Contact: John Hartgen
(703) 739-0800
jhartgen@abiworld.org

EXPERTS SUGGEST ESTABLISHING NEW CHAPTER 10 BANKRUPTCY FOR COMPANIES THAT ARE "TOO BIG TO FAIL"

February 19, 2009, Alexandria, Va. — As an alternative to a chapter 11 bankruptcy or government bailout, two bankruptcy experts have suggested a new "chapter 10" bankruptcy to be established within the Bankruptcy Code for companies that are viewed as "too big to fail." In response to financial distress of large companies, primarily the "Big Three" automakers General Motors, Chrysler and Ford, authors Prof. **George W. Kuney** of the University of Tennessee College of Law (Knoxville, Tenn.) and **Michael St. James** of St. James Law PC (San Francisco) have laid out their idea in the article "A Proposal for Chapter 10: Reorganization for 'Too Big to Fail' Companies," to be published in the March 2009 issue of the *American Bankruptcy Institute Journal*.

Kuney and St. James found that a chapter 11 filing for companies such as the Big Three automakers "would inevitably impose great harm on vendors and other interrelated businesses." The authors said that the primary problem with the current chapter 11 process was that a filing by a "too big to fail" (TBTF) company was that it could result in a cascade of business failures and layoffs for other nondebtor companies. The cascade of business failures would be due in large part to the "ordinary-course-of-business trade debts," such as vendor payments and payroll expenses, that are put on hold for months or years while a company negotiates a reorganization plan. Vendors dependent on those payments, such as auto suppliers, are also likely to fail as a result of a TBTF company bankruptcy.

To remedy this potential problem of cascading business failures, the authors' proposal for a new chapter 10 bankruptcy centers on excluding ordinary-course-of-business trade debts from the current chapter 11 process. "This one modification will free the bankruptcy process for a TBTF company from administering multitudes of granular claims that are unrelated to its core financial problems," according to Kuney and St. James. "Since payables would not be disrupted by the bankruptcy filing, the bankruptcy of the TBTF company would not inevitably and automatically lead to cascading business failures."

While providing the important exclusion for ordinary-course-of-business trade debts, the authors said that the chapter 10 process would closely resemble the chapter 11 filing process.

The chapter 10 proposal would adopt the processes established by the current chapter 11 structure with respect to the restructuring of ongoing contractual relationships, modification or rejection of collective-bargaining agreements, restructuring of secured debt and the restructuring of rights and powers of the various financial stakeholders and constituencies in the bankruptcy case.

To obtain a copy of "A Proposal for Chapter 10: Reorganization for 'Too Big to Fail' Companies," please contact John Hartgen at 703-739-0800 or via email at jhartgen@abiworld.org. In addition, make sure to visit ABI's Bankruptcy Town Hall Web site to read expert opinions and view several quick polls about whether the U.S. automakers should file for bankruptcy or if the federal government should provide further financial assistance to the struggling companies. To view the ABI Bankruptcy Town Hall site, please visit http://townhall.abiworld.org/.

###

ABI is the largest multi-disciplinary, nonpartisan organization dedicated to research and education on matters related to insolvency. ABI was founded in 1982 to provide Congress and the public with unbiased analysis of bankruptcy issues. The ABI membership includes more than 11,700 attorneys, accountants, bankers, judges, professors, lenders, turnaround specialists and other bankruptcy professionals, providing a forum for the exchange of ideas and information. For additional information on ABI, visit www.abiworld.org. For additional conference information, visit http://www.abiworld.org/conferences.html.