

# Three ABI Members Testify During Busy Month for Congressional Hearings

**Editor's Note:** Congress conducted several important hearings in July, including at least three on bankruptcy-related matters. On July 23 the Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts held a hearing entitled "The Worsening Foreclosure Crisis: Is It Time to Reconsider Bankruptcy Reform? One of the witnesses was **Adam Levitin**, a professor at Georgetown University Law Center in Washington, D.C., and the Fall ABI Robert M. Zinman Resident Scholar. On July 27 the Congressional Oversight Panel, created by Congress in the fall of 2008 to "review the current state of financial markets and the regulatory system" and chaired by **Elizabeth Warren**, the Leo Gottlieb Professor of Law at Harvard Law School, conducted a hearing to examine the Auto Industry Financing Program under the Troubled Asset Relief Program. One of the witnesses was **Stephen Lubben**, the Daniel J. Moore Professor of Law at Seton Hall University School of Law. On July 28 the House Judiciary Committee's Subcommittee on Commercial and Administrative Law held a hearing entitled "Medical Debt—Is Our Health-Care System Bankrupting Americans?" One of the witnesses was **John A. E. Pottow**, a professor of law at the University of Michigan Law School. This Legislative Update column features excerpts from the written testimony of the three ABI members. For their full testimony and for the statements of the non-ABI member witnesses at these hearings, please go to [judiciary.senate.gov/hearings/hearing.cfm?id=3993](http://judiciary.senate.gov/hearings/hearing.cfm?id=3993), [cop.senate.gov/hearings/library/hearing-072709-detroithearing.cfm](http://cop.senate.gov/hearings/library/hearing-072709-detroithearing.cfm) and [judiciary.house.gov/hearings/hear\\_090728.html](http://judiciary.house.gov/hearings/hear_090728.html), respectively. ABI is a nonpartisan organization dedicated to research and education on matters related to insolvency. The statements of these ABI members reflect their views and/or positions, not those of the ABI.

**Testimony of Adam Levitin**  
Georgetown University Law Center  
Washington, D.C.  
[ajl53@law.georgetown.edu](mailto:ajl53@law.georgetown.edu)

We are now well into the third year of the foreclosure crisis, and there is no end in sight. Since 2007 between five and six million homes entered foreclosure. As of March 31, 2009, the Mortgage Bankers Association reported that 3.85 percent of residential mortgage loans were currently already

in foreclosure, a rate nearly quadruple historical averages...Additionally, 5.65 percent of mortgages were more than 60 days delinquent and 9.12 percent were at least a month delinquent. By the end of 2010, another 7 million homes are expected to enter foreclosure.<sup>1</sup> *Unless the crisis is abated, by the time it runs its course, as many as one in five residential borrowers will have gone into foreclosure* [italics in original].



Prof. Adam Levitin

... Private lenders, industry associations, and two successive administrations have made a variety of efforts to mitigate the crisis and encourage loan modifications and refinancings, including a series of much vaunted initiatives—the HOPE Now Alliance, FHA Secure, Hope4Homeowners and the

...  
The foreclosure crisis has gone in waves of defaults. First there were the speculators, who borrowed close to 100 percent of property values and maybe more with construction mortgages. As soon as property values flattened, much less dropped, they bailed, as the costs of carrying the mortgages was more than the appreciation that they anticipated receiving on a sale. Many of these loans were non-recourse and the speculators simply walked away.

Next came a wave of defaults caused by payment reset shock, primarily from expiration of teaser rates on hybrid ARMs.

...  
Homeowners who took out hybrid ARMs anticipated being able to refinance the properties when the teaser rate expired. A refinancing, however, requires some equity in the property (and in the declining market, substantial equity in the property). Many of these mortgages were made by homeowners who had little

## Legislative Update

Making Home Affordable Program—but these have only had what can charitably be described as limited success.

...  
Unfortunately, there is still no consensus on why we are seeing so few loan modifications, even with tremendous government incentive payments to mortgage servicers. Some have argued that securitization structures create a variety of obstacles to loan modification, including outright contractual prohibitions and limitations, litigation risk, and adverse incentives for the servicers who make the modification decisions.<sup>2</sup> Others have argued that factors like redefault risk and self-cure risk make loan modification a poor bet economically for mortgagees, and that the simple reason modifications are not happening is that they are not profitable, even compared to losses of 60 cents on the dollar in foreclosure.<sup>3</sup>

equity in the property to begin with, but who anticipated accumulating it quickly in the appreciating market of the housing bubble. When the market fell, they lacked the equity to refinance.

