receive full payment after a delayed period) will actually vote on the plan.

The voting threshold for a class to have accepted the plan is a simple majority holding at least two-thirds of the value of claims in the class.

**Question 2.5 [3 marks]**

Answer the following questions about preferences, actual fraudulent conveyances and constructive fraudulent conveyances:

1. Which cause of action applies only to transfers made on account of antecedent debt?
2. Which cause of action requires that the debtor be presumed or proven to have been insolvent at the time of the transfer?
3. Which cause of action requires that the debtor be proven to have intended to frustrate creditors’ recoveries?
4. Preferences only arise in respect of antecedent debt (i.e. pre-existing debt).
5. Preferences only arise when the transfer was made when the debtor was insolvent. Insolvency is presumed for the 90 days prior to the petition date, although this presumption can be rebutted.

Insolvency is also one of the potential elements of a constructive fraudulent conveyance, which requires: a) proof that the debtor received less than reasonably equivalent value for the transfer and b) one of a number of additional, alternative factors, one of which is that the debtor was insolvent at the time of the conveyance or became insolvent as a result of it.

1. An actual fraudulent conveyance (unlike a constructive fraudulent conveyance) requires the debtor to have "actual intent" to frustrate the creditors' recoveries.

**QUESTION 3 (essay-type questions) [15 marks in total]**

**Question 3.1 [3 marks]**

Describe the circumstances in which a bankruptcy court may enter a final order consistent with the US Constitution, who reviews appeals from bankruptcy court orders and how orders that are not constitutionally final are reviewed.

Bankruptcy courts can only hear and determine "core" proceedings. The Bankruptcy Code sets out a long, but non-exhaustive list, of core proceedings. If proceedings are "non-core", the bankruptcy court can hear them (if they are sufficiently related to bankruptcy proceedings) but cannot make a final determination. It can only submit proposed findings of fact and conclusions of law to the district court (for the district court to make a final decision).

Since the decision in *Stern v Marshall* in 2011, the position has been more complex, as the US Supreme Court found that even in a "core" case, a bankruptcy court could not issue final orders that impose on the jurisdiction of Article III of the Constitution. It is now established that in core cases where the bankruptcy court lacks constitutional authority, the process is similar to that of non-core proceedings – i.e. the bankruptcy court will issue a report and recommendations for review by the district court. The bankruptcy court can also issue final orders with the consent of the parties.

The district court can also exercise its discretion to withdraw the reference of its jurisdiction to the bankruptcy court (for example, if the matter is one where the US Constitution grants the right to a jury trial).

Appeals from the bankruptcy court are heard by the relevant district court. In some circuits, the appeals are heard by a Bankruptcy Appellate Panel ("**BAP**") (although the parties have the option of requesting the appeal be heard by the district court instead).

If an order by the bankruptcy court was not constitutionally final then, on appeal, the district court/BAP will review d*e novo* all conclusions of law and findings of fact that the appellate party has objected to (compared to proceedings where the bankruptcy court had the authority to enter a final order, in which case the appellate court will review conclusions of law *de novo* but will only review findings of fact for abuse of discretion).

**Question 3.2 [3 marks]**

What provisions of the Bankruptcy Code may not be invoked by a foreign representative in a chapter 15 proceeding? What are two ways that the foreign representative can obtain equivalent relief?

One of the key differences between Chapter 15 and the UN Model Law, is that Chapter 15 excludes the right of a foreign representative to use the avoidance provisions in the Bankruptcy Code (i.e. those related to preferences or fraudulent conveyances).

To avail themselves of the anti-avoidance provisions, the foreign representative could either:

1. commence plenary proceedings themselves (e.g. Chapter 7 or 11) or use pre-existing plenary proceedings (i.e. where these were commenced by a debtor or creditor prior to the foreign representative's involvement) to invoke the anti-avoidance provisions; or
2. seek to avoid the relevant pre-petition transactions under other applicable US or foreign law (i.e. outside of the Bankruptcy Code). In most circuits, the Bankruptcy Code provision barring a foreign representative from invoking anti-avoidance relief has been held to only apply to the powers under the Bankruptcy Code (and not to other US or foreign law that would achieve the same objective – see *In re Condor Ins Ltd*, 601 F.3d 319).

**Question 3.3 [4 marks]**

What rules should one review when preparing a filing for a bankruptcy court?

The US Bankruptcy Code is clearly front and centre of any filing in a bankruptcy court. However, any applicant should also review relevant State law, the Federal Rules of Bankruptcy Procedure (which may incorporate Federal Rules of Civil Procedure), and the local procedural rules for the particular bankruptcy court. Individual judges may also have their own preferred practices. Practitioners should also check whether there are standard forms for common bankruptcy filings, which can be found on the uscourts.gov website.

There may also be relevant jurisprudence/case law that impacts upon the application of the various rules.

Practitioners from outside the particular circuit/jurisdiction would also be advised to consult a local practitioner.

