When Congress Says 'PIP Your KERP': Performance Incentive Plans, Key Employee Retention Plans and, Chapter 11 Bankruptcy Resolution

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Abstract

In the U.S., the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) imposed severe restrictions on the adoption of Key Employee Retention Plans (KERPs) and favored the Performance Incentive Plans (PIPs) in Chapter 11. Examining pre-BAPCPA data, we find that KERP contracts lead to longer bankruptcy resolutions but nevertheless improve operating performance, whereas PIP contracts lead to shorter bankruptcies and even higher operating performance. An unintended consequence of the new Act appears to be a reduction in the efficiency of Chapter 11 resolutions through limitation of the type of contracts that creditors can offer to key employees of bankrupt firms.

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