

The Subchapter V Debt Limit:

Where do Small Business
Debtors Go from Here?



AMERICAN
BANKRUPTCY
INSTITUTE



Joseph "Joe" Pack
Moderator
Pack Law; Miami



Evan N. Parrott
Moderator
*Maynard Nexsen PC;
Mobile, Ala.*



Jeffrey S. Ainsworth
*Branson Law PLLC;
Orlando, Fla.*



Hon. Paul W. Bonapfel
*U.S. Bankruptcy Court
(N.D. Ga.); Atlanta*



Hon. Michelle M. Harner
*U.S. Bankruptcy Court (D.
Md.); Baltimore*



Eric Terry
*Eric Terry Law PLLC; San
Antonio*

abiLIVE Faculty: The Subchapter V Debt Limit: Where Do Small Business Debtors Go from Here?

Joseph Pack, CPA is the founder and managing partner of Pack Law, P.A. in Miami and has many years of experience handling multibillion-dollar chapter 11 cases. He also teaches an advanced bankruptcy course at the University of Florida Levin College of Law, and he guest lectures at the University of Miami School of Law. Mr. Pack is a 2021 honoree of ABI's "40 Under 40" program, and he has been listed in *Turnarounds & Workouts* as an "Outstanding Restructuring Lawyer," and in *Super Lawyers* and *The Best Lawyers in America*. He also received the *Daily Business Review Florida Legal Awards* "On the Rise" distinction. Mr. Pack is admitted to practice in New York, Florida and Wyoming. He received both his B.A. and M.A. (*summa cum laude*) in accounting from the University of Florida, and his J.D. *cum laude* from the University of Florida Levin College of Law.

Evan N. Parrott is a shareholder with Maynard Nexsen PC in Mobile, Ala., in the firm's Bankruptcy and Restructuring Practice Group. He focuses his practice on the representation of debtors, creditors and other interested parties in all matters involving financial distress, bankruptcy, commercial lending, commercial leasing, reorganization proceedings and debt restructuring. Mr. Parrott has represented clients throughout the U.S. in loan workouts, commercial foreclosures, fraudulent transfer and preference actions, adversary proceedings, contested bankruptcy matters, § 363 sales, receiverships and the exercise of Article 9 remedies. He also represents clients in business disputes and commercial litigation in federal and state courts. Mr. Parrott clerked two years for U.S. Bankruptcy Judge Neil P. Olack in the Northern and Southern Districts of Mississippi, and one year for U.S. Magistrate Judge William E. Cassady in the Southern District of Alabama. He holds leadership positions in several local, state and national bar organizations, and he has taught multiple courses as an adjunct professor in the Political Science and Law Department at Spring Hill College, also coordinating the school's moot court program. In addition, he serves on the firm's Recruiting Committee and chairs the Mobile Office's recruiting program. Mr. Parrott serves as Communications Manager for ABI's Business Reorganization Committee and as president of the

Paul W. Brock American Inn of Court. He has been listed in *The Best Lawyers in America* as one of its “Ones to Watch” for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law, for Litigation – Bankruptcy and for Litigation: Intellectual Property since 2021; in *Mid-South Super Lawyers* as a “Rising Star” for Bankruptcy: Business since 2020; as a member of *Mobile Bay Magazine’s* “40 Under 40” Class of 2024; and as a member of the National Conference of Bankruptcy Judges (NCBJ) Next Generation Program Class of 2022. Mr. Parrott received his B.A. *cum laude* in communication arts in 2010 from Spring Hill College, and his J.D. *magna cum laude* in 2013 from the University of Mississippi School of Law, where he served on the executive board of the *Mississippi Law Journal*.

Jeffrey S. Ainsworth is an attorney with Branson Law PLLC in Orlando, Fla., where he practices primarily in the areas of bankruptcy, creditors’ rights and dischargeability issues, and has represented individual debtors, corporate debtors, unsecured creditors, committees, secured creditors and trustees. He is a member of ABI, the Orange County Bar Association and the Central Florida Bankruptcy Law Association. Mr. Ainsworth is admitted to practice in all Florida courts and the U.S. District Courts for the Northern, Middle and Southern Districts of Florida. He received his B.A. in political science in 2004 from the University of Central Florida and his J.D. in 2008 from Florida State University, where he also received a Certificate in Environmental and Land Use Law.

