AMERICAN BANKRUPTCY INSTITUTE

Winter Leadership Conference

A Deep Dive into Subchapter V Confirmation Issues

H. David Cox
Cox Law Group, PLLC | Lynchburg, Va.

Caroline R. Djang
Buchalter, PC | Irvine, Calif.

Richard H. Drew, III
Office of the U.S. Trustee | Shreveport, La.

Hon. Robert A. Mark
U.S. Bankruptcy Court (S.D. Fla.) | Miami

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A Deep Dive Into Subchapter V Confirmation Issues

Hon. Robert A. Mark
U.S. Bankruptcy Court, S.D. Fla.
Miami, Florida

Caroline R. Djang
Buchalter, PC
Irvine, California

Richard H. Drew, III
Office of the U.S. Trustee
Shreveport, Louisiana

David Cox
Cox Law Group, PLLC
Lynchburg, Virginia

Rethinking Nonconsensual Confirmation & Projected Disposable Income[1]

I. Overview of Confirmation Options

A. Consensual Confirmation vs. Nonconsensual Confirmation – a/k/a Cramdown

1. *All Impaired Classes Accept.* A subchapter V plan may be confirmed consensually under 11 U.S.C. § 1191(a) if all of the requirements of § 1129(a) are satisfied, including paragraph (8) requiring all impaired classes to have accepted the Plan but not including paragraph (15).

2. *Section 1191(b) Option If Nonacceptance*. If any impaired class fails to vote to accept the plan (as would be required under § 1129(a)(8)), then the subchapter V plan may still be confirmed under the cramdown provisions of § 1191(b).

3. *Cramdown.* Confirmation of the Plan "nonconsensually" under 11 U.S.C. § 1191(b) is commonly referred to as confirmation by "cramdown," the requirements of which are summarized below.

§ 1191. Confirmation of plan

(a) Terms. The court shall confirm a plan under this subchapter [*11 USCS §§ 1181* et seq.] only if all of the requirements of section 1129(a) [*11 USCS § 1129(a)*], other than paragraph (15) of that section, of this title are met.

(b) Exception. Notwithstanding section 510(a) of this title [*11 USCS § 510(a)*], if all of the applicable requirements of section 1129(a) of this title [*11 USCS § 1129(a)*], other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

[1] The materials related to Cramdown Confirmation under Subchapter V have been prepared by David Cox, Cox Law Group, PLLC, Lynchburg Virginia.

II. Cramdown Confirmation Requirements

A. Cramdown Requirements Generally.

1. *Two-part Test As to Impaired Classes*. Under the cramdown rules of 11 U.S.C. § 1191(b), if all other confirmation standards are met, a bankruptcy court shall confirm a plan, on request of the debtor, if, with respect to each impaired class that has not accepted it, the plan:

(a) does not discriminate unfairly, and

(b) is fair and equitable.

2. *Mirrors § 1129(b)(1) – No Unfair Discrimination*. The subchapter V conditions for cramdown confirmation are facially the same as the § 1129(b)(1) requirements for cramdown confirmation in a non-subchapter V chapter 11 case.

1129 (b)

(1) Notwithstanding section 510(a) of this title [*11 USCS § 510(a)*], if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

3. *Differs from § 1129(b)(2) – Fair and Equitable Definition*. Section 1129(b), however, does not apply in a subchapter V case, and there is a rule of construction that replaces and differs from § 1129(b)(2) for purposes of applying the condition that the plan be fair and equitable in a subchapter V case.

B. Understanding Requirement of No Unfair Discrimination

1. *Unfair?* There can be "discrimination," so long as it is not "unfair." 7 *Collier on Bankruptcy* ¶ 1129.03 (16th 2023).

2. *Test For Unfair Discrimination.* In concluding that the bankruptcy court did not err in determining that the plan met the necessary requirements for court approval under 11 U.S.C. § 1129 (b)(1), the District Court (affirmed by the 4th Circuit by an unpublished *per curiam* opinion, *In re Jim Beck, Inc.*, 214 B.R. 305, 307 (W.D. Va. 1997), *aff'd*, 162 F.3d 1155 (4th Cir. 1998)) agreed with the use of the following four-part test to gauge "unfairness:"

a. whether there is a reasonable basis for the discrimination;

b. whether the plan can be confirmed and consummated without the discrimination;

c. whether the discrimination is proposed in good faith; and

d. the treatment of the classes discriminated against.

3. *Disparate Treatment Without Reasonable Basis.* A plan unfairly discriminates in violation of § 1129(b) of the Bankruptcy Code only if similar claims are treated differently without a reasonable basis for the disparate treatment, or a class of claims receives consideration of a value that is greater than the amount of its allowed claims. *In re Health Diagnostic Lab., Inc*., 551 B.R. 218, 230 (Bankr. E.D. Va. May 12, 2016).

