

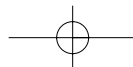
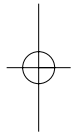
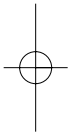
THE BANKING LAW JOURNAL

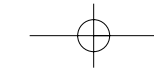
VOLUME 122

NUMBER 1

JANUARY 2005

HEADNOTE: RESPONDING TO PROPOSED ENFORCEMENT ACTIONS Steven A. Meyerowitz	1
RESPONDING TO PROPOSED ENFORCEMENT ACTIONS BY THE FEDERAL BANKING AGENCIES Joseph T. Lynyak III	3
CREDIT UNION CONVERSIONS Stephanie Fisch	26
THE <i>BANKVEST</i> CASE: THE SUPREME COURT LETS STAND FIRST CIRCUIT DECISION FAVORING PRESERVATION OF ESTATE ASSETS FOR ALL CREDITORS, INCLUDING INSTITUTIONAL LENDERS Jay L. Gottlieb and Arianna Frankl	31
NATIONAL BANKS: WHERE DOES DIVERSITY JURISDICTION LIE? James T. Shearin and Peter S. Olson	44
BANKRUPTCY FOR BANKERS Howard Seife	52
AUDIT COMMITTEES Christopher J. Zinski	62
BANKING BRIEFS Donald R. Cassling	77



**EDITOR-IN-CHIEF****Steven A. Meyerowitz***President, Meyerowitz Communications Inc.***MANAGING EDITOR****Adam McNally****BOARD OF EDITORS****Henry J. Bailey***Professor of Law, Emeritus
Willamette Univ. College of Law***Paul Barron***Professor of Law
Tulane Univ. School of Law***George Brandon***Partner, Squire, Sanders &
Dempsey LLP***Barkley Clark***Partner, Shook, Hardy & Bacon
LLP***John F. Dolan***Professor of Law
Wayne State Univ. Law School***Stephanie E. Dreyer***Attorney, Jenkins & Gilchrist,
P.C.***Thomas J. Hall***Partner, Chadbourne & Parke
LLP***Michael Hogan***Ashelford Management Serv. Ltd.***Mark Alan Kantor***Washington, D.C.***Satish M. Kini***Partner, Goodwin Procter LLP***Jonathan R. Macey***Professor of Law
Cornell Law School***Martin Mayer***The Brookings Institution***Brian J. Peretti***U.S. Department of Treasury***Julia B. Strickland***Partner, Stroock & Stroock &
Lavan LLP***Marshall E. Tracht***Professor of Law
Hofstra University School of Law***Stephen B. Weissman***Partner, Rivkin Radler LLP***Elizabeth C. Yen***Partner, Hudson Cook, LLP*

Bankruptcy for Bankers

Howard Seife*Partner, Chadbourne & Parke
LLP*

Technology, Law, and Banking

James F. Bauerle*DKW Law Group LLC*

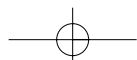
Audit Committees

Christopher J. Zinski*Partner, Schiff Hardin LLP*

Banking Briefs

Donald R. Cassling*Partner, Jenner & Block LLP*

THE BANKING LAW JOURNAL is published ten times a year by A.S. Pratt & Sons, 1901 Fort Myer Drive, Arlington, VA 22209, Copyright © 2005 ALEX eSOLUTIONS, INC. All rights reserved. No part of this journal may be reproduced in any form—by microfilm, xerography, or otherwise—or incorporated into any information retrieval system without the written permission of the copyright owner. Requests to reproduce material contained in this publication should be addressed to A.S. Pratt & Sons, 1901 Fort Myer Drive, Arlington, VA 22209, fax: 703-528-1736. For subscription information and customer service, call 1-800-572-2797. Direct any editorial inquires and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 10 Crinkle Court, Northport, New York 11768, SMeyerow@optonline.net, 631-261-9476 (phone), 631-261-3847 (fax). Material for publication is welcomed—articles, decisions, or other items of interest to bankers, officers of financial institutions, and their attorneys. While the utmost care will be given material submitted, we cannot accept responsibility for unsolicited manuscripts. POSTMASTER: Send address changes to the Banking Law Journal, A.S. Pratt & Sons, 1901 Fort Myer Drive, Arlington, VA 22209.



