



Comment of the Commercial Law League of America
In Support of a Permanent Increase to Subchapter V of
Chapter 11 of the U.S. Bankruptcy Code

March 6, 2022

Introduction

The Commercial Law League of America (“CLLA”), founded in 1895, is the nation’s oldest organization of attorneys and other experts in credit and finance actively engaged in the fields of commercial law, bankruptcy, and reorganization. The CLLA has long been associated with the representation of creditor interests, while seeking fair, equitable and efficient treatment of all parties in interest. CLLA members can be found in every state across America and in many foreign countries. The CLLA regularly submits policy papers to Congress and CLLA members have testified on numerous occasions before Congress as experts in fields related to creditor interests.

The CLLA supports: (i) increasing the Subchapter V debt limit to \$11,097,350.00, and (ii) making that increase permanent. The below, abridged from one of our Congressional position papers, is a summary of the current state of subchapter V legislation, and a brief discussion of why the relief sought by this resolution is necessary.

Ensuring a Streamlined Path for Small Business Debtors to Restructure Debts

The Small Business Reorganization Act of 2019 (SBRA) was enacted to provide small business debtors with a more streamlined path for restructuring their debts. The SBRA introduced an innovation: Subchapter V of Chapter 11, a new type of bankruptcy designed to make reorganization under the Bankruptcy Code faster and less expensive for America’s small businesses. Subchapter V defined a “small business debtor” as “a person engaged in commercial or business activities . . . that has aggregate noncontingent liquidated secured and unsecured debts . . . in an amount not more than \$2,725,625.” At least half of those debts must have been incurred from business activity. About a month after the SBRA’s February 2020 effective date, the COVID-19 pandemic upended the country. In response, Congress and the President enacted the CARES Act, which increased Subchapter V’s debt limits to \$7.5 million for two years. When Subchapter V’s increased debt limits lapsed in March of 2022, Congress enacted the Bankruptcy Threshold Adjustment and Technical Corrections Act on June 21, 2022, extending the increased \$7.5 million Subchapter V debt limit for another 2 years.

Last year there were 31.7 million small businesses in the United States. Between 2000 and 2019, these small businesses created 10.5 million net new jobs and accounted for 65.1% of the net new job creation since 2000. Small businesses face many challenges, and yet make such a large impact on the country’s economy. Since the SBRA’s enactment, as of September 8, 2022, 3839 debtors have filed under Subchapter V. In an American Bankruptcy Institute article surveying Subchapter



V cases from SBRA’s inception through June 30, 2021, it was reported that more than 50% of the plans in those Subchapter V cases had been confirmed and that such confirmations were achieved within six months of filing. In comparison, prior to enactment of SBRA, only 25% of Chapter 11 Plans were being confirmed at a median of 16 months from the petition date. The benefits of and need for Subchapter V are clearly expressed in the foregoing numbers. Although the debt limit of \$7.5 million was extended for an additional two years, it is imperative that the higher debt limit be made permanent. This increased debt limit should also be made permanent so as to align with those of Family Farmer bankruptcies (Chapter 12) which was recently increased to \$10 million (\$11,097,350.00 with inflation adjustments).

Such an increase would make Subchapter V available to a much greater number of small businesses that would benefit from the expedited, less costly, and less onerous Subchapter V process. For example:

1. 90 days after the bankruptcy petition a plan must be filed;
2. Reduced expenses of administration and creditor interference
3. Small Business Debtor stays in control of its operations...
4. But a Trustee is appointed to facilitate plan discussions between the debtor and creditors.
5. No competing plans
6. Elimination of “absolute priority rule”, allowing business owners to retain ownership

Conclusion

For the above reasons, Congress must act to ensure a streamlined path for small business debtors to restructure debts by: (i) increasing the Subchapter V debt limit to \$11,097,350.00, and (ii) making that increase permanent.

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