C. Understanding the Fair and Equitable Requirement.

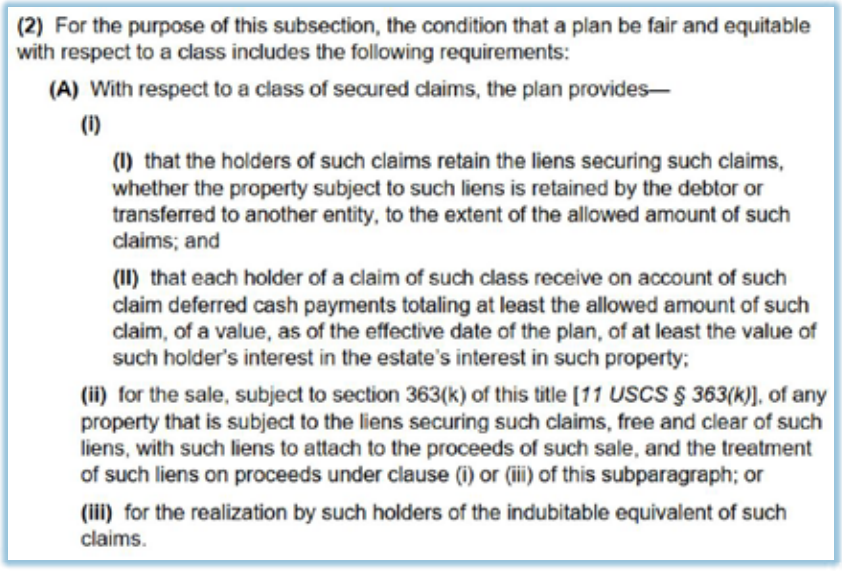
1. *Generally*. Section 1191(c) provides a "rule of construction" that replaces the requirements in § 1129(b)(2) for a plan to be fair and equitable in subchapter V case. Importantly, the fair and equitable requirement in a subchapter V case does not include the absolute priority rule. 8 *Collier on Bankruptcy* ¶ 1191.03 (16th 2023).

§ 1191(c):

> (c) **Rule of construction.** For purposes of this section, the condition that a plan be fair and equitable with respect to each class of claims or interests includes the following requirements:
>
> (1) With respect to a class of secured claims, the plan meets the requirements of section 1129(b)(2)(A) of this title [11 USCS § 1129(b)(2)(A)].
>
> (2) As of the effective date of the plan—
>
> (A) the plan provides that all of the projected disposable income of the debtor to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or
>
> (B) the value of the property to be distributed under the plan in the 3-year period, or such longer period not to exceed 5 years as the court may fix, beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor.
>
> (3)
>
> (A) The debtor will be able to make all payments under the plan; or
>
> (B)
>
> (i) there is a reasonable likelihood that the debtor will be able to make all payments under the plan; and
>
> (ii) the plan provides appropriate remedies, which may include the liquidation of nonexempt assets, to protect the holders of claims or interests in the event that the payments are not made.

2. *Fair and Equitable as to Secured Claims*. With regard to secured claims, however, the subchapter V fair and equitable requirement is the same as it is in a non-subchapter V chapter 11 case. Paragraph (1) of § 1190(c) states that the plan must meet the requirements of § 1129(b)(2)(A). 8 *Collier on Bankruptcy* ¶ 1191.03 (16th 2023).

§ 1129(b)(2)(A):



(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i)

(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title [*11 USCS § 363(k)*], of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

3. *Fair and Equitable with respect to Each Class of Claims*. Section 1191(c) provides a "rule of construction" for what is "fair and equitable" and describes three requirements to satisfy the condition that a plan be "fair and equitable" with respect to each class of claims or interests.

a. First, it requires the commitment of projected disposable income ("PDI"), or its value, for a period of three to five years, as the court determines under § 1191(c)(2)(A).

b. Second, it includes a "feasibility" requirement in § 1191(c)(3)(A).

c. Finally, the plan must provide "appropriate remedies" to protect holders of claims and interests if payments under the plan are not met in § 1191(c)(3)(B).

4. *Mandatory Cramdown Requirements*. So, regardless of how the plan satisfies subpart (a) above (with respect to projected disposable income or its value), § 1191(c)(3) requires that for a plan to be confirmed under the cramdown provisions, the Court must find EITHER:

a. "[t]he debtor will be able to make all payments under the plan" or

b. there is a reasonable likelihood the debtor will be able to make all payments under the plan and "the plan provides appropriate remedies . . . to protect the holders of claims or interests in the event that the payments are not made."

D. Understanding the Requirement of PDI or its Value Under § 1191(c)(2)(A)

1. *Entity Or Individual.* Paragraph (2) of § 1191(c) imposes a projected disposable income requirement, applicable in cases of corporations and other entities as well as of individuals. 8 *Collier on Bankruptcy* ¶ 1191.03 (16th 2023).

2. *Alternatives to Satisfy PDI Requirement*. The commitment of PDI under § 1191(c)(2)(A) as required under subchapter V may be satisfied in one of two alternate ways.

a. *Periodic Payment Alternative*. The first method requires that the plan provide that "all of the projected disposable income to be received in the 3-year period, or such longer period not to exceed 5 years as the court may fix . . . be applied to make payments under the plan." 11 U.S.C. § 1191(c)(2)(A). The statute does not state how the court is to fix or determine the length of the commitment period of the PDI (the "PDI Period"). Section 1191(c)(2)(A) does provide, however, that the PDI Period begins on the date that the first payment is due under the plan.

b. *Value Alternative*. The second alternative permits confirmation if "the value of the property to be distributed under the plan in [the PDI Period], beginning on the date on which the first distribution is due under the plan is not less than the projected disposable income of the debtor." 11 U.S.C. § 1191(c)(2)(B).

