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Delaware Views from the Bench

Subchapter V's Debt Cap: What Happens Now?

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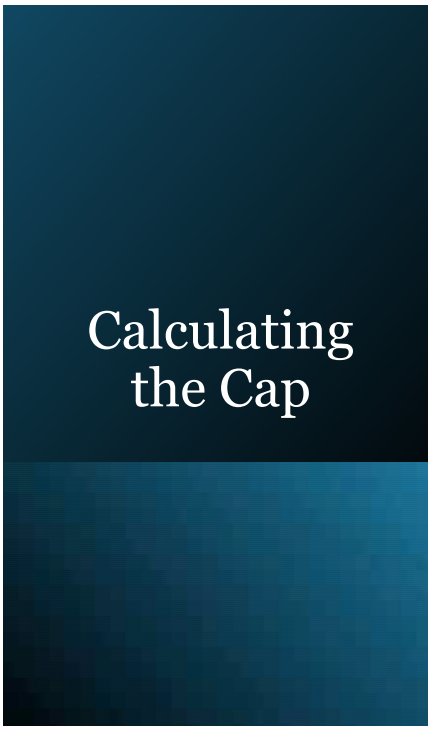
General Eligibility Requirements

- Must be engaged in “commercial or business activities”
- At least 50% of debt must arise from commercial or business activities
- Can be engaged in real estate business, but not a SARE debtor
- Aggregate noncontingent, liquidated debt limit of $3,024,725 as of June 21, 2024.



Calculating the Cap

The Bankruptcy Code does not define "contingent," "noncontingent," "liquidated," or "unliquidated;" however, given the similar language between Section 1182(1)(A) and Section 109(e), Courts often rely on Chapter 13 case law when interpreting Section 1182. *In re Hall,* 650 B.R. 595, 598 (Bankr. M.D. Fla. 2023). *See also In re Parking Management, Inc.*, 620 B.R. 544, 550 (Bankr. D. Md. 2020).

In Mazzeo v. U.S. (In re Mazzeo), 131 F.3d 295 (2d Cir. 1997) – "noncontingent"

The Court observed that it is "generally agreed that a debt is contingent if it does not become an obligation until the occurrence of a future event, but is noncontingent when all of the events giving rise to liability for the debt occurred prior to the debtor's filing for bankruptcy." *Id.* at 303 (collecting cases).

The Court declined to view a claim as contingent "merely because the debtor disputes the claim, for that would make the word 'contingent,' in the definition of 'claim,' redundant." *Id.*

The court explained that a "judicial determination as to liability and relief" is not required, and a claim may be noncontingent even if not reduced to judgment. *Id.*

In Mazzeo v. U.S. (In re Mazzeo), 131 F.3d 295 (2d Cir. 1997) – "liquidated"

The Court explained that the terms "liquidated" and "unliquidated" "generally refer to a claim's value (and the size of the corresponding debt) and the ease with which that value can be ascertained." *Id. at 304*. "If 'the value of the claim is easily ascertainable,' it is generally viewed as liquidated." *Id.*

Conversely, if that value depends on "a future exercise of discretion, not restricted by specific criteria, the claim is unliquidated." *Id.* (quoting *U.S. v. Verdunn*, 89 F.3d 799, 802 (11th Cir. 1996)). As a result, "courts have generally held that a debt is 'liquidated' ... where the claim is determinable by reference to an agreement or by a simple computation." *Id.*

The *Mazzeo* decision generally accords with a strong majority of Chapter 13 and (albeit limited) Subchapter V cases.

What Constitutes "Commercial or Business Activities"?

What it does mean:

- The term "commercial or business activities" is interpreted broadly to include any act of a business or commercial nature. *See In re Fama-Chiarizia*, 655 B.R. 48, 68 (Bankr. E.D.N.Y., 2023)
- Activities including having bank accounts and accounts receivable, pursuing litigation counterclaims, and winding down the business and "taking reasonable steps to pay its creditors and realize value for its assets" were sufficient *Id.*(citing *In re Offer Space*, 629 B.R. at 306).

