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CARES Act Expands the Small Business Reorganization Act – Lenders Beware

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) expands a new law that streamlines the Chapter 11 bankruptcy process for small businesses to include a larger group of small businesses. The Small Business Reorganization Act of 2019 (SBRA) went into effect in February 2020. Click here to read our previous in-depth analysis of the SBRA. Under the original provisions of SBRA, a small business debtor filing under SBRA could not have more than $2,725,625 in noncontingent, liquidated, secured, and unsecured debts as of the petition date, excluding debts owed to affiliates or insiders. The CARES Act, signed into law by President Trump on March 27, expands the debt cap to $7,500,000 (effective for only one year), which will greatly increase the number of debtors who can utilize the debtor-friendly provisions of SBRA. It is widely expected that SBRA will increase the small business debtor's ability to successfully reorganize, retain control of its business, and reduce the procedural costs and burdens ordinarily associated with Chapter 11 filings.

Top Five Things Lenders Need to Know About SBRA

1. **Easier for a Debtor to Confirm a Plan**

   - No disclosure statement requirements;
   - Only the debtor can propose a plan;
   - No absolute priority rule;
   - No "new value" requirement for ownership to retain equity;
   - No need for consent from an impaired class of creditors; and
   - Plan need only be "fair and equitable" and not discriminate unfairly – as to unsecured creditors this means that the debtor must either (i) pay all its projected disposable income for the first three to five years of the plan, or (ii) during such three to five-year period, distribute property with a value not less than the amount of such projected disposable income.

2. **Shorter Deadlines**

   - Status conference within 60 days after petition date; and
   - Plan filed within 90 days of the petition date.

3. **Standing Trustee – Yes; Creditors' Committee – No**

   - Standing trustee in the SBRA case will function similar to Chapter 12/13 trustees.
   - No creditors' committees absent an order of the bankruptcy judge upon finding "cause" exists to appoint one.

4. **Administrative Claims**

   - SBRA debtor may stretch payment of administrative expense claims over the term of the plan.
   - Payment not due in full on the effective date of the plan.

5. **Preference Claim Litigation**

   - Venue for preference claims are restricted by SBRA in a way that is favorable to creditors.

With the expansion of the debt limitations on SBRA under the CARES Act, lenders are much more likely to encounter cases involving the new SBRA procedures. With the legislative design to facilitate reorganization by small business debtors in a shorter time frame and for less cost, lenders need to know that some of the familiar advantages enjoyed in a traditional Chapter 11 scenario will not be available in a SBRA case.

Baker Donelson is working hard to assist its clients during these uncertain times. The information above is designed to highlight the changed circumstances that lenders can expect in an SBRA case. Our team of professionals continues to monitor and advise on new issues as they develop. For specific guidance or more information please contact John McJunkin or Lacey Rochester. For additional information you can also visit the Coronavirus (COVID-19): What You Need to Know information page on our website.