III. Projected Disposable Income

A. No PDI Definition. The Bankruptcy Code does not define "projected disposable income," but it defines "disposable income" in 11 U.S.C. § 1191(d) as income that is received by the debtor and that is not "reasonably necessary to be expended" for these specified purposes:

- the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation that first becomes payable after the date of the filing of the petition; or
- for payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor.

B. **Burden of Proof**. In *Hamilton v. Curiel* (*In re Curiel*), the bankruptcy court's confirmation of a subchapter V plan was reversed on appeal due to the debtor's unrealistic income projections, which rendered the plan infeasible under § 1129(a). 651 B.R. 548 (B.A.P. 9th Cir. June 23, 2023). The appellate panel remanded the case for further proceedings to address the feasibility of the plan in more detail, emphasizing the need for concrete evidence of the debtor's financial performance.

1. *Debtor's Burden*. It is the debtor's burden, as the plan proponent, to present concrete evidence to establish that she has sufficient cash flow to maintain her ongoing personal expenses while funding all plan payments. *Curiel* at 562.

2. *Adequate Evidence*. While feasibility under § 1129(a) presents a relatively low threshold, it still depends on adequate evidence in the form of factual support for the debtor's projections. *Curiel* at 563.

3. *Reasonable Probability of Success*. "The use of the word 'likely' in Section 1129(a)(11) requires the Court to assess whether the plan offers a reasonable 'probability of success, rather than a mere possibility.'" *Curiel* at 563, citing *In re Sanam Conyers Lodging*, LLC, 619 B.R. 784, 789 (Bankr. N.D. Ga. 2020) (quoting *In re Aspen Vill. at Lost Mountain Memory Care, LLC*, 609 B.R. 536, 543 (Bankr. N.D. Ga. 2019)).

C. Is PDI Fixed or does it Float?

1. *Plain Language – Projected and Fixed*. When the statute's language is plain, the sole function of the courts is to enforce it according to its terms. *Lamie v. Treasury*, 540 U.S. 526, 534 (2004). The statute itself refers to "projected" disposable income, indicating that the debtor makes payments based on expectations of what its income and expenditures will be.

2. *But Compare*:

a. *Floats -- Must Pay Actual Disposable Income*. A cramdown plan (confirmed under § 1191(b)) 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. *Staples v. Wood-Staples (In re Staples)*, 22-157 (Bankr. M.D. Fla. Jan. 6, 2023).

b. *Fixed -- Must Pay What Is Projected At Effective Date*. The Supreme Court applies Chapter 13's "projected disposable income" requirement. The Supreme Court considers the plain meaning of the word "projected" and focuses on how disposable income is to be projected. The Supreme Court's opinion emphasizes that "projected disposable income" in § 1325(b)(1) requires a "forward-looking" calculation that's to be determined "as of the effective

date of the plan.". *Hamilton v. Lanning*, 560 U.S. 505 (2010). Subchapter V's "projected disposable income" requirement (in § 1191(c)) is also to be determined "as of the effective date of the plan." Chapter 12, too, contains the same "effective date of the plan" language (in § 1225(b)(1)).

§ 1325(b)(1):

(b)

(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

§ 1225(b)(1):

(b)

(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim;

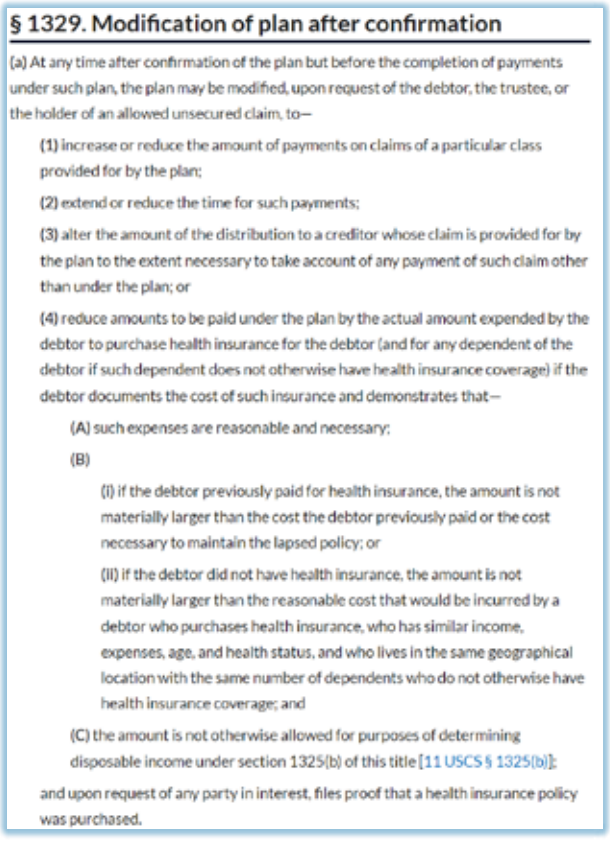
(B) the plan provides that all of the debtor's projected disposable income to be received in the three-year period, or such longer period as the court may approve under section 1222(c) [11 USCS § 1222(c)], beginning on the date that the first payment is due under the plan will be applied to make payments under the plan; or

(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c) [11 USCS § 1222(c)], beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.