What it does not mean:

- The debtor must be making a profit, actively operating, or intending to operate in the future.
- The requirement can be met by merely filing for bankruptcy and engaging in the bankruptcy process.

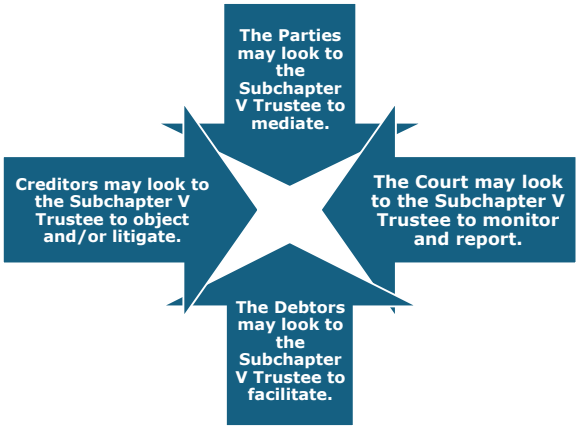
The Role of the Subchapter V Trustee

The Subchapter V Trustee

Intention

- Appointed by the United States Trustee
- Role is to oversee and monitor the case, to appear and be heard on specified matters, to facilitate a consensual plan, and to make distributions under a nonconsensual plan confirmed under the cramdown provisions. *See* Hon. Paul W. Bonapfel, *Guide to the Small Business Reorganization Act of 2019*, *revised* June 2022, page 9.

Perception



Confidentiality and other considerations when communicating with the Subchapter V Trustee

- How do confidentiality concerns effect the Subchapter V Trustee's quasi-mediator role?
- What should debtors be mindful of when communicating with the Subchapter V Trustee?
- Can the Subchapter V Trustee be called as a witness if they are facilitating the resolution of issues between the parties?

The Subchapter V Plan

Plan Confirmation Issues

Debtor's Financial Projections:

- Who is evaluating the efficacy of the Debtor's financial projections? How does the court weigh the financial projections given the evidence and witnesses typically presented?
- The court in *In re Lupton Consulting LLC*, 2021 WL 3890593 (Bankr. E.D. Wisc. 2021) concluded that the debtor's plan was not feasible because the debtor's financial projections submitted by its principal were not reliable in view of historical data and discrepancies with operating reports. *See* Hon. Paul W. Bonapfel, *Guide to the Small Business Reorganization Act of 2019, revised* June 2022, page 160.

Plan Confirmation Issues (cont.)

Disposable Income:

- Does additional disposable income over the plan payment period warrant a "true up" payment? Conversely, if the projected disposable income does not materialize are creditors simply not paid? Must the creditors come back to court?
- Some courts have held that a cramdown plan in Subchapter V can require an individual debtor to calculate disposable income every quarter and to increase payments automatically to unsecured creditors if actual disposable income turns out to be more than projected disposable income, according to District Judge John E. Steele, who affirmed Bankruptcy Judge Caryl E. Delano of Tampa, Fla. *See Staples v. Wood-Staples (In re Staples)*, 22-157 (M.D. Fla. Jan. 6, 2023).

Plan Confirmation Issues (cont.)

Oversight of Plan Payments:

- Pursuant to section 1194(b), in a non-consensual case, the Subchapter V trustee will normally act as the plan-disbursing agent and remain in place until all of the payments have been made according to the terms of the confirmed plan. *See In re Lager*, 2024 WL 3928157, at *2 (Bankr. N.D. Tex. 2024).
- Additionally, the Subchapter V Trustee must ensure that the debtor commences making timely payments required by a confirmed plan and must file a final report, regardless of whether the trustee is the distribution agent under the plan. *Id.*
- If the Subchapter V Trustee is discharged and the debtor is appointed as the disbursing agent, the debtor will oversee plan payments. However, the United States Trustee retains supervisory responsibilities to ensure compliance with the plan and the proper administration of the case.