Hon. Paul W. Bonapfel is a U.S. Bankruptcy Judge for the Northern District of Georgia in Atlanta and Rome, Ga., appointed in 2002. Prior to his appointment, he practiced law in Atlanta with Lamberth, Bonapfel, Cifelli & Stokes, P.A., now known as Lamberth, Cifelli, Ellis & Nason, P.A. As an attorney, Judge Bonapfel represented all types of parties in bankruptcy cases, including consumer and business debtors in liquidation cases, business debtors in reorganization cases, chapter 7 and 11 bankruptcy trustees, creditors’ committees, and creditors in both consumer and business cases. Judge Bonapfel is a co-author of *Chapter 13 Practice and Procedure* (Thomson Reuters). A Fellow in the American College of Bankruptcy, he has served as chairperson of the Bankruptcy Sections of the State Bar of Georgia and the Atlanta Bar Association and was a director and president of the Southeastern Bankruptcy Law Institute, which presents an annual seminar

on bankruptcy law and procedure. In addition, he teaches a course at Mercer Law School in Macon, Ga., on consumer bankruptcy practice. Judge Bonapfel received his B.A. *cum laude* from Florida State University in 1972 and his J.D. *magna cum laude* from the University of Georgia School of Law in 1975, where he was a notes editor of the *Georgia Law Review*. Following law school, he clerked for U.S. District Judge Wilbur D. Owens, Jr., in Macon.

Hon. Michelle M. Harner is a U.S. Bankruptcy Judge for the District of Maryland in Baltimore, appointed in 2017. Prior to her appointment to the bench, she was the Francis King Carey Professor of Law and the Director of the Business Law Program at the University of Maryland Francis King Carey School of Law, where she taught courses in bankruptcy and creditors' rights, business associations, business planning, corporate finance and the legal profession. Judge Harner lectured frequently during her academic career on various topics involving corporate governance, financially distressed entities, risk management and related legal issues. Her academic scholarship is widely published, with her publications appearing in, among others, the *Vanderbilt Law Review*, *Notre Dame Law Review*, *Washington University Law Review*, *Minnesota Law Review*, *Indiana Law Journal*, *Fordham Law Review* (reprinted in *Corporate Practice Commentator*), *Washington & Lee Law Review*, *William & Mary Law Review*, *University of Illinois Law Review*, *Arizona Law Review* (reprinted in *Corporate Practice Commentator*) and *Florida Law Review*. Judge Harner has served as the Associate Reporter to the Advisory Committee on the Federal Rules of Bankruptcy Procedure, the Reporter to the ABI Commission to Study the Reform of Chapter 11, and most recently chaired the Dodd-Frank Study Working Group for the Administrative Office of the U.S. Courts. She also served as the Robert M. Zinman ABI Resident Scholar for the fall of 2015. She most recently served as the chair of the Dodd-Frank Study Working Group for the Administrative Office of the U.S. Courts, and she is currently serving as a member of the Advisory Committee on the Federal Rules of Bankruptcy Procedure and an associate editor of the *American Bankruptcy Law Journal*. Judge Harner is an elected conferee of the National Bankruptcy Conference, an elected Fellow of the American College of Bankruptcy, and an elected member of the American Law Institute. She previously was in private practice in the business restructuring, insolvency, bankruptcy and related transactional fields, most recently as a partner at the Chicago office of the international law firm Jones Day.

Judge Harner received her B.A. *cum laude* from Boston College in 1992 and her J.D. *summa cum laude* from The Ohio State University College of Law in 1995.