3. *Remember – Postconfirmation Plan Modification Only By The Debtor*. Subchapter V does not permit postconfirmation modification at the instance of anyone except the debtor per § 1193. Thus, although a subchapter V debtor can seek postconfirmation modification to reduce

payments if its actual results turn out to be worse than projected, creditors do not have a similar remedy to increase plan payments if the debtor does better than expected.

4. *Compare SubV to Chapters 12 & 13*. Under Chapter 13, § 1329(a) permits the trustee or an unsecured creditor to seek modification, and under Chapter 12, § 1229(a) similarly allows such parties to seek postconfirmation modification. As such, the trustee or an unsecured creditor can propose a modification to require the debtor to pay more money based on an increase in disposable income in Chapters 12 & 13.



§ 1329. Modification of plan after confirmation

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, upon request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments;

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or

(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

(A) such expenses are reasonable and necessary;

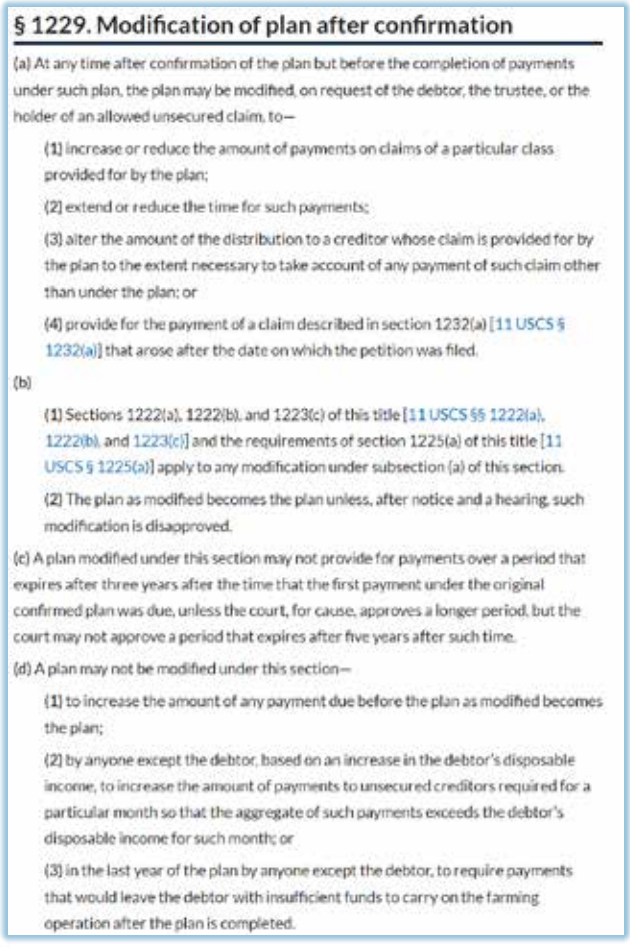
(B)

(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy; or

(ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance, who has similar income, expenses, age, and health status, and who lives in the same geographical location with the same number of dependents who do not otherwise have health insurance coverage; and

(C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title [11 USCS § 1325(b)];

and upon request of any party in interest, files proof that a health insurance policy was purchased.



§ 1229. Modification of plan after confirmation

(a) At any time after confirmation of the plan but before the completion of payments under such plan, the plan may be modified, on request of the debtor, the trustee, or the holder of an allowed unsecured claim, to—

(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(2) extend or reduce the time for such payments;

(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan; or

(4) provide for the payment of a claim described in section 1232(a) [11 USCS § 1232(a)] that arose after the date on which the petition was filed.

(b)

(1) Sections 1222(a), 1222(b), and 1223(c) of this title [11 USCS §§ 1222(a), 1222(b), and 1223(c)] and the requirements of section 1225(a) of this title [11 USCS § 1225(a)] apply to any modification under subsection (a) of this section.

(2) The plan as modified becomes the plan unless, after notice and a hearing, such modification is disapproved.

(c) A plan modified under this section may not provide for payments over a period that expires after three years after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

(d) A plan may not be modified under this section—

(1) to increase the amount of any payment due before the plan as modified becomes the plan;

(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

(3) in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.

IV. Other Cramdown Issues

A. Three of Five Year Term / Commitment Period for Projected Disposable Income?

1. *Is There Cause to Extend?* "While at first blush the simple math of an extended plan term might seem to generate a higher payment to unsecured creditors, the inherent risks to the small business debtor of that extension could defeat the unsecured creditors' desire for greater recovery." *In re Urgent Care Physicians, Ltd.,* No. 21-24000-BEH, 2021 WL 6090985, at *9–11 (Bankr. E.D. Wis. Dec. 20, 2021).