Plan Confirmation Issues (cont.)

The Nonparticipating Class Problem:

- Whether a subchapter V plan can be consensually confirmed under 11 U.S.C. § 1191(a) when an impaired class of creditors fails to vote and the plan provides that such class of creditors shall not be counted at all for purposes of voting and/or shall be deemed to have accepted the plan?
- Two disparate approaches to the question of acceptance under § 1129 (a) (8) have emerged within the context of a nonparticipating class: (1) excluding such classes for the purposes of the § 1129 (a) (8) analysis, and (2) requiring affirmative acceptance to achieve consensual confirmation. A third approach — deeming a nonvoting class to have implicitly accepted the plan — has been largely discredited among courts analyzing the issue. *See* Patricia A. Redmond and Ashley D. Champion, *"You're Killing Me, Smalls!"*, ABI Journal, 20 October 2024 (attached).

Plan Confirmation Issues (cont.)

Termination of the Automatic Stay:

- If the court confirms a consensual plan, a Subchapter V debtor receives a discharge under § 1141(d)(1)(A) upon confirmation. One effect of immediate the discharge is that the automatic stay terminates under § 362(c)(2)(C). *See* Hon. Paul W. Bonapfel, *Guide to the Small Business Reorganization Act of 2019*, *revised* June 2022, page 10.
- Generally, when cramdown confirmation occurs in a Subchapter V case, § 1141(d) does not apply, and confirmation does not result in a discharge. Instead, §1192 governs the discharge, which does not occur until the debtor completes plan payments for a period of at least three years or such longer time not to exceed five years as the court fixes. Accordingly, the automatic stay remains in effect after confirmation of a Subchapter V cramdown plan until the case is closed or dismissed, or the debtor receives a discharge. *Id.*

Dollar Threshold: Where do we stand and where are we likely to go?

- Status of current legislation
- The future of Subchapter V, with or without an increased debt limit?

Q & A

On the Edge

By Patricia A. Redmond and Ashley D. Champion

"You're Killing Me, Smalls!"[1]

The Problem of the Nonparticipating Class in Subchapter V

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Subchapter V of chapter 11 of the Bankruptcy Code was designed to "streamline the bankruptcy process by which small business debtors reorganize and rehabilitate their financial affairs."[2] Thus, it varies from other chapter 11 cases in several key aspects, including its approach to consensual confirmation, whereby a subchapter V debtor can obtain a discharge on confirmation and avoid the ongoing expense associated with a three- to five-year delay in obtaining a discharge mandated by a cramdown confirmation.

Two recent opinions out of bankruptcy courts in the Eleventh Circuit highlight a major speed bump to the consensual plan confirmation — the nonparticipating class (often consisting entirely of a governmental creditor or a creditor with a small claim.[3] Although some courts have held that such nonparticipating classes should not be considered for confirmation purposes, other courts have recently held that the failure of an impaired class to vote in favor of the plan renders consensual confirmation impossible. This article explores the problem of the nonparticipating class with respect to an otherwise consensual subchapter V plan before concluding that a statutory fix is necessary and creative solutions should be explored in the interim to minimize the negative economic effects of cramdown confirmation.

The Statutory Sandlot: Sections 1191 and 1129(a)(8), and Bankruptcy Rule 3018(c)

Section 1191(a) of the Bankruptcy Code permits consensual confirmation of a subchapter V plan "only if all of the requirements of section 1129(a) ... are met."[4] Section 1129(a)(8) provides that a plan may be confirmed only if each class of claims or interests has "(A) such class has accepted the plan; or (B) such class is not impaired under the plan."[5] Section 1191(b) contains subchapter V's cramdown provision and permits confirmation if § 1129(a)(8)'s requirements have not been met, provided that the proposed plan is fair and equitable and does not discriminate unfairly with respect to the impaired nonaccepting classes.

