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BENEFITS OF NEW SUBCHAPTER V BANKRUPTCIES: NOW AVAILABLE TO BUSINESSES WITH TOTAL DEBTS OF \$7.5 MILLION OR LESS

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In February, a new form of chapter 11 bankruptcy became available to certain small businesses, called Subchapter V, which streamlines the chapter 11 process in many ways, making it affordable and effective for the first time for smaller businesses.

Subchapter V was originally limited to businesses with no more than \$2.7 Million in debt but the CARES Act has greatly expanded that debt limit to \$7.5 Million, for at least the next year. This will capture a large number of more substantial businesses impacted by the current pandemic.

Subchapter V provides numerous benefits to small business debtors that are intended to make the bankruptcy process and successful exit from chapter 11 easier and far less expensive than a traditional chapter 11 reorganization. These benefits include, among others:

The replacement of the expensive and partisan Creditors' Committee with a neutral "Subchapter V Trustee", to oversee and facilitate the process;

- A process designed to encourage (and even require) negotiation between the debtor and its creditor constituents (overseen by the Subchapter V trustee) with a goal towards a consensual reorganization plan;
- Permitting only the debtor to file a reorganization plan throughout the case;
- A shortened, 90-day deadline to file a plan of reorganization (which may be extended in some cases), elimination of the disclosure statement requirement, and use of form plans of reorganization to minimize the legal fees associated with the bankruptcy process;
- Plan confirmation rules that focus on what the debtor can afford to pay to unsecured creditors going forward and permit a debtor to confirm a plan over creditor objection by proposing to use the debtor's projected monthly disposable income for a commitment period of 3 to 5 years to repay prepetition unsecured debt;
- The ability to restructure secured debt on fair terms without the support of at least one class of creditors (including, for example, extension of maturity date, elimination of onerous loan covenants, modification of monthly payment amount, elimination of certain prepayment penalties, elimination of default interest, and reduction of interest rates to current market rates in appropriate circumstances);
- Permitting modification of residential mortgages given by business owners to secure loans extended to the company;
- Elimination of quarterly fees payable to the United States Trustee;



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- Permitting existing owners to retain their equity interests in the debtor without getting acceptance from unsecured creditors or making a substantial contribution towards the reorganization to repurchase the equity; and
- Retained ability to reduce secured debt to the value of collateral, reject unfavorable contracts and leases, and sell non-producing or unprofitable assets and business lines free and clear of liens.

The increase in the debt limit for qualified Subchapter V debtors to \$7.5 million will sunset automatically on March 27, 2021, unless extended by Congress. Small businesses that are in financial distress are encouraged to act now to see if a Subchapter V bankruptcy will assist their recovery from the COVID-19 crisis and other financial challenges.

We believe this represents a transformative improvement of the chapter 11 process that will be highly effective for a wide range of businesses that are burdened with unmanageable debts but are otherwise viable.

The Dilworth Paxson Bankruptcy Group, which includes 6 partners—each with between 20 to more than 40 years of experience representing business entities in chapter 11—is uniquely qualified to handle these cases effectively and efficiently. We provide flexible fee arrangements that enable clients to quantify costs with a higher level of certainty.

If you have questions or wish to discuss your restructuring options, please contact [James M. Matour](#), [Peter C. Hughes](#), [Jennifer L. Maleski](#) or any of the attorneys in our [Bankruptcy Group](#).