2. *When Is It Appropriate For the Court To Extend The Commitment Period?* One example may be when the debtor elects to reserve funds as part of its budget for anticipated expansion of the business might be a reason to extend the term of the plan beyond the 3-year minimum commitment. See Hon. Paul W. Bonapfel, *A Guide to the Small Business Reorganization Act of 2019* at 121 (July 2021).

B. Payment of Administrative Expenses.

1. *Admin Claims.* With the exception noted below, §1129(a)(9)(A) requires a plan to provide for the payment in cash, on the effective date of the plan, of claims of the kind specified in §§ 507(a)(2) and 507(a)(3), unless the holder of the claim has agreed to different treatment.

a. Claims under § 507(a)(2) include administrative expenses allowable under § 503(b).

b. Claims under § 507(b)(3) are claims allowable under § 502(f), which are claims arising in the ordinary course of business after the filing of an involuntary petition but before appointment of a trustee or entry of an order for relief.

2. *Nonconsensual Plan Exception To Admin Claim Payment On Effective Date.* A consensual plan confirmed under § 1191(a) must comply with this requirement, but § 1191(e) permits cramdown confirmation of a plan that provides for payment of such claims over time through the plan. 8 *Collier on Bankruptcy* ¶ 1191.03 (16th 2023).

§1191(e):

> **(e) Special rule.** Notwithstanding section 1129(a)(9)(A) of this title [11 USCS § 1129(a)(9)(A)], a plan that provides for the payment through the plan of a claim of a kind specified in paragraph (2) or (3) of section 507(a) of this title [11 USCS § 507(a)] may be confirmed under subsection (b) of this section.

3. *Can unpaid administrative rent be deferred and paid through the plan? In re Seven Stars on the Hudson Corp.*, 618 B.R. 333, 346 n.82 (Bankr. S.D. Fla. 2020) (stating that a small business plan is unconfirmable unless it provides for "payment in full of [landlord's] administrative rent claim on the effective date of the plan.").

C. Evidentiary Burden Confirmation.

1. *Preponderance*. The debtor bears the burden of establishing that the plan confirmation requirements have been satisfied, by a preponderance of the evidence. *In re South Canaan Cellular Investments, Inc*., 427 B.R. 44, 61 (Bankr. E.D. Pa. 2010).

2. *Who May Be Heard?* Any "party in interest" has the right to appear and be heard on confirmation of the plan under § 1109 and may attack a witness's credibility at the hearing under Fed. R. Evid. 607. Reversing the Fourth Circuit, the Supreme Court stated in *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.,* that courts must determine on a case-by-case basis whether a prospective party has a sufficient stake in reorganization proceedings to be a "party in interest" under § 1109(b). 144 S. Ct. 1414, 1423 (2024). Examining the plain language, context clues,

purpose, and statutory history of § 1109(b), the Supreme Court concluded that an insurer with financial responsibility for bankruptcy claims is a "party in interest" that may object to a chapter 11 plan of reorganization. *Id*. at 1424.

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF BANKRUPTCY PROCEDURE[1]

Rule 3018. Chapter 9 or 11—Accepting or Rejecting a Plan[2]

(a) In General.

* * * * *

(3) ***Changing or Withdrawing an Acceptance or Rejection.*** After notice and a hearing and for cause, the court may permit a creditor or equity security holder to change or withdraw an acceptance ~~or rejection~~. The court may permit the change or withdrawal of a rejection as provided in (c)(1)(B).

* * * * *

(c) ~~Form~~ Means for Accepting or Rejecting a Plan; Procedure When More Than One Plan Is Filed.

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[1] New material is underlined in red; matter to be omitted is lined through.

[2] The changes indicated are to the version of Rule 3018 on track to go into effect December 1, 2024.

(1) ~~***Form***~~ ***Alternative Means*.**

(A) *By Ballot.* Except as provided in (B), ~~An~~ an acceptance or rejection must:

(~~A~~i) be in writing;

(~~B~~ii) identify the plan or plans;

(~~C~~iii) be signed by the creditor or equity security holder—or an authorized agent; and

(~~D~~iv) conform to Form 314.

(B) *As a Statement on the Record.* The court may also permit an acceptance—or the change or withdrawal of a rejection—in a statement that is:

(i) part of the record, including an oral statement at the confirmation hearing or a stipulation; and

(ii) made by an attorney for—or an authorized agent of—the creditor or equity security holder.

(2) ***When More Than One Plan Is Distributed.*** If more than one plan is sent under Rule 3017, a creditor or equity security holder may accept or reject one or more plans and may indicate preferences among those accepted.

* * * * *

Committee Note

Subdivision (c) is amended to provide more flexibility in how a creditor or equity security holder may indicate acceptance of a plan in a chapter 9 or chapter 11 case. In addition to allowing acceptance or rejection by written ballot, the rule now authorizes a court to permit a creditor or equity security holder to accept a plan by means of its attorney's or authorized agent's statement on the record, including by stipulation or by oral representation at the confirmation hearing. This change reflects the fact that disputes about a plan's provisions are often resolved after the voting deadline and, as a result, an entity that previously rejected the plan or failed to vote accepts it by the conclusion of the confirmation hearing. In such circumstances, the court is permitted to treat that change in position as a plan

acceptance when the requirements of subdivision (c)(1)(B) are satisfied.