Chief among the advantages of consensual confirmation is immediate discharge under § 1141(d)(1), as opposed to confirmation under § 1192, wherein discharge is available after three to five years of payments under the confirmed plan. From a cost perspective, consensual confirmation is much preferred, as discharge of the subchapter V trustee occurs after substantial consummation of a confirmed consensual plan, whereas the subchapter V trustee is charged with making plan distributions under a confirmed cramdown plan.[6]

"Acceptance" is not defined in the Code, and voting is permissive rather than mandatory.[7] Class acceptance is calculated based on the number of holders of allowed claims that have voted to accept the plan.[8] In addition, Rule 3018(c) of the Federal Rules of Bankruptcy Procedure specifies that "an acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form."[9] Without clear guidance for the treatment of nonvoting classes, courts have been split over whether to count nonvoting classes for the purpose of determining whether § 1129(a)(8) has been met.

Who's on First? Approaches to the Nonparticipating Class Problem

Two disparate approaches to the question of acceptance under § 1129(a)(8) have emerged within the context of a nonparticipating class: (1) excluding such classes for the purposes of the § 1129(a)(8) analysis, and (2) requiring affirmative acceptance to achieve consensual confirmation. A third approach — deeming a nonvoting class to have implicitly accepted the plan — has been largely discredited among courts analyzing the issue.[10]

Close Doesn't Count in Baseball (and Consensual Confirmation): *M.V.J. Auto* and *Florist Atlanta*

The facts in *M.V.J. Auto World Inc.* and *In re Florist Atlanta Inc.* were remarkably simi-

1 Quote from *The Sandlot* (Island World 1993).
2 Small Business Reorganization Act of 2019, H.R. Rep. No. 116-171, at 1 (2019).
3 *See In re M.V.J. Auto World Inc.*, 661 B.R. 186 (Bankr. S.D. Fla. 2024). *See In re Florist Atlanta Inc.*, No. 24-51980-pwb, 2024 WL 3714512 (Bankr. N.D. Ga. Aug. 7, 2024).
4 11 U.S.C. § 1191(a).
5 11 U.S.C. § 1129(a)(8).
6 *See* 11 U.S.C. §§ 1183(b), 1194(b).
7 *See* 11 U.S.C. § 1126(a) (holders of allowed claims or interests "may accept or reject a plan").
8 *See* 11 U.S.C. § 1126(c).
9 Fed. R. Bankr. P. 3018(c).
10 *See, e.g., In re Hot'z Power Wash Inc.*, 655 B.R. 107, 116 (Bankr. S.D. Tex. 2023) (observing that "most [courts] agree that a nonvote cannot be construed as an implicit acceptance"). The pre-1978 Bankruptcy Act expressly provided that a failure to vote was deemed a rejection of the plan, but that provision was removed when the Code was passed in 1978. *In re Ruti-Sweetwater Inc.*, 836 F.2d 1263, 1267 (10th Cir. 1988) (citing H.R. Rep. 95-595, at 410 (1977)).

lar.[11] In both cases, the debtors placed the Small Business Administration (SBA) in a separate class and the SBA elected not to vote,[12] the debtors sought consensual confirmation under § 1191(a), and no party filed an objection to plan confirmation. In *Florist Atlanta*, the subchapter V trustee, counsel for the U.S. Trustee and counsel for the SBA all appeared and had no objection to confirmation. In *M.V.J. Auto*, the U.S. Trustee, the subchapter V trustee and one other secured creditor argued at the confirmation hearing that the plan could only be confirmed under the cramdown provision in § 1191(b) because § 1129(a)(8)'s terms had not been met as required by § 1191(a).

