A Layperson's Guide to the Key Provisions of the Small Business Reorganization Act of 2019 or "How SubChapter V of Chapter 11 Helped Me Save My Business"

By Drew McManigle

There has been much written, and much left to write, about the Small Business Reorganization Act of 2019, commonly referred to as SubChapter V of Chapter 11 of the United States Bankruptcy Code ("SubChapter V" or "Small Business Chapter 11 Bankruptcy"). The purpose of this article is to provide small business owners with a brief overview, the benefits and operation of Small Business Chapter 11 Bankruptcy. I serve as one of six, and one of only two, non-attorney SubChapter V, Small Business Chapter 11 Trustees, appointed by the Department of Justice, Office of The United States Trustee, for the Southern District of Texas, Houston Division.

At this point, almost everyone is generally familiar with Chapter 11, Title 11 of The United States Code, commonly referred to as "Chapter 11". From Braniff Airlines in 1982 to Enron in 2001, continuing onward to the spate of Chapter 11 filings in recent years, including retailers like Neiman Marcus and Penny's, oilfield exploration, production and service companies similar to Chesapeake Energy and Pioneer Energy Services Corp and restaurant and franchises like Ruby Tuesday and Pizza Hut, Chapter 11 meant *big business*. Over time, it also meant big debt, big dollars, big costs, big professional fees and few prospects for real or meaningful middle-market or small business reorganization. H.R. 3311, was enacted by the One Hundred and Sixteenth Congress in January 2019 "*To amend chapter 11 of title 11, United States Code, to address reorganization of small businesses, and for other purposes*." (the "Act"). The Act became effective (live and operational) in February 2020 to, in other words, make the "Fresh Start" provisions contained in Big Chapter 11, now modified in the new SubChapter V Chapter 11, *more accessible*, *more affordable* and *faster* for small businesses needing formal business restructuring help.

What is different between SubChapter V from Big Chapter 11? Most importantly, the level of debt owed. Originally under the Act, a business or individual could seek designation as a "small

business debtor" provided it had $2.7 million of noncontingent liquidated secured and unsecured debt combined. With the COVID-19 pandemic upon us and enactment of the CARES Act, the small business chapter 11 debt limit was temporarily increased to $7.5 million of noncontingent liquidated secured and unsecured debt combined. This temporary increase is set to expire in March 2021, unless extended by Congress. As important, at least 50% of the debt must arise from business or commercial activity and the equity owners *retain their ownership interests*.

How fast is fast you may ask…?

From the date the small busines chapter 11 is filed (the "Petition Date") with the debtor-in possession ("DIP"), meaning the people who own and operate the business still are in charge of owning and operating the business, it's a very *fast track*. Shortly after, and almost concurrently with the Petition Date, the Office of the United States Trustee ("UST"), who are responsible for overseeing the administration of bankruptcy cases and private trustees, will appoint me or one of my colleagues to the case as the SubChapter V Chapter 11 Trustee (the "Trustee"). This happens in all SubChapter V cases. Essentially, the Trustee's role is to monitor, participate, facilitate, mediate and shepherd, when required, the DIP and the bankruptcy case to achieve, if possible, a consensual (meaning agreed to by all parties) plan of reorganization.

Fast, you say?

Within 10 days to two weeks, the DIP will prepare for and attend the informal Initial Debtors Conference ("IDI") with the UST, Trustee and DIP bankruptcy legal counsel...yes, you're going to need one of those![1] At the IDI, financial, debt and operational information will be provided by the DIP to both the UST and Trustee, who will get a "feel" for why the case was filed among other case administration "housekeeping" matters. Thereafter, within 14 days, if it doesn't do so concurrently on the Petition date, the DIP files its Statement of Financial Affairs and Schedules (the "Schedules and Statements"). These essentially provide the detail of who, how much, when, where and why of the DIP's business operations. A few weeks afterwards, the DIP will attend the

[1] Any business owner or individual considering the option of SubChapter V, Small Business Chapter 11 reorganization, should seek out and engage competent legal counsel experienced in bankruptcy related matters.

more formal First Meeting of Creditors under 11 U.S.C. 341 (the "341 Meeting") where the debtor will be questioned by the UST, Trustee and any creditor or party-in-interest on the information contained in the Schedules and Statements.

Fast, continued…

Sixty Days after the Petition Date, the DIP and counsel will attend a Status Conference before the United States Bankruptcy Judge assigned to the case with the UST, the Trustee and other parties-in-interest present. 14 days before this, the DIP will file a report on its reorganization efforts to confirm, e.g., obtain creditor approval for a consensual plan of reorganization. Only, and the ACT means only, the DIP can exclusively propose a plan of reorganization and it must do so *90 days after the Petition Date*. This is a unique feature of SubChapter V small business reorganizations. Thereafter, the Bankruptcy Court will schedule a confirmation hearing on DIP's consensual or non-consensual "cram down" plan of reorganization. Other unique features of small business reorganization act are: that no committee of unsecured creditors are appointed; no hyper-detailed "Disclosure Statement" is required to be filed supporting the DIP's plan; the reorganization plan can have up to a five-year term and administrative costs, e.g., professional fees, Trustee fees, etc. can be spread across the length of the plan.

Thus, taking into consideration the level of pre-bankruptcy financial and operational planning the proposed debtor undertakes (with its financial advisor and bankruptcy counsel) prior to the Petition Date, means that in most scenarios, small business chapter 11 cases are fast, affordable and effective. H.R. 3311 was designed to provide small business owners with a "Fresh Start" as originally envisioned by the drafters of Big Chapter 11. Simply, the means to preserve the business enterprise, maintain jobs, preserve the owners' equity and treat creditors similarly in a fully transparent process.

ABOUT THE AUTHOR

Drew McManigle is the Founder and CEO of MACCO Restructuring Group, LLC ("MACCO"). MACCO is a national middle-market focused interim leadership and financial advisory practice based in Houston, with offices in Denver, Oklahoma City, Wilmington, DE and New York City. Across the country, Drew has held leadership and fiduciary roles with titles such as operating chapter 11 trustee, chapter 11 plan, litigation or liquidating trustee, interim CEO, CRO, receiver and assignee. He has represented company, debtor or creditor interests in bankruptcy and state courts across the country, including in a variety of distressed situations, such as complex domestic and foreign litigation. He attended Texas Tech University and received his bachelor's degree from the University of Houston-Downtown. He has been quoted in national publications including The Deal, Debtwire and The Houston Chronicle. Drew is a reputable panelist, public speaker on restructuring and a frequently posts on Linked-In. He is a member of the Turnaround Management Association and a Board member of the Houston Chapter.