Subdivision (a) is amended to take note of the means in (c)(1)(B) of changing or withdrawing a rejection.

Nothing in the rule is intended to create an obligation to accept or reject a plan.

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A DEEP DIVE INTO SUBCHAPTER V CONFIRMATION ISSUES

Materials for Non-Voting Classes and Post-Confirmation Role of Subch. V Trustee

Non-Voting Classes

I. Non-Voting Classes: Applicable Code Sections and Rules

A. Sec. 1126(c): "A class of claims has accepted a plan if such plan has been accepted by creditors . . . that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors . . . that have accepted or rejected such plan."

B. Fed. R. Bankr. P 3018(c): "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. . . ."

C. Sec. 1129(a): "The court shall confirm a plan only if all of the following requirements are met: . . . (8) With respect to each class of claims or interests—(A) such class has accepted the plan; or (B) such class is not impaired under the plan."

II. Non-Voting Classes: Case Law

A. Longstanding Majority View: A class of creditors without any members casting ballots does not accept the plan of reorganization. *In re Vita Corp*. 358 B.R. 748 (C.D. Ill. 2007) ("[Section 1126] requires a plan to be actively accepted. . . . If Congress had intended otherwise, instead of basing a class's acceptance on whether 'such plan has been accepted by creditors' of a certain number and amount, it would have used the phrase 'if such plan has not been rejected by creditors.'") (*citing In re Higgins Slacks Company*, 178 B.R. 853 (Bankr. N.D.Ala. 1995);

B. Longstanding Minority View: A class of creditors without members voting for or against the plan is deemed to accept the plan. *In re Ruti-Sweetwater,* 836 F.2d 1263, 1266 (10th Cir. 1988) (Non-voting class must be deemed to accept plan, otherwise creditors "may sit idly by," refusing to participate in reorganization process, only to object immediately prior to confirmation.)

C. New Interpretation Advanced Since Advent of Subchapter V: A class of without any members casting ballots does not count at all towards calculation of the plan's acceptance by creditors. *In re Franco's Paving*, LLC 654 B.R. 107, 110 (Bankr. S.D. Tex. 2023); *In re Hot'z Power Wash,* 655 B.R. 107, 118-19 (Bankr. S.D. Tex. 2023) (". . . the result of a § 1126(c) computation for a nonvoting class is absurd, unsolvable, and was not contemplated by Congress. . . . Allowing creditors' silence to force nonconsensual plans, especially as is the case here where a non-voting class is willfully withholding its vote, defeats the overarching policy preferences of Subchapter V.")

D. Rejection of New Interpretation in Favor of Traditional Majority View: *In re MVJ Auto World Inc*. 661 B.R. 186 (Bankr. S.D. Fla. 2024) ("It is not absurd that no creditors in a class voting on a plan should be treated any differently than a situation where there is not a sufficient number of creditors voting in favor of a plan to satisfy section 1129(a)(8). Moreover, section 1129(a)(8) does not compel acceptance or rejection; section 1129(a)(8) looks to whether a class has accepted a plan, not whether a class has rejected a plan or stood silent."); *In re Thomas Orthodontics,* S.C. 2024 Bankr. LEXIS 2334 (Bankr. E.D. Wis. September 25, 2024).

III. Special Problem of Non-Voting Government Creditors

Post-Confirmation Role of Subchapter V Trustee

I. Trustee's Post-Confirmation Role: Applicable Code Sections

A. Sec. 1183(c)(1): "**If the plan of the debtor is confirmed under section 1191(a) of this title,** the service of the trustee in the case shall terminate when the plan has been substantially consummated, except that the United States trustee may reappoint a trustee as needed for performance of duties under subsection (b)(3)(C) of this section and section 1185(a) of this title." (emphasis added)

B. Sec. 1194(b): If a plan is confirmed under section 1191(b) of this title, except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.

C. Section 350(a): "After an estate is fully administered and the court has discharged the trustee, the court shall close the case."

II. Post-Confirmation Status of Trustee after Non-Consensual Confirmation: Case Law

A. Trustee remains in place for life of the plan: *In re Gui-Fer-Me*, 2022 WL 1216270 at *8 (Bankr. D. P.R. April 25, 2022). (". . . [I]n chapter 11 subchapter V cases that are confirmed under 11 U.S.C. § 1191(b), the services of the subchapter V trustee do not terminate until the completion of plan payments and the subchapter

V trustee files his/her final report and the debtor then requests the entry of final decree and discharge.")

B. Alternative view: After non-consensual confirmation, a case can be closed and the trustee's services terminated while plan payments are ongoing, with reopening and reappointment as needed,, notwithstanding the lack of express statutory authorization: *In re Florist Atlanta*, 2024 WL 3714512 at *5-6 (Bankr. N.D. Ga. August 6, 2024); *In re Lager,* 2024 WL 3928157 at *8 (Bankr. N.D. Tx. August 2, 2024). ("The scope of a Subchapter V trustee's post-confirmation services should be thoughtfully tailored to suit the needs of a case, especially where a reorganized debtor will serve as the plan distribution agent and the Subchapter V trustee's post-confirmation role is therefore minimal. The breadth of the Subchapter V trustee's post-confirmation role determines the contours of whether and how to close the case.")