Under these circumstances, each court concluded that § 1129(a)(8) requires affirmative acceptance of the plan from all impaired classes. Thus, because the SBA class did not vote, the plans could not be consensually confirmed under § 1191(a). The courts' analyses began and ended with the statutory language. Neither court addressed the requirements of Bankruptcy Rule 3018(c), the legislative history or the implications of effectively inferring rejection from silence for purposes of the § 1191(a) analysis.

You're Out! Cases Not Counting Nonvoting Classes in Their § 1129(a)(8) Analyses

In two cases preceding *M.V.J. Auto* and *Florist Atlanta*, bankruptcy courts in the Southern District of Texas concluded that nonvoting classes should not be considered in a § 1129(a)(8) analysis, thus consensual confirmation could be achieved without the affirmative vote of all of the impaired classes. In *In re Franco's Paving LLC*,[13] the plan contained six classes. Three classes voted in favor of the plan, and three classes — consisting nearly entirely of governmental claims with the exception of unknown claims added into one class — did not vote. In their closing argument at the confirmation hearing, the U.S. Trustee objected to consensual confirmation, arguing that § 1129(a)(8) had not been satisfied.

The court first considered the language of § 1126(c), explaining that class acceptance depended on two mathematical equations: (1) A/B > 50 percent, where "A" is the number of claims in the class that vote for the plan and "B" is the number voting claims in the class; and (2) C/D ≥ 66.67 percent, where "C" is the dollar amount of claims in the class that vote for the plan and "D" is the dollar amount of voting claims in the class. Absent a vote in the class, each equation becomes 0/0 = E, where "E" is the quotient and solving for "E" is 0 x E = 0, rendering "E" unsolvable because it can be any number. As a result, the calculation under § 1126(c) cannot be performed. When faced with such a scenario, "certainly not contemplated in the statute," the court reasoned that courts "should read the statute to align with congressional intent and 'the statute's design.'" The court further observed that "by implementing a denominator that includes only votes actually cast in § 1126, it logically follows that Congress presumed that at least one vote [had been] cast."[14]

Turning to subchapter V's underlying policy goal — encouraging consensual plans — the court reasoned that a creditor in agreement with a plan may express such consent either by affirmative vote or opting not to object, and the outcome should be no different because the overarching policy of subchapter V is satisfied. Accordingly, the court concluded that a nonvoting class "should not be counted for purposes of § 1129(a)(8)."[15]

Next, in *In re Hot'z Power Wash Inc.*,[16] the plan contained three impaired classes: Two voted in favor of the plan, and one class — consisting solely of the secured claim of the Internal Revenue Service (IRS) — did not vote. Aware of the IRS's policy to not vote on plans, the debtor attempted to use a notice on the face of the plan deeming nonvoting classes to have implicitly accepted the plan. The U.S. Trustee objected to such notice as being contrary to Bankruptcy Rule 3018(c)'s requirement that "an acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or an authorized agent, and conform to the appropriate Official Form."[17] The U.S. Trustee also objected to the debtor's alternative argument that a nonvote should be deemed acceptance as being violative of the plan language of § 1129(a)(8). The court agreed with the U.S. Trustee, concluding that "nonvotes do not satisfy the language of § 1126(c)."[18]

Observing the Code's silence as to the proper treatment of nonvoting classes, the court then reasoned that both "acceptances *and rejections* must satisfy the formality requirements in Bankruptcy Rule 3018(c) to be counted." Further, the court agreed with the mathematical analysis in *Franco's Paving*, concluding that "the calculation mandated by § 1126(c) as applied to a nonvoting class creates a mathematically undefined result that cannot be construed as a rejection of the class."[19] Accordingly, the court concluded that the nonvoting class should not have been deemed to have rejected the plan for purposes of the § 1129(a)(8) analysis.

Taming the Beast: Resolving the Nonparticipating Class Problem

Resolution of the nonparticipating class problem is difficult in the face of the Bankruptcy Code's silence as to the treatment of such classes. The preferable fix is legislative, but such action is neither easy nor certain. Absent a legislative fix, courts may seek to treat a nonvoting class as neither accepting nor rejecting the plan. In the event the court is inclined to follow the reasoning in *M.V.J. Auto* and *Florist Atlanta*, there are other creative fixes that can be employed to minimize the adverse effects of cramdown confirmation under § 1191(b).

