## THE NEW "FAST TRACK" CHAPTER 11 FOR SMALL BUSINESSES

The Bankruptcy Reform Act of 1994 allows for a new "fast track" form of Chapter 11 for small businesses. The term "small business" is defined by the Act to mean an individual, partnership or corporation engaged in commercial business activities (excluding those whose primary activity is the business of owning or operating real estate or such activities incidental thereto) whose debts as of the date of the petition do not exceed $2,000.000. Obviously, this definition will include many "Mom and Pop" operations.

The purpose of the amendments establishing a new "small business" category is clearly to speed up Chapter 11 proceedings for such businesses and to make the rules easier for such debtors to follow in order to get a plan confirmed.

For example, any party in interest in such a case can request that the Court order that no Committee of Creditors be appointed. Obviously, the absence of Creditors' Committees in such cases will decrease the expenses of administration, and we expect that debtors, as "parties in interest," will be requesting such orders routinely upon the filing of any Chapter 11 involving a small business.

Another attempt in the amendments to streamline the process shortens the time in which only the Debtor may file a plan to 100 days after the date of the Order of Relief, rather than the 120 days for other Chapter 11 cases.

This means that the Debtor must either have his plan filed, or have obtained an extension, or face the possibility of a creditor filing a plan of liquidation, twenty days earlier. The statute further requires that all plans shall be filed within 160 days after the date of the Order of Relief, and that the Court may reduce the 100 day period or the 160 day period for cause. The statute goes on to provide, however, that the Court may increase the usual 100 day deadline if the Debtor can show "the need for an increase is caused by circumstances for which the Debtor should not be held accountable." 11 U.S.C. 1121(e)(3)(B).

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One "fast track" provision may prove especially troubling to creditors. In a small business Chapter 11, the Reform Act allows the Court to waive the usual requirements for a disclosure statement to be approved as adequate under 11 U.S.C. Section 1125 and instead "conditionally approve a disclosure statement subject to final approval after Notice and a Hearing."

This amendment provides as well that acceptances and rejections of a plan may be solicited based on a "conditionally approved" disclosure statement "as long as the Debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed at least 10 days prior to the date of the hearing on confirmation of the plan."

Thus creditors must insist upon adequate information even more forcefully than before and also remain alert to the ongoing Chapter 11 stages of development so as not to miss the opportunity to raise objections to a "conditionally approved" disclosure statement which they may receive just prior to the hearing on confirmation.

This amendment suggests even more possibilities of creditor discomfort by allowing the hearing on the disclosure statement to be combined with the hearing on the confirmation of the plan. Traditionally, the challenges by creditors to a disclosure statement's adequacy have been very important. A disclosure statement could only be sent out to creditors after having been approved as containing "adequate information" within the definition provided in 11 U.S.C. 1125 before a debtor could solicit votes for a plan.

Everyone theoretically is in favor of speeding up the Chapter 11 process and reducing administrative costs so that creditors may be paid more and more quickly. It remains to be seen, however, whether the new "small business" Chapter 11 will achieve its purposes and be more beneficial for creditors. Your editor at this point definitely has reservations about the relaxed requirements as to the disclosure statement and its approval, as well as the combining of the hearing on the disclosure statement with the confirmation hearing.

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