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CARES ACT IMPACT ON BANKRUPTCY LAW

Hodgson Russ Bankruptcy, Restructuring & Commercial Litigation Alert
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Business owners and individuals facing the impacts of COVID-19 should be aware of some important changes the Coronavirus Aid, Relief, and Economic Security (CARES) Act makes to the United States Bankruptcy Code.

Background – the SBRA
On February 19, 2020, the Small Business Reorganization Act (SBRA) became effective, which added a new subchapter to the United States Bankruptcy Code—Subchapter V. The SBRA was enacted to increase a small business' ability to achieve a successful restructuring by streamlining Chapter 11 filings and making the reorganization process simpler for small businesses. The SBRA also increases a debtor's ability to retrain control of its business after emerging from bankruptcy.

Some of the key provisions of the SBRA include the following:

- Only the debtor can propose a plan of reorganization, which is due within 90 days of the bankruptcy filing.
- Neither separate approval of a disclosure statement nor solicitation of votes is required to confirm a plan.
- No official committee of unsecured creditors will be appointed.
- A standing trustee is appointed to ensure the reorganization stays on track.
- SBRA removes the requirement that equity holders of a small business debtor provide "new value" to retain their interest in the debtor without paying creditors in full and instead, allows small business owners to retain ownership by allowing them to pay creditors over a longer period of time.

How does the CARES Act change Chapter 11 filings?
The $2.2 trillion economic stimulus package enacted by the CARES Act temporarily broadens the requirements for small businesses filing under Subchapter V. As passed under the SBRA, to qualify as a debtor under Subchapter V, the debtor's total secured and unsecured debts could not exceed $2,725,625. The CARES Act, however, temporarily increases this limit to $7,500,000. By increasing the debt limit for a debtor to qualify for Subchapter V, the CARES Act makes bankruptcy reorganization a viable option for small businesses.

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This increased debt limit only applies to cases filed *after* the CARES Act was passed and sunsets one year from the CARES Act going into law.

How does the CARES Act change Chapter 7 and Chapter 13 filings?
The CARES Act amends the definition of "Current Monthly Income" to exclude payments from the federal government to a debtor made as part of COVID-19 emergency relief efforts. The concept of "Current Monthly Income" is relevant in determining whether a debtor qualifies for Chapter 7 relief (liquidation) or if their income will require filing a Chapter 13 repayment plan.

Federal payments related to the emergency relief measures for COVID-19 will also be excluded from "disposable income," which is required to fund a Chapter 13 plan. Chapter 13 debtors who have already confirmed a plan may amend, after notice and court approval, their plans by alleging a material financial hardship associated with the COVID-19 emergency. The CARES Act amendments also allow Chapter 13 plan modifications to extend the term of a payment plan beyond the current five-year limitation. Under the CARES Act, plans may be amended to extend payments for a period of up to seven years from the first payment due under the original plan.

The changes to Chapter 7 and Chapter 13 filings apply in pending cases and will be applicable for one year after the CARES Act becomes effective.

Please contact Garry Graber (716.848.1273) or James Thoman (716.848.1361) if you would like to discuss how the CARES Act may impact your filing under Subchapter V bankruptcy.

Please check our Coronavirus Resource Center and our CARES Act page to access additional information related to these rapidly evolving topics.

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