...  
Now we are looking at another wave of defaults from interest rate resets, this time on so-called pick-a-pay or pay-option ARMs.

...  
Most pay-option ARMs were not subprime loans. Instead, they were made to prime borrowers, but were often underwritten with reduced documentation, making them so-called "Alt-A" loans... while low interest rates will mitigate the payment reset shock, the switch from negative amortization to positive amortization alone will result in a greatly increased monthly payment for many pay-option borrowers, who will then be confronted with making significantly greater monthly payments for a property in which they have no equity.

<sup>1</sup> "Not Much Relief," *New York Times*, July 5, 2009, at WK7.

<sup>2</sup> See, e.g., Anna Gelpert and Adam J. Levitin, "Rewriting Frankenstein Contracts: Workout Prohibitions in Residential Mortgage-Backed Securities," 82 S. Cal. L. Rev. (forthcoming 2009).

<sup>3</sup> See, e.g., Manuel Adelino, "Why Don't Lenders Renegotiate More Home Mortgages? Redefaults, Self-cures, and Securitization," Fed. Reserve Bank of Boston, Public Policy Discussion Paper, No. 09-4, July 6, 2009, at [www.bos.frb.org/economic/ppdp/2009/ppdp0904.pdf](http://www.bos.frb.org/economic/ppdp/2009/ppdp0904.pdf).

continued on page 68

# Legislative Update: ABI Members Testify at Congressional Hearings

from page 10

The fourth wave of defaults has already begun, and the worst is still ahead of us. This wave is fueled by a declining market, as underwater homeowners with no prospect of positive equity in the near future strategically default on their mortgages... A number of studies have identified negative equity as a, if not the, primary factor in current foreclosures.<sup>4</sup>

...

Rising unemployment will only exacerbate the problems of negative equity. When a home is both underwater *and* the monthly payments are unaffordable out of current earnings, a default is nearly inevitable.

...

Unfortunately, none of the current loan-modification or refinancing efforts attempt to deal with the negative equity problem in a way that offers a long-term solution.

...

To recapitulate:

- We know we are in the midst of an economic catastrophe for the American family and for many communities and that more trouble is to come.
- We know that these problems are likely to last not just for another six months, but for several years, and that they will place a drag on the entire economy, ensuring that recovery, whenever it comes, will be slow.
- We know that there are two factors driving defaults on mortgages — unaffordable payments (often due to rate resets and unemployment) and negative equity (due to high initial loan-to-value ratios and falling housing prices).
- We know that foreclosures place downward pressure on home prices and beget more foreclosures, creating a negative feedback loop or death spiral in the housing market.
- We know that there still aren't nearly enough loan modifications being done to offset the tide of foreclosures.
- We know that almost no loan modifications address negative equity

by reducing principal balances. Of the 185,156 loan modifications in the first quarter of 2009, only 3,389 or 1.8 percent involved principal balance reductions, and all but four of these were for loans held in portfolio, rather than securitized.<sup>5</sup>

- We also know many loan modifications do not address affordability by reducing monthly payments. 45.8 percent of the loan modifications done in the first quarter of 2009 resulted in monthly payments remaining unchanged or even increasing (in 18.5 percent of cases).<sup>6</sup>
- We also know that we still don't have consensus about why the numerous refinancing and modification programs attempted by industry, the Bush administration, and the Obama administration haven't made significant headway against the volume of defaults and foreclosures, but we can say that it is likely multicausal and not subject to a silver-bullet cure.

## Bankruptcy Modification of Mortgages

This situation leaves only one option on the table for the federal government: Permit homeowners to modify their mortgages in bankruptcy. Whatever the factors may be that are inhibiting voluntary and government-subsidized loan modifications, they are immaterial if a mortgage loan can be modified in bankruptcy. Permitting the modification of single-family principal residence mortgages in bankruptcy would create a mechanism that would address the negative equity problem as well as the affordability problem, while also denying relief to speculators who would abuse the system and homeowners who cannot realistically afford even a modified mortgage.<sup>7</sup> This mechanism could be immediately available and would have no additional cost to the taxpayers, and it would not result in

higher mortgage costs or less mortgage credit availability as long as lenders' foreclosure losses remain greater than bankruptcy modification losses.