Eric Terry is the founder of Eric Terry Law, PLLC in San Antonio, where he provides high-caliber business-related legal services in a broad range of areas regarding corporate bankruptcy, general counsel and debtor/creditor rights. Before forming ET Law, he was a briefing attorney for two federal judges and practiced for more than 16 years at one of America's largest law firms with one of the largest and most experienced business reorganization practice groups. Mr. Terry was recognized as a "Super Lawyer" in the area of bankruptcy and workouts by *Texas Monthly* from 2005-22 and in *The Best Lawyers in America* for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law from 2009-22, as well as for Litigation – Bankruptcy from 2012-22. He is a member of the State Bar of Texas, Bar Association of the Fifth Federal Circuit, Former Federal Law Clerks Society, San Antonio Bar Association, San Antonio Bankruptcy Bar Association, LEK Inns of Court and ABI. Mr. Terry received his B.A. magna cum laude in 1991 from the University of Pennsylvania and his J.D. in 1995 from the University of Texas at Austin School of Law.

Subchapter V - Overview

- Subchapter V = “Skinny” Chapter 11
- Promulgated to assist small businesses
- Benefits of Subchapter V compared to Chapter 11

Subchapter V - Debt Limit

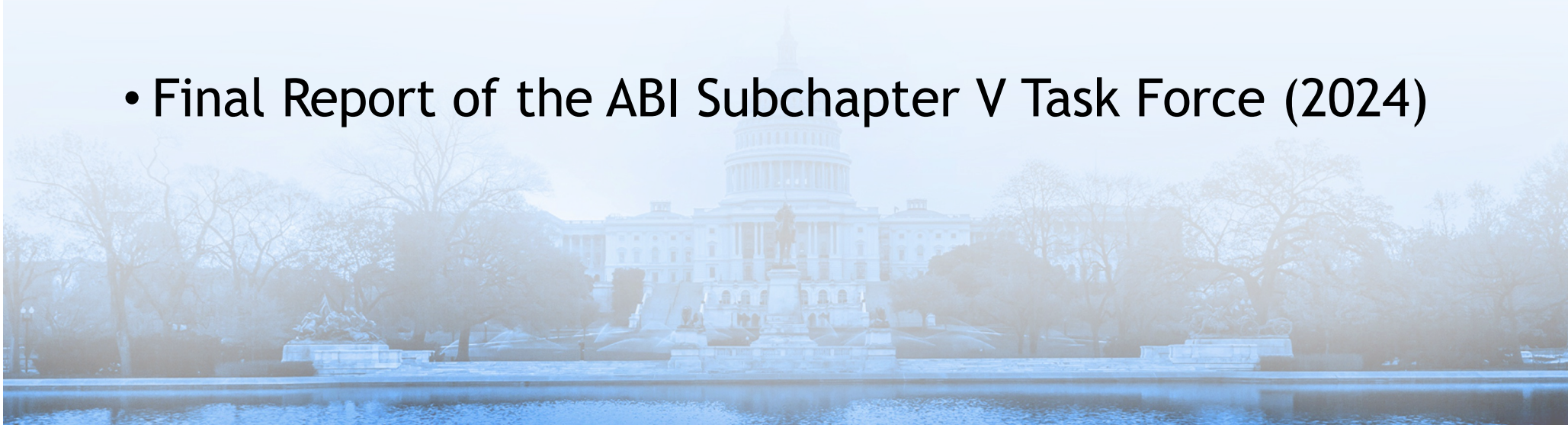
- Definition of “small business debtor” and election of Subchapter V
- What debts are included?
 - Liquidated and Non-Contingent
 - Debts of Affiliates Included

History of Subchapter V Debt Limit

- Subchapter V Enacted (2019) - \$2,725,625
- CARES Act (2020) - \$7,500,000
- Expiration of Increase (2024) - \$3,024,725

Subchapter V - Success Story

- The American Bankruptcy Institute Subchapter V Task Force
- Final Report of the ABI Subchapter V Task Force (2024)



Chapter 11 Subchapter V Statistical Summary Through September 30, 2024¹

Subchapter V Filing Summary

| Time Period | Subchapter V Cases |
|--------------------|---------------------------|
| Fiscal Year 2020 | 1,118 |
| Fiscal Year 2021 | 1,717 |
| Fiscal Year 2022 | 1,592 |
| Fiscal Year 2023 | 1,985 |
| Fiscal Year 2024 | 2,647 |