BANKRUPTCY FOR BANKERS

HOWARD SEIFE

SOLVENT DEBTORS MAY BE UNABLE TO ENTER BANKRUPTCY IN ABSENCE OF “FINANCIAL DISTRESS”

Under federal bankruptcy law, a debtor need not be insolvent before filing for bankruptcy protection.¹ The drafters of the Bankruptcy Code understood the need for early access to bankruptcy relief to allow a debtor to rehabilitate its business before it is faced with a hopeless situation.²

The fact that there is no insolvency requirement, however, does not mean that the courts will permit every solvent debtor to have unfettered access to chapter 11. Indeed, chapter 11 bankruptcy petitions are subject to dismissal under 11 U.S.C. § 1112(b)³ unless they are filed in good faith, and the burden is on the bankruptcy petitioner to establish that its petition has been filed in good faith.⁴

At its most fundamental level, the good faith requirement ensures that the Bankruptcy Code’s careful balancing of interests is not undermined by petitioners whose aims are antithetical to the basic purposes of bankruptcy. As one circuit court of appeals has stated, the good faith standard “furthers the balancing process between the interests of debtors and creditors which

Howard Seife is a partner in Chadbourne & Parke LLP’s New York office and chair of the firm’s bankruptcy and financial restructuring practice. Mr. Seife has more than 25 years of experience as a bankruptcy attorney and has represented lenders and other interested parties in reorganizations of retail, technology, energy, real estate, leasing, textiles, manufacturing, telecommunications, and media companies. He has dealt with virtually every bankruptcy situation, including debtor-in-possession financing, cash collateral orders, automatic stay relief, plan negotiation, sales of assets, and preference and fraudulent conveyance actions, and is a leader in the use of cross-border ancillary proceedings. Mr. Seife may be reached at (212) 408-5361 and hseife@chadbourne.com.

characterizes so many provisions of the bankruptcy laws and is necessary to legitimize the delay and costs imposed upon parties to a bankruptcy.”⁵ The appellate court explained that the good faith requirement “prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefiting them in any way.”⁶

Recently, the U.S. Court of Appeals for the Third Circuit issued a significant decision in a case involving a solvent debtor’s attempt to enter chapter 11, finding that it did not meet the good faith test. The Third Circuit’s decision, in *In re Integrated Telecom Express, Inc.*,⁷ will limit the circumstances where solvent debtors can enter chapter 11 in bankruptcy courts in the Third Circuit. Moreover, its reasoning, if adopted by other courts across the country, likewise will restrict debtors’ access to bankruptcy courts, thereby permitting — indeed, requiring — lenders, other creditors and debtors to resolve their disputes outside of bankruptcy.

Deteriorating Market

The case involved Integrated Telecom Express, a supplier of software and equipment to the broadband communications industry. In the summer of 2000, Integrated negotiated a 10 year lease of real property in Silicon Valley with the property’s owner. The monthly base rent was \$200,000, increasing five percent annually.

In 2001, the market for many of Integrated’s products deteriorated, causing Integrated to suffer net losses of \$36.2 million. In November 2001, a securities class action was filed in the Southern District of New York naming Integrated as a defendant, along with certain officers, directors, and underwriters of the company. The class action alleged claims in the amount of \$93.24 million for various violations of the Securities Act of 1933 and the Securities Exchange Act of 1934 in connection with Integrated’s initial public offering of securities.

Several months later, Integrated’s board of directors approved a plan to liquidate and dissolve the company under applicable Delaware law. The two major issues to be resolved prior to dissolution were the disposition of Integrated’s intellectual property rights and its remaining obligations under the Silicon Valley lease. In May 2002, the board approved the sale of sub-

BANKING LAW JOURNAL

stantially all of Integrated's intellectual property and related assets to Real Com, a corporation to be formed by certain of Integrated's officers and directors, for \$1.5 million plus assumption of Integrated's technical support and warranty obligations.