American Bankruptcy Institute
Winter Leadership Conference
Scottsdale, Arizona
December 13, 2024

A Deep Dive Into SUBCHAPTER V Confirmation Issues

Materials for Topic: Role of Sub V Trustee / US Trustee

CAROLINE DJANG (SBN: 216313)
BUCHALTER
A Professional Corporation
18400 Von Karman Avenue, Suite 800
Irvine, CA 92612-0514
Telephone: 949.760.1121
Fax: 949.720.0182
Email: cdjang@buchalter.com

Subchapter V Trustee

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

In re INNERLINE ENGINEERING, INC., Debtor.	Case No. 6:22-BK-10545-WJ Chapter 11 **SUBCHAPTER V TRUSTEE'S SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF FIRST INTERIM FEE APPLICATION** Date: April 4, 2023 Time: 2:00 p.m. Ctrm.: 304

Caroline R. Djang, the subchapter V trustee (the "Trustee") appointed in the above-captioned bankruptcy case of Innerline Engineering, Inc. (the "Debtor") submits this Second Supplemental Brief in further support of her *Application for Interim Fees and/or Expenses (11 U.S.C. § 331)* (the "Application") [Doc. 160]. Pursuant to the Court's Scheduling Order, entered on February 15, 2023 [Doc. 230], "The parties are focusing on (1) the scope of the duties of a subchapter V trustee, (2) whether or not such scope includes certain duties performed by a committee of creditors for the benefit of creditors and (3) whether or not a committee of creditors should be appointed in subchapter V cases such as this one." The Trustee addresses each of these issues in turn below.

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I.

INTRODUCTION

The Trustee has thoughtfully reviewed the cases, brief and order referenced by the Court at the January 31, 2023 at 1:30 p.m. continued hearing on the Application. In addition, the Trustee has conducted her own independent research of relevant case law, as well as articles, handbooks and other resources available to her. Based thereon, the Trustee believes that, while some courts have stated in dicta that a Trustee may have a fiduciary duty in a subchapter V case, that fiduciary duty does not extend to advocating for creditors, as this Court suggested at the January 31, 2023 hearing. Thus, the trustee has not fallen short of her duties. Moreover, given the dearth of case law regarding a subchapter V trustee's duties, the Trustee cannot be bound by standards that are found in dicta in non-binding case law. If the Court nevertheless finds that a subchapter V trustee does have a duty to advocate on behalf of creditors for better treatment under a subchapter V plan, the Trustee believes that she should be given an opportunity to fulfill this role, and that a committee of general unsecured creditors should not be appointed.

II.

APPLICABLE LAW

A. Cases and Authority Cited by the Court at the January 31, 2023 Hearing

1. *In re Louis*, 2022 Bankr. LEXIS 1586 (Bankr. C.D. Ill. June 7, 2022): The Court stated, in pertinent part:

> The Subchapter V trustee's primary duty is to "facilitate the development of a consensual plan of reorganization." 11 U.S.C. §1183(b)(7); *In re Ozcelebi*, 639 B.R. 365, 2022 Bankr. LEXIS 854, 2022 WL 990283, at *7 (Bankr. S.D. Tex. Apr. 1, 2022); UST Program Policy and Practices Manual, §3-17.1.1, p. 189 ("A trustee is appointed in every [Subchapter V] case tasked primarily with facilitating a consensual plan."). It is a significant distinction shared by no other trustee in bankruptcy. *218 Jackson*, 631 B.R. at 947. And it makes the Subchapter V trustee's role more like that of a mediator than other trustees who have traditionally taken on a more adversarial role. *Id.* (citing *Seven Stars on the Hudson*, 618 B.R. at 346 n.81). *Louis*, 2022 Bankr. LEXIS 1586, at *50.

Additionally, the court in *Louis* noted in a footnote: "Further, if all creditors really were in agreement, as represented by Trustee Bourne, then consensual confirmation was within reach and

the Trustee **had a fiduciary duty to recommend and support efforts to obtain such a confirmation**." *Louis*, 2022 Bankr. LEXIS 1586, at *24 n. 8. (Emphasis added).

2. *In re Ventura*, 615 B.R. 1, 13 (Bankr. E.D.N.Y. 2020)

The court in *Ventura* states, "The subchapter V trustee will act as a fiduciary for creditors, in lieu of an appointed creditors' committee. The subchapter V trustee is also charged with facilitating the subchapter V debtor's small business reorganization and monitoring the subchapter V debtor's consummation of its plan of reorganization. 11 U.S.C. § 1183 (a), (b)." *In re Ventura*, 615 B.R. 1, 13. In the context of whether any prejudice would result from the debtor's retroactive election to subchapter V, the Office of the United States Trustee argued, "because the order for relief in the Debtor's case was entered on October 24, 2018, the Debtor's 90-day deadline to file a plan has expired, and it does not appear that the SBRA trustee can effectively function as the facilitator of a consensual plan." *Ventura*, 615 B.R. at 14-15. The *Ventura* opinion provides no further discussion of the subchapter V trustee's role or duties.