Source: <https://www.justice.gov/ust/page/file/1499276/download>

Chapter 11 Small Business Case Outcomes Summary

| Disposition | Chapter 11 Small Business (Non-Subchapter V) | | Subchapter V |
|--------------------------------|--|-------------------|-------------------|
| | FY 2017 – FY 2019 | FY 2020 – FY 2023 | FY 2020 – FY 2023 |
| Pending Without Confirmed Plan | 1% | 3% | 4% |
| Plan Confirmed | 31% | 22% | 52% |
| Converted | 15% | 22% | 12% |
| Dismissed | 54% | 53% | 32% |
| Total | 100% | 100% | 100% |
| Median Months to Confirmation | 10.8 | 10.4 | 6.6 |
| Median Months to Dismissal | 6.0 | 4.2 | 4.7 |

Source: <https://www.justice.gov/ust/page/file/1499276/download>



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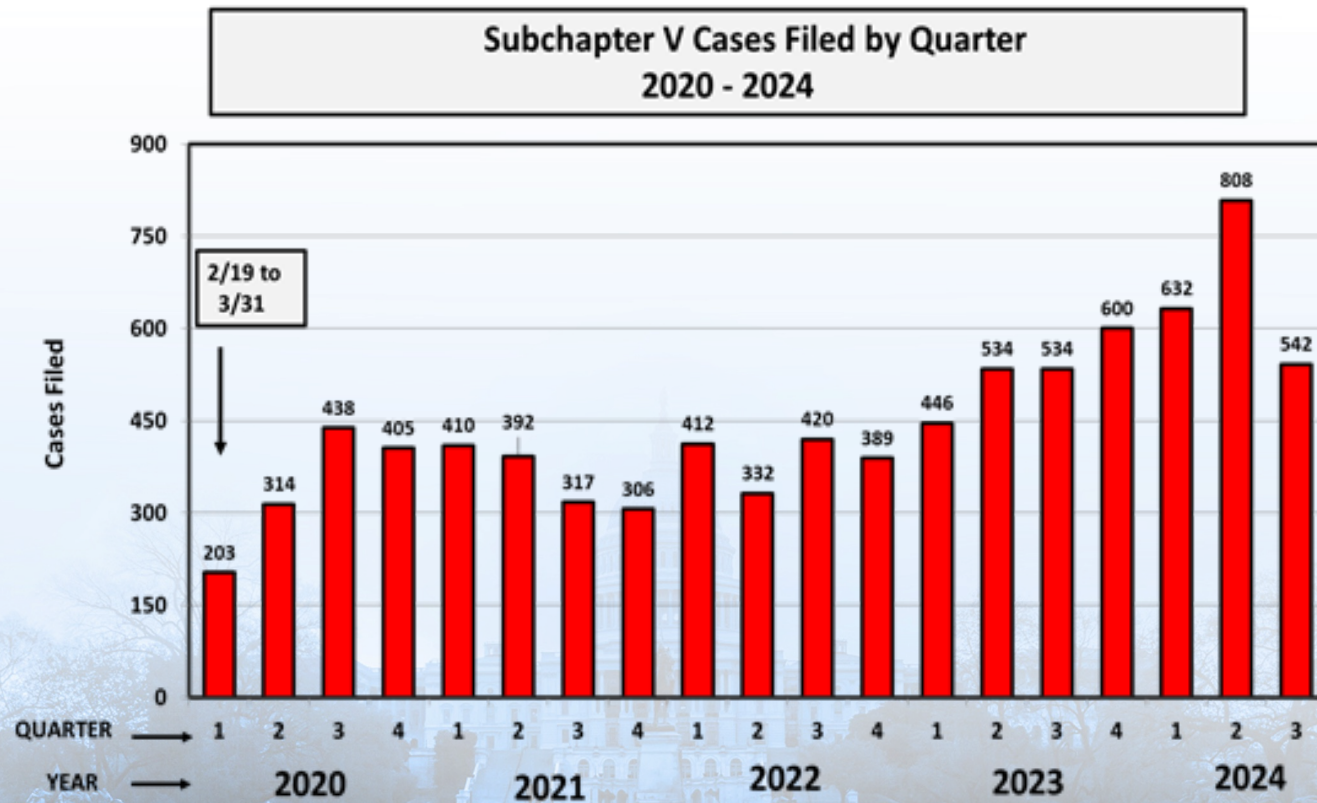
Executive Office of the U.S. Trustee Report (Through September 30, 2024)