Thereafter, Integrated attempted to negotiate an accord and satisfaction of its lease. After Integrated's board authorized a chapter 11 filing in the event that the landlord would not accept \$8 million as an accord and satisfaction of Integrated's obligations under the lease, Integrated's bankruptcy counsel sent the landlord a letter stating that, if the landlord were unwilling to settle, Integrated was prepared to avail itself of various provisions in the Bankruptcy Code, including the cap on landlords' claims set forth in 11 U.S.C. § 502(b)(6).⁸ The letter asserted that "even if [Integrated] were to file bankruptcy solely to cap the Lessor's claim using Bankruptcy Code §502(b)(6), a use for which this Code section is intended, [Integrated] would not violate the good faith filing doctrine."

The parties did not reach a settlement, and Integrated filed a voluntary petition for relief under chapter 11. According to schedules filed with the bankruptcy court, Integrated had \$105.4 million in cash and \$1.5 million in other assets at the time that it filed for bankruptcy. The landlord filed a proof of claim listing the present discounted value of Integrated's lease obligations at approximately \$26 million. Integrated's schedules listed additional miscellaneous liabilities of approximately \$430,000.

Immediately after Integrated filed its petition, Integrated attempted to address the two major obstacles to dissolution: the sale of its intellectual property assets and its remaining obligations under the lease. The day after Integrated filed its petition, it moved to sell its intellectual property assets at a public auction. The Official Committee of Equity Security Holders objected to the adequacy of Integrated's efforts to market the assets. Ultimately, Integrated was able to renegotiate the sale and to introduce other bidders. As a result, a new agreement was reached with Real Com for some, but not all, of the assets for \$2 million, an increase of \$500,000. The remaining assets were sold for \$500,000 after confirmation of the plan of reorganization.

Integrated also moved to reject the Silicon Valley lease. In response, the landlord filed a motion to dismiss the chapter 11 proceeding on the ground that the petition was not filed in good faith. The bankruptcy court denied

the motion to dismiss from the bench, explaining that Integrated had “offered a number of reasons for the filing of the bankruptcy case,” and that the bankruptcy court “believe[d] there is validity to a number of those considerations.” The bankruptcy court stressed that Integrated “was losing a lot of money” and characterized the company’s financial losses as “dramatic.” According to the bankruptcy court, in September 2001 Integrated “was experiencing a dramatic downward spiral” and, as such, the board of directors “had an obligation, and appropriately exercised that obligation, to give the investors their money back.” The bankruptcy court also held that, “even assuming” that Integrated’s stated reasons for filing the petition were not “particularly persuasive,” Integrated’s desire to take advantage of the §502(b)(6) cap on landlords’ claims was not a sufficient basis on which to dismiss the petition as a matter of law.

Thereafter, the bankruptcy court confirmed Integrated’s proposed plan of liquidation over the landlord’s objections; applying §502(b)(6), the bankruptcy court reduced the landlord’s claim from \$26 million to \$4.3 million. The liquidation plan reserved \$5 million of Integrated’s estate, which when added to \$20 million in insurance coverage available to Integrated, would satisfy any judgment that might be entered in the securities class action. The securities class voted in favor of the plan of liquidation.

The landlord appealed to the district court, which held that the bankruptcy court had not abused its discretion in denying the landlord’s motion to dismiss. The district court rejected the landlord’s argument that “permitting a solvent corporation to invoke the landlord cap would permit an end run around a core principle of bankruptcy law, the ‘absolute priority rule’ — that is, that creditors must be paid in full before stockholders can retain equity interests for any purpose.” Noting that insolvency is not a prerequisite to filing under chapter 11, the district court concluded that, in light of the bankruptcy court’s finding that Integrated was “experiencing a dramatic downward spiral” and that filing a chapter 11 petition fulfilled the board’s obligations to shareholders, no such “end run” had taken place.