11 *See supra* n.3.
12 In *Florist Atlanta*, there were also no votes cast by the class of unsecured creditors. *See Florist Atlanta*, 2024 WL 3714512, at *1 n.1.
13 *In re Franco's Paving LLC*, 654 B.R. 107 (Bankr. S.D. Tex. 2023). *See M.V.J. Auto*, 661 B.R. at 187.
14 *Id.* at 110.
15 *Id.*
16 *Id.* (citation omitted). *In re Hot'z Power Wash Inc.*, 655 B.R. 107 (Bankr. S.D. Tex. 2023).
17 Fed. R. Bankr. P. 3018(c).
18 *Hot'z Power Wash*, 655 B.R. at 114-15.
19 *Hot'z Power Wash*, 655 B.R. at 114.

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On the Edge: "You're Killing Me, Smalls!" Nonparticipating Classes in Sub V

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Everybody Gets One Chance to Do Something Great: Statutory Revision

As in most instances where silence in the Bankruptcy Code results in disparate approaches to statutory construction, the ideal fix is legislative. In this case, § 1129(a)(8) could be amended to clarify that a plan may be confirmed if a class of claims either fails to reject the plan or fails to vote. In addition, § 1191(a) could be amended to clarify that the failure of a class to vote shall either be construed as acceptance or result in noninclusion of the class for purposes of the § 1129(a)(8) analysis.

Finally, § 1192(2) could be revised to add language akin to § 1141(d)(5)(A), which specifies that discharge is granted upon completion of payments "[u]nless after notice and a hearing the court orders otherwise for cause." Such language would give courts discretion to afford an earlier discharge and terminate the subchapter V trustee earlier. Congress also could elect to specify that affirmative acceptance is required under § 1129(a)(8).

In any event, ending the silence is the best way to clarify the path forward. While statutory amendment is preferred, such action is not certain to occur anytime soon.

Tie Goes to the Debtor? Courts May Omit Nonparticipating Classes

The *M.V.J. Auto* court engaged in a fulsome analysis of the Texas cases, indicating first that the underlying reasoning in *Franco's Paving* and *Hot'z Power Wash* — that Congress did not contemplate a nonvoting class — was incorrect as evidenced by the permissive rather than mandatory nature of voting under § 1126(a), as well as the fact that the mathematical equation set forth in § 1126(c) does not include nonvoting creditors. However, these provisions only indicate congressional contemplation that *some* creditors within a class would not vote, not that an *entire class* would fail to vote.

The *M.V.J. Auto* court also concluded that treating a nonvoting class as a class that fails to cast a sufficient number of votes in favor of the plan to achieve acceptance is not an absurd result. As such, it is impossible to determine the number of votes necessary to achieve class acceptance when none of the claims have accepted or rejected the plan — an absurd result. Treating classes that fail to vote in this manner effectively likens them to those who have rejected the plan — a conclusion that ignores the requirements of Bankruptcy Rule 3018(c) and contradicts the consensual confirmation goal of subchapter V.

Moreover, exclusion of a nonvoting class is not a novel concept. For example, in *In re DBSD North America Inc.*,[20] the court designated the vote of an entity that had purchased all of the claims in its class under § 1126(e), leaving the class without any countable votes under § 1126(c). Faced with the question of what to do with a class without any members who could vote, the court concluded that the most appropriate solution was to disregard the class for purposes of the § 1129(a)(8) analysis: "To hold, even though the sole class occupant ... was disqualified from rejecting, that Class 1 *effectively rejected anyway*, because there was nobody left to accept, would make [the] designation ruling meaningless."[21]