...

The policy behind the special protection for single-family principal residences is that Congress believed in 1978 that if mortgage lenders were shielded from losses in bankruptcy, competition would ensure that lenders would pass on these gains to consumers in the form of lower mortgage costs, thereby encouraging homeownership.<sup>8</sup>

Unfortunately, the economic assumption behind the special protection for single-family principal residence mortgages in bankruptcy is incorrect. *It is unlikely that bankruptcy modification of mortgages will result in higher costs of credit or less credit availability, despite the banking industry's protestations to the contrary.* The banking industry has not presented a scintilla of evidence that permitting cramdown would affect credit prices. Instead, they have made declarations based on a simplistic economic view that greater access to bankruptcy necessarily results in higher costs of credit and lower credit availability. The economics of bankruptcy, however, are more complicated.

I have conducted the only empirical work on the topic,<sup>9</sup> and the clear finding from my research is that mortgage prices are largely insensitive to bankruptcy modification risk. No premium compensating for bankruptcy modification appears in primary mortgage pricing, secondary mortgage market pricing, or, most crucially, in private mortgage insurance pricing, and there is no discernible effect on homeownership rates from the protection. Permitting bankruptcy modification is unlikely to result in higher mortgage costs or lower mortgage credit availability.

This should not be a surprising finding. Lenders will only raise prices in reaction to permitting bankruptcy

<sup>5</sup> Office of Comptroller of the Currency and Office of Thrift Supervision, OCC and OTS Mortgage Metrics Report, First Quarter 2009, at [www.occ.treas.gov/ftp/release/2009-77a.pdf](http://www.occ.treas.gov/ftp/release/2009-77a.pdf) at 21, 23.

<sup>6</sup> *Id.* at 25.

<sup>7</sup> It is important to emphasize, however, that even with cramdown, chapter 13 cannot help a homeowner unless the homeowner has regular income. Regular income is a threshold eligibility requirement for chapter 13. In a two-earner family, there need be only one regular income, but if a family's difficulty in paying its mortgage is caused by unemployment of the sole earner, chapter 13 would not be an option. The reason I emphasize the importance of regular income for chapter 13 eligibility is that unemployment will be a major factor in the coming wave of foreclosures.

<sup>8</sup> *Nobelman v. American Savings Bank*, 508 U.S. 324 (1993). The legislative history on the antimodification provision 11 U.S.C. §1322(b)(2) is scant and not particularly illuminating of congressional intent (it is more illuminating of congressional skepticism in response to mortgage industry claims). Moreover, the history of the anti-modification provision suggests that it was intended only to prevent adjustments to mortgage rates and amortizations, not interfere with 11 U.S.C. §506, a generally applicable provision of the Bankruptcy Code that limits the amount of a secured claim to the value of the collateral, with any excess claim being treated as unsecured.

<sup>9</sup> Adam J. Levitin, "Resolving the Foreclosure Crisis: Modification of Mortgages in Bankruptcy," 2009 *Wisc. L. Rev.* 565 (2009).

<sup>4</sup> See, e.g., Congressional Oversight Panel, "The Foreclosure Crisis: Working Toward a Solution," at <http://cop.senate.gov/reports/library/report-030609-cop.cfm>; Stan Leibowitz, "New Evidence on the Foreclosure Crisis," *Wall St. J.*, July 3, 2009 at A13; Michael LaCuer-Little, "Follow the Money: A Close Look at Recent Southern California Foreclosures," March 5, 2009, paper presented at the American Real Estate and Urban Economics Association 2009 Mid-Year Meeting, at [www.areuea.org/conferences/papers/download.phtml?id=2133](http://www.areuea.org/conferences/papers/download.phtml?id=2133).

modification of all mortgages if it would result in greater losses to them than the alternative—foreclosure. The choice a mortgagee faces is not bankruptcy loss versus no loss, but bankruptcy loss versus foreclosure loss. So long as bankruptcy losses are smaller than foreclosure losses, permitting bankruptcy modification will not result in higher prices.

Thus, it all comes down to the question of whether lenders lose more in bankruptcy than in foreclosure. The best evidence on the question says they do not, and this is not surprising; bankruptcy law guarantees that lenders will recover at least as much as in a foreclosure.