**Question 3.4 [5 marks]**

What fiduciary duties do directors of Delaware corporations owe and to whom are the duties owed in the ordinary course of business? To whom are duties owed when the corporation is potentially or actually insolvent?

Delaware State law provides that directors owe a fiduciary duty of loyalty to the company, which comprises acting in the company's best interests, on a disinterested and independent basis, in good faith. They also have a duty of care to exercise educated/informed decision-making. This duty is narrower than in many jurisdictions as it is subject to the "business judgment rule". Under this rule, the board of directors is presumed to have acted in good faith on the basis of reasonable information. This presumption can be rebutted, but only by showing that the majority of the board were not acting in such manner. Where the presumption is not rebutted, a director will only be liable unless gross negligence can be established.

The business judgment rule switches to the "entire fairness standard" where a transaction is approved by a board majority who are not disinterested or independent (or where a controlling shareholder is on both sides of the transaction). In such cases, the transaction is void unless the entire fairness standard is satisfied. The entire fairness standard means the directors bear the burden of proving that the challenged decision/transaction is “entirely fair” (in the sense of both fair dealing and fair price) to the company and its shareholders.

Where directors are not disinterested or independent in relation to a proposed transaction, they should disclose this promptly to the board.

The company's certificate of incorporation may also include exculpatory provisions which further protect the director from liability for breach of the duty of care (although it cannot exclude the duty of loyalty).

The directors owe their duties to the company and its shareholders. Unlike some jurisdictions, such as the UK, there is no shift to the duties being owed to creditors in circumstances where the company is insolvent or potentially insolvent (confirmed by the Delaware Supreme Court in *North Am Catholic Educational Programming Foundation Inc v Gheewalla,* 930 A.2d 92).

**QUESTION 4 (fact-based application-type question) [15 marks in total]**

**Question 4.1 [5 marks]**

iWork Ltd leases office space from office building owners and sublets the space to small businesses. Due to the increases in the numbers of businesses operating remotely, iWork Ltd has suffered a decline in revenues. As a result, it has failed to pay rent on some of its office space leases. What protections does the Bankruptcy Code provide to lessors of office space to iWork Ltd?

Firstly, the lessors/landlords may be able to force iWork into involuntary insolvency proceedings under Chapter 7 or 11 if they meet the requisite requirements, i.e.:

1. where iWork has fewer than 12 non-contingent, non-insider creditors, only one creditor is required to file an involuntary petition. If iWork has more than 12 such creditors, at least three qualifying creditors must join in the petition; and
2. the aggregate amount of the petitioning creditors' claims is at least US$16,750.

If iWork itself commences bankruptcy proceedings, the lessors, as creditors, will be entitled to notice of the petition. If Chapter 7 or 11 proceedings are commenced (whether involuntary or voluntary), a landlord will be a "party in interest". This means they will have various rights under the Bankruptcy Code to seek relief or object to relief sought by others (and they will have the right to have their grievances heard at the hearing for the confirmation of a Chapter 11 plan).

Landlords of debtor-tenants of non-residential property also have the benefit of a statutory exemption from the automatic stay, which means that they can still evict iWork once the lease has expired (11 USC section 362(b)(10)). A landlord can also apply to lift the stay (or obtain relief from the stay) on the basis of lack of adequate protection, where the value of the property may decline during the course of proceedings (11 USC section 362(d)).

Another area where landlords/lessors have protection (or, at least, greater certainty) is in relation to executory contracts in Chapter 11 cases. Usually, a debtor has until the confirmation of its plan of reorganization to elect to assume, assign or reject an executory contract. However, this period is reduced in relation to decisions about unexpired leases of non-residential property to 120 days from the date of the order for relief. Whilst this can be extended by 90 days for cause, any further extension requires the landlord's consent (11 USC section 365(d)(4)). Section 365 also contains other provisions dictating when a trustee can assume an unexpired lease of the debtor (e.g. they must cure defaults and provide adequate assurances of future performance).

Rent is usually paid on an ongoing basis as an administrative expense of the insolvency proceedings, thus it has priority. However, this is only in cases where the debtor is in occupation, and as iWork sub-lets the spaces, they are not directly in occupation. By analogy with the Covid 19 pandemic (where a number of bankruptcy courts found that closed, leased premises did not benefit the debtor's estate) any properties that do not have a sub-tenant (that is, a source of income to iWork's estate) are not benefitting the estate.

**Question 4.2 [5 marks]**

Skin Luxe is incorporated and has a principal place of business in France where it develops and manufactures high end skincare products. Skin Luxe sells its skin care products through its own boutiques in many international cities, including Paris, Las Vegas, London and Hong Kong. Skin Luxe’s English law-governed bonds are due to mature in one year, but it is unable to repay or refinance them. Skin Luxe is considering using an English scheme of arrangement to restructure the bonds.

Discuss whether the English scheme of arrangement could be granted recognition under US chapter 15 as a foreign main or foreign non-main proceeding.