Circuit Court Ruling

In its decision, the Third Circuit observed that, at its most basic level,

BANKING LAW JOURNAL

the Bankruptcy Code maximizes value by alleviating the problem of financial distress.⁹ In the Third Circuit's view, good faith "necessarily requires some degree of financial distress on the part of a debtor."¹⁰ Indeed, the appellate court stated, courts have dismissed chapter 11 petitions filed by financially healthy companies that had no need to reorganize under the protection of chapter 11. Those courts have recognized that if a petitioner has no need to rehabilitate or reorganize, its petition cannot serve the rehabilitative purpose for which chapter 11 was designed.¹¹ (It should be noted that the Third Circuit recognized that even a solvent debtor can be entitled to bankruptcy protection if it suffers from financial distress.)¹²

The circuit court pointed out that both the bankruptcy court and the district court had concluded that Integrated faced financial distress because it "was losing a lot of money," and "was experiencing a dramatic downward spiral," and that, as a result, Integrated had gone "out of business." However, the appellate court continued, it did not see how bankruptcy offered Integrated any relief from this sort of distress, which had "no relation to any debt owed by Integrated." Put differently, it stated that it could "identify no value for Integrated's assets that was threatened outside of bankruptcy by the collapse of Integrated's business model, but that could be preserved or maximized in an orderly liquidation under Chapter 11." Simply put, the Third Circuit ruled that because Integrated's "dramatic downward spiral" did not establish that Integrated was suffering from financial distress, it did not, standing alone, establish that Integrated's petition was filed in good faith. The Third Circuit emphasized that, as set forth in Integrated's bankruptcy schedules, "Integrated was highly solvent and cash rich at the time of the bankruptcy filing." Therefore, the appellate court ruled, because Integrated's economic difficulties did not establish that Integrated was suffering from financial distress, they did not, standing alone, establish that Integrated's petition was filed in good faith.

Other Factors

The circuit court next considered whether Integrated's petition served a valid bankruptcy purpose because bankruptcy provided a framework for it to resolve the securities class action. It rejected that argument, too. The Third

Circuit found that there was “no question” that the securities class action did not place Integrated in financial distress, given that it had assets of nearly \$107 million (of which \$105 million was cash) when it entered bankruptcy, plus directors and officers insurance coverage of \$20 million. Ultimately, the court noted, the securities class voted in favor of Integrated’s plan, which capped claims at \$25 million (or a \$5 million reserve plus the \$20 million D&O policy). The Third Circuit declared that the “inescapable conclusion” was that the securities class action did not threaten any value of Integrated that chapter 11 seeks to preserve.

The Third Circuit next considered — and rejected — Integrated’s contentions that there were three additional purposes that supported a finding of good faith. First, Integrated argued that chapter 11 “provide[d] an efficient procedure for the dissolution of [Integrated] and distribution of its assets to parties in interest.” The circuit court found, however, that dissolution is not an objective that can be attained in bankruptcy,¹³ and it also ruled that “distribution,” standing alone, is not a valid bankruptcy purpose. As the circuit court said, the Bankruptcy Code allows for a distribution of the debtor’s estate pursuant to a valid plan of reorganization or liquidation. “Antecedent to any such distribution is an inquiry whether the petition and the plan are filed in good faith, i.e., whether they serve a valid bankruptcy purpose.”

Second, Integrated argued that chapter 11 provided court oversight to the proposed sale of its intellectual property as well as certain protections to the parties to the sale not available outside of chapter 11. The Third Circuit acknowledged that there was no dispute that the sale of these assets during the bankruptcy had realized an additional \$1 million beyond the sale that Integrated had negotiated prior to filing its chapter 11 petition, but it found that this did not justify invocation of chapter 11. In the circuit court’s view, the increase in value “was a result of Integrated’s failure to adequately market the assets to potential bidders” before entering bankruptcy. Moreover, it added, the increase in value was “relatively insignificant,” representing less than one percent of Integrated’s total assets.

Third, Integrated argued that chapter 11 enabled it to establish a bar date and define the universe of claims against it to assure that any distributions to its creditors and stockholders accounted for any inchoate claims.

BANKING LAW JOURNAL

However, the circuit court said that Integrated's "vague and passing references" to potential disputes with its shareholders was "entirely insufficient to establish a good faith expectation" that chapter 11 protection was necessary to protect Integrated from such claims.