Any attempt to mitigate foreclosures faces the challenges of quickly deciding which homeowners to help, addressing the twin problems of negative equity and affordability, avoiding moral hazard, and determining who will bear the cost of loan modifications. Bankruptcy modification helps solve these very issues and can do so more effectively and cheaply than any other proposed solution. Bankruptcy modification is also the only way to bypass the contractual, legal, practical and economic problems created by securitization.

Permitting bankruptcy modification would not create moral hazard for lenders or debtors. Lenders will lose loan value. While they will generally do better than in foreclosure, and the loss is not because of bankruptcy per se, there is still a high price for lenders that will discourage reckless lending. As for homeowners, chapter 13 bankruptcy is not a “drive-by” process. In order to receive a discharge in chapter 13, a debtor must live on a court-supervised, means-tested budget for three or five years,<sup>10</sup> and fully repay certain debts, including allowed secured claims, domestic-support obligations, and tax liabilities.<sup>11</sup> There are also limitations on how often a debtor may receive a bankruptcy discharge.<sup>12</sup> Nor would bankruptcy modification give homeowners a windfall. At best, a homeowner with negative equity would end up with zero equity, not positive equity. Given the large transaction costs to a sale, debtors are unlikely to sell their properties for anything beyond a *de minimis* profit over the next few years.

Finally, one of the greatest advantages of bankruptcy modification is that it has no cost for taxpayers. In an age of a trillion dollars in government bailouts, bankruptcy modification is a rare bargain.

Bankruptcy courts are well staffed relative to historic filing levels, and court fees cover the administrative costs of the process. Bankruptcy modification has no cost to taxpayers, and stabilizing housing markets would greatly help economically beleaguered local governments.

The foreclosure crisis is not about to stop any time soon. Judicially-supervised restructuring of mortgages is the only tool we have left in the box. It’s a tool we know can work. It’s a tool that can save hundreds of thousands of families their homes and help stabilize communities, housing markets, and the economy. It’s time to use it.

**Testimony of Stephen J. Lubben**  
*Seton Hall University School of Law*  
*Newark, N.J.*  
*lubbenst@shu.edu*

**T**he GM and Chrysler bankruptcy cases implicate TARP in two respects that come within my area of expertise. First, there is the claim that TARP money was used to violate the rights of creditors and otherwise undermine “typical” bankruptcy practice. Much of this argument turns on the use of a “363 sale” in both cases. Second, there is the question of the use of TARP money to fund these cases in place of a normal “DIP lender,” that is the government acting as post-bankruptcy lender, and the consequent power that role gave to Treasury and the Automotive Task Force.



*Prof. Stephen J. Lubben*

... Although § 363 itself contains no apparent limitations, the courts have developed rules that prevent imposition of a reorganization plan through the sale process. This is the so-called rule against “sub rosa” plans—that is, plans disguised as sales.<sup>1</sup> But the courts are also aware that an overly robust definition of what constitutes a “sub rosa” plan would destroy the utility of the Bankruptcy Code, which provides an important tool for mitigating the collateral effects of financial distress.

Thus, despite some overheated commentary to the contrary, the basic structure used to reorganize both GM and Chrysler was not unprecedented. Indeed, it was entirely ordinary.

The press has speculated—generally accurately—that all the consideration will go to the secured lenders in Chrysler. They have a \$6.9 billion claim and the sale proceeds were \$2 billion. The press has also speculated that the consideration in GM will go to the bondholders. That’s only partially right; the GM pleadings make clear that the consideration will go to “old GM” to distribute to creditors. Since the secured lenders will have been paid off by this point, the sale proceeds will go to unsecured creditors (of which the bondholders are one part).

None of this constitutes a *sub rosa* plan.

In both GM and Chrysler the UAW is getting better treatment than other unsecured creditors. But that better treatment is not coming from the debtor. It is coming from the U.S. government, passing through the purchaser of the “good” assets in each case. We can debate whether it is wise for the government to bail out the UAW, but it still does not make it a *sub rosa* plan and really does not implicate the bankruptcy process at all.

There is also little beyond rhetoric to support the idea that either case impairs investor rights. GM had \$27 billion in secured debt and an estimated liquidation value of at most \$9.7 billion. That is, if GM had liquidated, the bondholders would have been entitled to absolutely nothing.

The chapter 11 strategy used in GM pays non-governmental secured creditors in full and gives unsecured creditors 10 percent of the reorganized company and warrants for 15 percent more of the company. This is substantially more than any other offer available to the bondholders.

