

**Large Delaware and New York
Reorganization Cases Fail at a
Higher Rate than Elsewhere**

Feasibility: Code §1129(a)(11)

The court shall confirm a plan only if . . .
confirmation of the plan is not likely to be followed
by the liquidation, or the need for further financial
reorganization, of the debtor . . . unless proposed
in the plan

LoPucki & Kalin Study

- Published at 54 Vanderbilt L. Rev. 231(2001)
- We studied **all** firms that
 - Emerged from bankruptcy of a large, public firm
 - Under plan confirmed in US 1991-96
 - 127 firms, followed to February 2000
- Findings:
 - Delaware-reorganized: 30% refiled, 7.9% per year
 - New York-reorganized : 23% refiled, 4.8%
 - Other court reorganized: 5% refiled, 1.1% per year

LoPucki & Doherty study

- Forthcoming Vanderbilt Law Review Symposium, November 2002; posted <http://www.law.ucla.edu/erg>
- Cases studied: All public firms that
 - Emerged from bankruptcy of large public firm
 - Under plan confirmed 1991-96
 - 98 total (26 Delaware, 16 New York, 56 Other Courts)
- This study different in that:
 - Only firms emerging as public firms (10-K data)
 - Each firm followed five years

Reorganization Failure Rates

	Delaware	New York	Other Cts	Significan
Refiling	42 %	19 %	4 %	$p < .001$
Business	24 %	25 %	13 %	DE/OT .1
Plan	54 %	31 %	14 %	$p = .001$
Earnings	-9 %	-3 %	1 %	$p = .002$

Refiling: A second bankruptcy in five years after

Business: Out-of-business (distress) in five years

Plan: Refiled or out of business in five years after

Earnings: Average annual profits in five years after

Summary of findings

- Delaware reorganizations failed more often
- Filing firm characteristics (exogenous) didn't predict failure
 - Not financial condition
 - Not size, complexity, industry
 - Delaware doesn't get significantly harder cases
- Court characteristics (endogenous) did predict failure
 - Failure to fix the business
 - Too much leverage emerging (weak)
 - Prepackaging and too much speed
 - Plans too simple

Can tougher cases excuse the high refiling rates?

- For a factor to explain Delaware's high failure rate:
 1. The factor must correlate with failure
 2. The factor must correlate with Delaware
- Example: For large case size to explain Delaware's high failure rate:
 1. Large cases must fail more often
 2. Large cases must gravitate to Delaware

Plan complexity

- **Fewer plan classes correlates with failure**
 - Plan failures averaged 13.3 classes; plan successes averaged 16.8 classes ($p=.027$)
- **Fewer plan classes correlates with Delaware**
 - Delaware firms averaged 12.6 classes
 - New York firms averaged 15.5 classes
 - Other court firms averaged 17.7 class ($p=.008$)

Delaware reorganizes fewer firms

(Cases filed after 1989 and disposed of before 1997)

	Delaware	Other Cts	
Cases	38	117	
Conversions	0	4	
Dismissals	0	1	
§ 363 Sales	1	1	
Confirmations	37	111	
Emerging firms	30 (79%)	99 (85%)	