Alternatively, the court concluded that if the class had to be considered, it "should now be regarded as an accepting class."[22] The court reasoned that because the Bankruptcy Code focuses on those who vote rather than the total membership of classes, and because the former act conditioned confirmation upon votes and not the failure to vote, "the absence of votes in a class doesn't result in failure to satisfy section 1129(a)(8)."[23]

I've Got This: Drafting Solutions to the Nonparticipating Class Problem

Debtors should include a backup strategy in their plan in case they are before a court that requires affirmative acceptance to meet § 1129(a)(8)'s requirements. The *Florist Atlanta* court explored one such simple, yet effective, solution: specifying in the plan that the debtor would make post-confirmation payments to creditors, and not including any post-confirmation duties to be performed by the subchapter V trustee.

Section 1191(a) provides for termination of the subchapter V trustee's services on substantial confirmation. Section 1191(b) does not have a termination provision, but nothing in the Bankruptcy Code limits such termination when (1) the debtor, rather than the trustee, will make plan payments; and (2) the subchapter V trustee will not have post-confirmation duties to perform. Observing that no party objected to the debtor making plan payments or requested the performance of post-confirmation duties, the court concluded that it was appropriate to terminate the subchapter V trustee's services upon substantial confirmation (the commencement of plan payments) and the filing of the subchapter V trustee's final report.

Conclusion: Let Them Play

The problem of the nonparticipating class is not one easily solved under the existing statutory scheme. Ideally, revision of the statute is necessary to clarify the effect of such nonparticipation on the analysis under § 1191. In the interim, courts may remove nonvoting classes from the § 1129(a)(8) equation, but debtors should also include plan provisions limiting the post-confirmation duties of the subchapter V trustee to limit costs in the event that cramdown confirmation is required. Such plan provisions as the one approved by the *Florist Atlanta* court can help soften the potentially costly effects of cramdown confirmation under § 1192. abi

Editor's Note: *ABI's Subchapter V Task Force released its Final Report and recommendations to Congress in April 2024, which is available at subvtaskforce.abi.org.*

20 *In re DBSD N. Am. Inc.*, 419 B.R. 179 (Bankr. S.D.N.Y. 2009).

21 *Id.* at 207.
22 *Id.* at 206.
23 *Id.*

Faculty

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Morgan L. Patterson is a partner with Womble Bond Dickinson in Wilmington, Del., where her practice focuses on corporate bankruptcy and creditors' rights in complex chapter 11 proceedings. She has broad experience representing debtors, creditors' committees, lenders, bondholders, secured and unsecured creditors, liquidation trustees, landlords, asset-purchasers, and other interested entities in various bankruptcy reorganization and liquidation proceedings. Ms. Patterson's bankruptcy work includes all matters of litigation and transactions, including involuntary petitions, avoidance actions, relief-from-stay proceedings, trustee motions, sale and purchase of assets, executory contracts and lease issues, post-petition financing, disclosure statements, plan confirmation, and representing liquidating trustees and plan administrators in the winding down of estates. She also has expertise with cross-border insolvency proceedings, specifically with respect to the consummation of large cross-border asset sales. Ms. Patterson is Membership chair for the International Women's Insolvency & Restructuring Confederation's Delaware Chapter and is a member of the Federal Bar Association, ABI, the Delaware Bankruptcy Inn of Court and the Delaware State Bar Association. She has been listed in *Chambers USA* as a Ranked Lawyer for Bankruptcy/Restructuring in Delaware since 2022 and was listed as a "Delaware Rising Star" in Bankruptcy by *Super Lawyers* from 2018-19. Ms. Patterson received her B.A. *magna cum laude* in 2005 from Temple University and her J.D. *magna cum laude* in 2009 from Widener University School of Law, where she was Bluebook editor of the *Delaware Journal of Corporate Law*.