Capping Landlord Claims

Finally, the Third Circuit examined whether Integrated's desire to take advantage of the cap on landlord claims provided by §502(b)(6) established good faith in and of itself. It held that it did not. As the circuit court explained, "[j]ust as a desire to take advantage of the protections of the Code cannot establish *bad* faith as a matter of law, that desire cannot establish good *faith* as a matter of law. Given the truism that every bankruptcy petition seeks some advantage offered in the Code, any other rule would eviscerate any limitation that the good faith requirement places on Chapter 11 filings." The court reasoned that §502(b)(6) and the legislative policy underlying that provision assume the existence of a valid bankruptcy, which, in turn, assumes a debtor in financial distress. "The question of good faith is therefore antecedent to the operation of § 502(b)(6)," it emphasized.

To be filed in good faith, the circuit court concluded, a petition "must do more than merely invoke some distributional mechanism in the Bankruptcy Code." It must seek "to create or preserve some value that would otherwise be lost — not merely distributed to a different stakeholder — outside of bankruptcy." This inquiry, the appellate court declared, was particularly sensitive where, as in this case, a petition seeks to distribute value directly from a creditor to a company's shareholders.¹⁴ It then remanded the case to the bankruptcy court with instructions to dismiss Integrated's petition.

Conclusion

The Third Circuit's decision in *Integrated Telecom*, emphasizing the absence of any financial distress facing Integrated, strongly suggests that it will be more difficult for solvent debtors to enter bankruptcy in the future. Although a number of bankruptcy courts have dismissed petitions in similar circumstances,¹⁵ the federal appellate court decision is likely to be more influ-

ential, and have greater impact, than these other opinions. The “good faith” requirement for entering bankruptcy is a real one, and the Third Circuit’s ruling makes it clear that it must be enforced.

Notes

¹ See, e.g., *In re SGL Carbon Corp.*, 200 F.3d 154 (3d Cir. 1999).

² See, e.g., *In re Johns-Manville Corp.*, 36 B.R. 727 (Bankr. S.D.N.Y. 1984) (“Accordingly, the drafters of the Code envisioned that a financially beleaguered debtor with real debt and real creditors should not be required to wait until the economic situation is beyond repair in order to file a reorganization petition.”).

³ Under 11 U.S.C. § 1112(b), “the court may convert a case under [Chapter 11] to a case under Chapter 7...or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause.” The statute lists 10 non-exhaustive factors that may amount to cause. H.R. Rep. No. 95-595, at 406 (1977), *reprinted in* 1978 U.S.S.C.A.N. 5963, 6362 (“[The] list [contained in § 1112(b)] is not exhaustive. The court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.”).

⁴ See, e.g., *In re SGL Carbon Corp.*, *supra*; *accord In re PPI Enters. (U.S.), Inc.*, 324 F.3d 197 (3d Cir. 2001) (“The debtor bears the burden of establishing good faith.”).

⁵ *In re Little Creek Dev. Co.*, 779 F.2d 1068 (5th Cir. 1986).

⁶ *Id.*; see also *Carolin Corp. v. Miller*, 886 F.2d 693 (4th Cir. 1989) (good faith requirement is “indispensable to proper accomplishment of the basic purposes of Chapter 11 protection”).

⁷ 384 F.3d 108 (3d Cir. 2004).

⁸ 11 U.S.C. § 502(b)(6) limits the amount that a landlord can recover in bankruptcy for damages resulting from the termination of a lease. Under §502(b)(6), a landlord can recover rent that has accrued as of the filing of the petition, but may not recover rent remaining on the lease beyond one year’s rent or 15 percent of the remaining rent (not to exceed three years), whichever is greater:

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest...objects.

(b)...if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

...(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

BANKING LAW JOURNAL

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates.

⁹ See Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law* 10 (1986) (“The basic problem that bankruptcy law is designed to handle, both as a normative matter and as a positive matter, is that the system of individual creditor remedies may be bad for the creditors as a group when there are not enough assets to go around.”).