- “Compared to other (non-subchapter V) chapter 11 small business cases, subchapter V cases have had approximately double the confirmed plan percentage and a 20 percent lower dismissal percentage, as well as a shorter time to confirmation.”
- “Of subchapter V cases with confirmed plans, 69 percent of the confirmed plans have been consensual plans.”

Source: <https://www.justice.gov/ust/page/file/1499276/download>

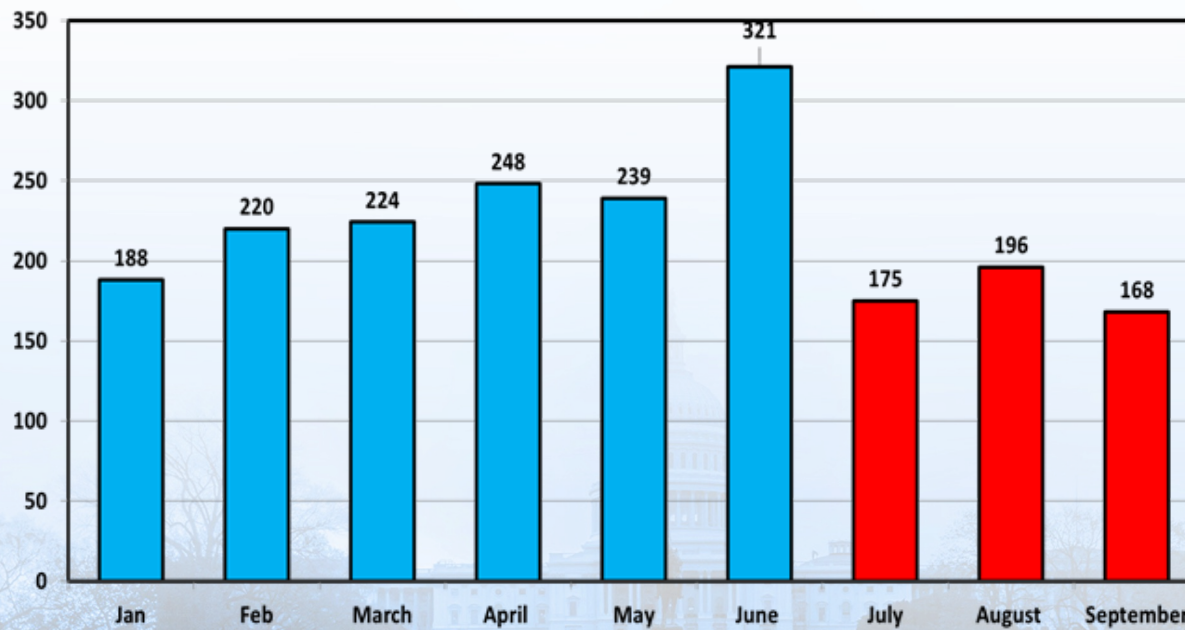
Impact of Expiration of Debt Limit Increase





Data compiled by the American Bankruptcy Institute

Subchapter V Filings By Month in 2024



Data compiled by the American Bankruptcy Institute

Subchapter V - Resources

- Final Report of the American Bankruptcy Institute Subchapter V Task Force (available at <https://connect.abi.org/l/107412/2024-04-22/6wj4lm>)
- EOUST Report (available at <https://www.justice.gov/ust/page/file/1499276/download>)
- Judge Bonapfel's Guide to SBRA (available at <https://www.ganb.uscourts.gov/content/honorable-paul-w-Bonapfel>)