

## **The CARES Act's Impact on the Newly Effective Small Business Reorganization Relief Act of 2019**

*By Marguerite Lee DeVoll, Associate*

On Friday, March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). While many people are familiar with the provisions to provide consumers direct relief, many people are likely not familiar with provisions of the CARES Act that help small businesses, particularly with regards to an increasingly attractive bankruptcy filing.

The CARES Act modified the eligibility provisions of the newly effective (as of February 19, 2020) Small Business Reorganization Act of 2019 ("SBRA"). SBRA, in turn, created a new subchapter under chapter 11 of the Bankruptcy Code, subchapter V, for small businesses. The CARES Act raises the debt limit for small businesses eligible to file a subchapter V, chapter 11 case from \$2,725,625 to \$7.5 million. [Note: This eligibility increase will lapse after 1 year when it will return to the \$2,725,625 limit.]

SBRA was passed to address the needs of small businesses in an effort to make chapter 11 reorganization more affordable, feasible, and efficient. With the increase of small businesses now eligible to file a subchapter V, chapter 11 case, creditors should be aware that several key provisions (summarized below) means that these cases are expected to move quickly through the bankruptcy courts. Further, due to the newness of SBRA, the courts are still implementing its provisions and there will be differences between the courts on how certain provisions are handled.

As such, if you find-out that one of your debtor small-businesses has filed under subchapter V, as with any bankruptcy matter, it behooves you not to delay in seeking appropriate legal advice on your rights.

### **Key Provisions of SBRA:**

- A status conference with the court within 60 days from the filing of the bankruptcy petition. 14 days prior to the status conference, the debtor must provide an outline of the debtor's plan for reorganization as well as the measures the debtor has taken to discuss the plan options with creditors and other interest parties.
- The deadline to file the plan is 90-days from the filing of the bankruptcy petition to file the chapter 11 plan.
- There is no disclosure statement requirement.
- There are no creditor committees.
- A subchapter V debtor is exempt from the requirement to pay quarterly fees to the U.S. Trustee, which in the past has been a costly deterrent to small businesses.
- Subchapter V eliminates the Absolute Priority Rule and provides greater flexibility for the small business owners to retain control of their businesses so long as the plan is "fair and equitable" and "does not discriminate unfairly." (The Absolute Priority Rule imposed

a strict hierarchy of payment of creditors that often times forced owners of a small business, being lowest on the creditor tier, to relinquish control or liquidate, if higher-tiered creditors were not being paid in full.)