¹⁰ See *SGL Carbon, supra* (“Courts, therefore, have consistently dismissed Chapter 11 petitions filed by *financially healthy* companies with no need to reorganize under the protection of Chapter 11.”) (emphasis added); *In re Coastal Cable T.V., Inc.*, 709 F.2d 762 (1st Cir. 1983) (“To meet the ‘good faith’ requirement...many courts have held that a reorganization plan must bear some relation to the statutory objective of resuscitating a *financially troubled* corporation.”) (emphasis added); *In re Cohoes Indus. Terminal, Inc.*, 931 F.2d 222 (2d Cir. 1991) (“Although a debtor need not be *in extremis* in order to file such a petition, it must, at least, face such financial difficulty that, if it did not file at that time, it could anticipate the need to file in the future.”); *In re Dixie Broad., Inc.*, 871 F.2d 1023 (11th Cir. 1989) (recognizing that one factor relevant to good faith is “whether the debtor is ‘financially distressed’” and affirming dismissal of petition for, *inter alia*, use of bankruptcy proceedings despite the apparent good financial health of the debtor); *In re Little Creek Dev. Co.*, 779 F.2d 1068 (5th Cir. 1986) (“Determining whether the debtor’s filing for relief is in good faith depends largely upon the bankruptcy court’s on-the-spot evaluation of the debtor’s financial condition, motives, and the local financial realities.”); *In re The Bible Speaks*, 65 B.R. 415 (Bankr. D. Mass. 1986) (concluding that, despite the absence of a statutory financial eligibility standard in chapter 11, “[t]he legislative history [to the Bankruptcy Code] indicates that Congress intended Chapter 11 to be resorted to by business entities which are experiencing some type of financial difficulty”); *In re Talladega Steaks, Inc.*, 50 B.R. 42 (Bankr. N.D. Ala. 1985) (dismissing petition where debtor “presented no evidence that financial difficulties had precipitated the filing of the petition and indeed testified that the debtor’s debts and other financial obligations were substantially current.”)

¹¹ See *SGL Carbon, supra* (citations omitted).

¹² See, e.g., *In re Marshall*, 300 B.R. 507 (Bankr. C.D. Cal. 2003) (“It is not uncommon for debtors to be solvent under the balance sheet test, and yet to have severe

BANKRUPTCY FOR BANKERS

financial problems....The United States bankruptcy law is designed to provide relief from creditor pressures for debtors with cash flow difficulties, even where they are clearly solvent under a balance sheet test.”).

¹³ See Collier on Bankruptcy § 727.01[3] (“After liquidation, any dissolution of the corporation or partnership that the parties desire must be effectuated under state law, since the Code does not provide for dissolution of corporations or partnerships.”).

¹⁴ See Elizabeth Warren, *Bankruptcy Policy*, 54 U. Chi. L. Rev. 775 (1987) (“[a]n almost axiomatic principle of business law is that, because equity owners stand to gain the most when a business succeeds, they should absorb the costs of the business’s collapse—up to the full amount of their investment”); see also *Bank of Am. Nat’l Trust & Sav. Assoc. v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 453 (1999) (characterizing one of the purposes of chapter 11 as “maximizing property available to satisfy creditors”).

¹⁵ See, e.g., *In re Liberate Technologies*, 314 B.R. 206 (Bankr. N.D. Cal. 2004) (dismissed for lack of good faith a chapter 11 petition seeking primarily to cap a landlord’s claim for future rent under § 502(b)(6)); *In re N.W. Place, Ltd.*, 73 B.R. 978 (Bankr. N.D. Ga. 1987) (dismissing chapter 11 petition filed to invoke trustee’s avoidance powers under Bankruptcy Code and to set aside transfer); *In re S. Cal. Sound Sys., Inc.*, 69 B.R. 893 (Bankr. S.D. Cal. 1987) (dismissing chapter 11 petition filed to reject executory contract pursuant to 11 U.S.C. § 365(a)); *In re Cardi Ventures, Inc.*, 59 B.R. 18 (Bankr. S.D.N.Y. 1985) (dismissing chapter 11 petition filed to assume and assign lease pursuant to 11 U.S.C. § 365(f)); *In re Nancant, Inc.*, 8 B.R. 1005 (Bankr. D. Mass. 1981) (dismissing chapter 11 petition filed to have certain tax liability determined pursuant to 11 U.S.C. § 505).