Likewise, it was entirely rational for the bulk of Chrysler’s secured lenders to believe that \$2 billion in cash, on their \$6.9 billion claim, was, by far, the highest possible recovery they could obtain. Indeed, a nearly 30 percent recovery is clearly better than these lenders could have done if they had liquidated the debtor’s assets. And liquidation was the lenders’ only real alternative.

It has been alleged that Chrysler’s senior lenders only agreed to accept their treatment because they were recipients of TARP funds. And it has more generally been asserted that Treasury and Task Force members were overly aggressive in demanding changes from the debtors and concessions from creditors. Importantly, many of these allegations have not been supported by

*continued on page 70*

<sup>10</sup> 11 U.S.C. §1325(b) (2005).

<sup>11</sup> 11 U.S.C. §§1322(a); 1325(a)(5) (2005).

<sup>12</sup> 11 U.S.C. §§727(a)(7)-(9); 1328(f)(2) (2005).

<sup>1</sup> The phrase was first used in *In re Braniff Airways Inc.*, 700 F.2d 935 (5th Cir. 1983).

# Legislative Update: ABI Members Testify at Congressional Hearings

from page 69

proof and instead seem to represent little more than conspiracy theories.

...

In this context, Treasury and the Task Force's actions seem like those of a normal secured lender, exercising its rights to maximize recovery on its loans. And given the amount of money involved, I think the taxpayers have every reason to expect that the Treasury would negotiate just as hard as any other "DIP lender" under similar circumstances.

...

The dissenting Chrysler lenders' complaint that they do not like the decisions made by the majority of the senior lenders ignores the simple fact that they agreed by contract to be bound by "majority rule." This is not a problem created by TARP, the Bankruptcy Code, or the federal government, but by the agreement to which the lenders themselves voluntarily agreed to be bound. In essence, they seem to be attacking the bankruptcy process out of frustration with their poor investment decision.

The handling of these cases was not always perfect—for example, the requirement in the bidding procedures that any bidder assume the UAW agreements smacks of overreaching. But in the context of these cases, it was probably a harmless error. I doubt there was another bidder willing to pay more than \$2 billion for Chrysler's assets. And the senior lenders—who could have "credit bid" their claim—showed no interest in taking on these assets.

...

In short, by and large, I think that the criticism of the automotive bankruptcy cases does not stand up to careful scrutiny. Congress may well want to consider the policy implication of a chapter 11 process that has become heavily driven by quick asset sales and lender control. But given the reality of current chapter 11 practices, both GM and Chrysler's chapter 11 cases were not all that exceptional.

**Testimony of John A. E. Pottow**  
*University of Michigan Law School*  
*Ann Arbor, Mich.*  
*pottow@umich.edu*

In analyzing the demographics of the rising number of consumer bankruptcy filings, the CBP

[Consumer Bankruptcy Project—"a research collaboration of 10 scholars at various universities whose specialities range from sociology to health policy"] finds the most rapid escalation in Americans in the over-65 demographic. In fact, the number over 55 is rising too—well beyond the growth of this age cohort in the general population.<sup>1</sup> In 1991, approximately 2.1 percent of bankruptcy filers were over 65. By 2001 that number had more than doubled to 4.5 percent. Our 2007 data find the number has risen again to around 7.0 percent. (Dropping the age threshold to 55 finds those percentages increasing from 8.2 percent in 1991 to 11.7 percent in 2001 and doubling again to 22.3 percent in 2007.) Thus, in analyzing the bankruptcy filings of American families over the past few years, what is most striking to us in terms of demographic findings is how elder Americans are the most rapidly growing age group—at a rate of over 100 percent.



Prof. John A. E. Pottow

Why are the elderly filing so much more now for bankruptcy? One important reason appears to be medical bankruptcy. In fact, multivariate regression analysis (a statistical technique that some scholars mistakenly believe is both necessary and sufficient to establish causation) of CBP data reveals that age is a positive and statistically significant predictor of medical bankruptcy filing. The "odds ratio" of age is 1.016 per year ( $p = 0.0001$ ). This means that for each year older you are, you are 1.016 more likely to have your bankruptcy have been for a medical reason.<sup>2</sup>

...