In general, the threshold for a particular type of foreign proceeding to qualify for recognition under Chapter 15 is low (and the US courts have recognized English Schemes of Arrangement before). What will be key is whether the English proceedings are "foreign main" or foreign non-main" (or neither). The answer is important, as foreign main proceedings benefit from the automatic stay once recognized (in relation to the debtor's property within the US) as well as other provisions such as the ability of the foreign representative to operate the debtor's business in the ordinary course. In contrast, in foreign non-main proceedings, any such relief under Chapter 15 is discretionary (where the bankruptcy court must be satisfied that it is appropriate under US law for the assets in question to be administered in the foreign non-main proceedings).

The central question is: where is Skin Luxe's Centre of Main Interests ("**COMI**")? Foreign main proceedings are those commenced in the debtor's COMI, so if England is Skin Luxe's COMI then an English Scheme of Arrangement would be foreign main proceedings. The COMI is presumed to be the place of incorporation (so in this case, France) but this is rebuttable. Relevant factors (as to which see *In re SPhinX Ltd*, 351 BR103) include:

1. location of the company headquarters (here, France);
2. location of management (unclear, but most likely appears to also be France);
3. location of primary assets (France would again seen to be the most relevant here, although Skin Luxe clearly has assets in the form of its boutiques across the world);
4. location of a majority of debtors (we do not know this information, only that the bonds are English law governed); and
5. jurisdiction whose law will apply to most disputes (assuming that most disputes are likely to arise in relation to the bonds, this would be England).

On balance, it seems most factors point to the COMI being France, so the English Scheme of Arrangement would be a foreign non-main proceeding (although it is potentially arguable that the COMI is England on the basis that all disputes arising from the bonds will be subject to English law). The COMI should also be ascertainable by creditors and third parties on the basis of objective evidence (*Morning Mist*, 714 F.3d at 134) and it seems likely that, applying this principle, it would, again, point in favour of France being the COMI.

For the English Scheme of Arrangement to qualify as a foreign non-main proceedings, Skin Luxe must still have an "establishment" in England ("COMI" and "establishment" are both creatures of European insolvency law, rather than concepts of US law themselves). An establishment is a place where the company carries on non-transitory economic activity (assessed at the date of commencement of Chapter 15 proceedings). It does seem that on the basis of a) the governing law of the bonds and b) the fact Skin Luxe has a boutique in London, it meets the requirement of having an establishment in England – thus an English Scheme of Arrangement would likely be granted recognition as foreign non-main proceedings.

**Question 4.3 [5 marks]**

Speculation Inc is engaged in day-trading stocks from leased office space with two employees. It funds its trading through a margin loan from its broker, where the shares it purchases are held as collateral. For a while, Speculation Inc was very successful in trading, and the US Department of Justice (DOJ) has announced an investigation into whether its success was due to illegally trading on insider information. More recently, Speculation Inc has had serious trading losses, causing its broker to declare a default on the margin loan. It also has fallen behind on its rent, and has been sued in civil suit by a former employee alleging she was fired due to due to gender bias.

What would be the effect of a chapter 11 petition being filed by Speculation Inc on each of (i) the DOJ investigation, (ii) margin loan default; (iii) the delinquent lease and (iv) the employment discrimination lawsuit?

On filing a Chapter 11 petition, Speculation Inc will benefit from the worldwide automatic stay. However, this will not apply in all circumstances.

1. DOJ investigation – two statutory exceptions to the stay are criminal proceedings and regulatory investigations, which would appear to capture the DOJ investigation and any subsequent criminal prosecution (11 USC section 362(b)(1) and (25)). Thus the investigation can continue.
2. Margin loan default – One of the statutory exceptions to the automatic stay is exercise of rights under commodity, forward or security contracts (11 USC section 362(b)(6)). The purpose behind this exception is to avoid disruption to financial markets. The provision provides that there is no stay:

*"of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right […] under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right […] to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts."*

If the margin loan falls within this definition, then the broker would be able to enforce on it.

In addition, any previous margin payments (or payments to the broker in connection with a securities/commodity/forward contract) will benefit from the "safe harbor" provisions of the Bankruptcy Code (11 USC section 546(e)) whereby they cannot be avoided as a preference (unless they were made with the intention to defraud creditors).

1. Delinquent lease – as a result of the stay, the landlord cannot take any steps to obtain possession or control of the property (although as noted in relation to question 4.1 above, it can proceed with eviction action once the lease has expired). Provided Speculation are in occupation of the property, the future rent will be payable as an administrative expense in the Chapter 11 proceedings. The previously unpaid rent will mean the landlord is a creditor of the bankruptcy estate; it cannot commence separate proceedings to recover the unpaid rent.
2. Employment discrimination lawsuit – any pre-petition claims are stayed, which would apply to the civil lawsuit. Thus, no further steps can be taken in the lawsuit during the period of the stay (save that the court can exercise its discretion to modify the stay to permit certain acts).

**\* End of Assessment \***