Hon. Laurie Selber Silverstein is a U.S. Bankruptcy Judge for the District of Delaware in Wilmington, initially sworn in on Jan. 7, 2015. She served a term as Chief Judge. Judge Silverstein is a member of the American Bar Association's Business Law and Litigation Sections and a Fellow of the American College of Bankruptcy and the American Bar Foundation. She serves on the board of directors of the Delaware Bar Foundation and the Historical Society of the United States Court of Appeals for the Third Circuit. She also is a member of the Legislative Committee of the National Conference of Bankruptcy Judges. Prior to joining the bench, Judge Silverstein was a partner at Potter Anderson & Corroon LLP in Wilmington, Del., where she led the firm's bankruptcy and corporate restructuring practice group. She received her B.S. *cum laude* in economics in 1982 from the University of Delaware and her J.D. with honors from George Washington University's National Law Center in 1985.

Natasha M. Songonuga is a partner with Archer & Greiner, P.C. in Wilmington, Del., and focuses on business reorganization and restructuring matters, working across the full spectrum of chapter 11 cases and counseling creditors in assignments for the benefit of creditors state court insolvency proceedings. Her clients include debtors and creditors, chapter 11 and chapter 7 trustees, landlords, bidders at bankruptcy sales, and trustees appointed pursuant to the Securities Investor Protection Act. Ms. Songonuga is a subchapter V trustee and successfully shepherded the first confirmed subchapter V chapter 11 plan of reorganization in Delaware. She works with subchapter V debtors and their creditors facilitating the development of a consensual chapter 11 reorganization plan. Ms. Songonuga's extensive practice includes debtor/trustee representation, with her focus on financially troubled corporate entities and trustees in both chapter 11 and chapter 7 bankruptcy cases. She also represents secured and unsecured creditors in large bankruptcy cases. In addition, she has experience in bankruptcy and insolvency-related litigation, including the prosecution and defense of preferential and fraudulent transfer avoidance actions and fiduciary duty claims, the preparation of discovery requests and responses, disputes involving the assumption and rejection of leases and contracts, and assistance in depositions. She also has experience defending avoidance action defendants in state court assignments for the benefit of creditors proceedings. Ms. Songonuga also handles a wide range of other matters, including managing the claims objection and reconciliation process for thousands of claims; drafting, negotiating, and objecting to plans of reorganization and liquidation; § 363 sales; stay-relief motions; and handling related litigation. She is a Fellow of the American Bar Foundation and has consistently been ranked by *Chambers USA* in the top tiers for bankruptcy and restructuring lawyers, and she is a frequent author and speaker on topics related to bankruptcy. Ms. Songonuga received her B.S. from Rutgers University and her J.D. *cum laude* from Seton Hall University School of Law, where she was a member of the *Seton Hall Law Review*.

Hon. J. Kate Stickles is a U.S. Bankruptcy Judge for the District of Delaware in Wilmington, appointed on April 6, 2021. Previously, she was member of Cole Schotz P.C.'s Bankruptcy and Corporate Restructuring Department in its Wilmington, Del., office and practiced in the areas of corporate bankruptcy, insolvency and creditors' rights, having represented debtors, official committees, creditors, examiners and trustees in chapter 11 cases. Before joining Cole Schotz, Judge Stickles was a partner in the Bankruptcy and Restructuring Practice at Saul Ewing LLP and a director at Prickett, Jones, Elliott, Kristol & Schnee, P.A. She is a Fellow in the American College of Bankruptcy and a member of the National Conference of Bankruptcy Judges, ABI and the International Women's Insolvency & Restructuring Confederation. She also is a member of the Delaware State Bar Association and the Delaware Bankruptcy American Inn of Court. Judge Stickles has published in, and served as a contributing editor for, the *ABI Journal* and has also published in *The Americas Restructuring and Insolvency Guide*, the ABI Bankruptcy Litigation Committee eNewsletter and the ABI Commercial Fraud Committee eNewsletter. She received her B.A. in political science and communications from Western Maryland College and her J.D. from Temple University School of Law.