I am less preoccupied than others with trying to find the exact, perfect definition of a medical bankruptcy... *Whatever* the metric one prefers, it cannot be denied that the numbers are rising. Debating whether the problem has gone from bad to terrible or terrible to disastrous is all distracting noise from the broader and

<sup>1</sup> Our CBP results on aging trends are published in Deborah Thorne, Elizabeth Warren and Teresa A. Sullivan, "The Increasing Vulnerability of Elder Americans: Evidence from the Bankruptcy Court," 3 *Harv. L. & Pol'y Rev.* 87 (2009).

<sup>2</sup> The regression results are reported at Himmelstein et al., *supra* note 4, at table 4.

more important observation that things are getting worse.

...

The CBP analyzed the first national random sampling of bankruptcy filers after BAPCPA to examine their incomes (as well as other financial characteristics).<sup>3</sup> We published our findings suggesting that BAPCPA did not appear to have weeded out high-income filers as intended but rather had a seemingly random impact: Cutting the numbers of bankruptcy filers, to be sure, but not by virtue of their incomes. In academic statistics-speak, we would call this having a "nonselective" effect.

What is important about the means test that is currently part of the Bankruptcy Code is that it does not distinguish "medical debtors" or otherwise accord them any heightened protection that the average store charge-card junkie would enjoy.

...

The only relevant deduction related to medical debtors is for monthly expenses for health insurance and health savings accounts, as well as the continuation of pre-existing expenses for a family member who cannot pay his or her own expenses. That means debtors who have accumulated mounting medical bills, or who have charged up credit cards to cover living expenses while on reduced work time to fight an illness, receive no relief whatsoever from the means test. With its narrow focus on current monthly income, the means test is unable to appreciate the reality of how families struggle financially with medical hardship.

...

Secondly, the means test has a much-touted "exception," codified in §707(b)(2)(B). I say "much-touted" because when BAPCPA was passed, many pointed to this "exception" as a way to help out medical debtors.<sup>4</sup>

...

My skepticism with §707(b)(2)(B)'s capacity to mitigate bankruptcy for medical debtors led me to analyze our CBP files for debtors who successfully employed its exception. That is, I sought to determine how many debtors flunked

<sup>3</sup> See Lawless et al., *supra* note 1.

<sup>4</sup> Cf. 151 Cong. Rec. S1856 (daily ed. March 1, 2005) (statement of Sen. Grassley) ("So that I am crystal clear, people who do not have the ability to repay their debts can still use the bankruptcy system as they would have before...").

the means test but were able nevertheless to avail themselves to this exception (which also applies to armed service members) to evade the consequences of a means test flunking. The results were striking. Of the 1,823 chapter 7 debtors I looked at in our dataset, exactly four (0.2 percent) even filled out the part of the bankruptcy petition where one would try to claim special circumstances.

...

Many if not most experts suggest abolishing the means test as what can be most charitably described as a well-intentioned failure.<sup>5</sup> I join them, not

only because I have increasing faith that U.S. trustees and bankruptcy judges can likely screen abuse adequately without a statutory straightjacket, but also because I have now seen the data of non-selective effects and I worry that the means test is in a sense backfiring, drawing many needy Americans away from the financial relief in bankruptcy they require. The cost of this means-test system is huge in terms of deluging debtors and court clerks with compulsory (and unnecessary) paperwork,

<sup>5</sup> Cf. Letter from Bankruptcy and Commercial Professors to Sens. Spector and Leahy, (Feb. 16, 2005), available at [www.abiworld.org/pdfs/LawProfLetter.pdf](http://www.abiworld.org/pdfs/LawProfLetter.pdf) (imploping Congress to consider predicted costs and inefficacies of the means test and BAPCPA).

a cost that seems especially poignant for debtors who went bankrupt solely for medical reasons.

But I also believe that incremental reform works. If we are not ready to confess error on the means test and scrap it altogether, then we could at least exempt medical debtors—the least-blameworthy debtors needing relief—from its operation. Proposed H.R. 901 clearly takes a step in the right direction in trying just such an approach, and even takes a pretty workable stab at defining a “medical” bankrupt.<sup>6</sup> ■

<sup>6</sup> See Medical Bankruptcy Fairness Act, H.R. 901, 111th Cong., (2009), §2 (defining “medically distressed debtor”).

Copyright 2009  
American Bankruptcy Institute.  
Please contact ABI at (703) 739-0800 for reprint permission.