3. *In re Penland Heating & Air Conditioning, Inc.,* 2020 Bankr. LEXIS 1550 (Bankr. E.D.N.C. June 11, 2020)

Quoting *Ventura,* the court in *Penland* reiterates, "The subchapter V trustee will act as a fiduciary for creditors, in lieu of an appointed creditors' committee. The subchapter V trustee is also charged with facilitating the subchapter V debtor's small business reorganization and monitoring the subchapter V debtor's consummation of its plan of reorganization." *In re Penland Heating & Air Conditioning, Inc.*, 2020 Bankr. LEXIS 1550, at *3. The court in *Penland* further quoted bankruptcy judge Paul W. Bonapfel's *A Guide to the Small Business Reorganization Act of 2019*, 93 Am. Bankr. L.J. 571, 582-83 (2019), which explains, "The role of a Subchapter V trustee is like that of a trustee in Chapters 12 and 13, and a Subchapter V debtor remains in possession of assets and operates the business."

4. *In re Bonert,* 2020 Bankr. LEXIS 1783, at *21-22 (Bankr. C.D. Cal. June 3, 2020)

In the *Bonert* case, Judge Robles overruled the general unsecured creditors' committee's opposition to the Debtors' Subchapter V election. *In re Bonert*, Bankr. LEXIS 1783, at *20. The court further ordered:

> By no later than **June 18, 2020**, the Committee shall file a brief showing cause why it should not be disbanded. The brief shall explain how the Committee's continued existence will improve recoveries to creditors, assist in the prompt resolution of this case, and provide effective oversight of the Debtors. The brief shall also address why the Committee's continued existence is warranted given the finding in the Memorandum that the Committee did not act appropriately in opposing the Claim Objections. By no later than **June 18, 2020**, the Subchapter V Trustee shall file a statement setting forth his views on whether the Committee's continued existence would materially assist in the prompt resolution of this case. The Debtors' opposition to the Committee's brief and response to the Subchapter V Trustee's statement is due by **June 25, 2020**; the Committee's reply to the Debtor's opposition and to the Subchapter V Trustee's statement is due by **July 2, 2020**. As of **July 2, 2020**, the matter shall stand submitted.

The Trustee has reviewed the brief filed by the subchapter V trustee in the *Bonert* case on June 18, 2020 [Doc. 277] (the "Jones Brief"), as well as the Court's Order disbanding the Committee, entered on July 10, 2022 [Doc. 287] (the "Bonert Order"). It is important to note that the Bonert Order provides as follows: "On June 19, 2019, the Committee filed a statement indicating that **it did not oppose its disbandment**." (Emphasis added).

5. Sections 1183(a) and 704(a)(6) of the Bankruptcy Code

The Court theorized at the January 31, 2023 hearing that the Trustee has a duty to object to a subchapter V plan based on § 1183(a) of the Code, which in turn cites to § 704(a) of the Code. In particular, § 704(a)(6) of the Code provides, "The Trustee shall—if advisable, oppose the discharge of the debtor." According to the Court, this subsection requires a subchapter V trustee to object to a plan. The Trustee could find no authority interpreting this Code section in this manner.

III.

DISCUSSION

A. Duties of a Subchapter V Trustee

The Trustee believes that the Court may have overlooked a relevant, published case that discusses a subchapter V trustee's role at length. The court in *In re 218 Jackson LLC*, 631 B.R. 937, 947 (Bankr. M.D. Fla. 2021)[1] explains:

[1] More subchapter V cases have been filed in the Bankruptcy Court for the Middle District of Florida than in any other District in the country with 383 total subchapter V cases filed. Source: ABI.

> A subchapter V trustee plays a different role from other trustees even though many duties are the same or similar….
>
> Yet, the subchapter V trustee is the only trustee directed to "facilitate the development of a consensual plan of reorganization." 11 U.S.C. § 1183(b)(7). This duty is assigned to no other trustee in bankruptcy. This distinction is significant. Traditionally, trustees tend to be adversarial to the debtor as a result of their duties in protecting the estate and creditors. Chapter 7 trustees take possession of the estate's property and dispose of or administer those assets in order to pay creditors. This role typically puts a trustee in conflict with the debtor and sometimes creditors. A chapter 11 trustee, if one is appointed, similarly takes possession of estate assets for the purpose of liquidation, sale, or less frequently, a reorganization. A chapter 13 trustee similarly is gathering assets, but in the form of plan payments in order to distribute to creditors. A chapter 12 trustee is perhaps the most similar here—not taking possession of estate property and occupying a similar oversight role. But even a chapter 12 trustee is not charged with facilitation of a consensual plan.
>
> A subchapter V trustee, however, doesn't take possession of estate property unless the debtor is removed (and in that event the subchapter V trustee is provided with expanded powers). 11 U.S.C. § 1183(b)(5). A subchapter V trustee is not required to investigate the financial affairs of the debtor, unless the court orders it for cause and upon request of a party. It is not a stretch then to conclude that **the subchapter V trustee's role was intentionally designed to be less adversarial**. Facilitation of a consensual plan requires the subchapter V trustee to work with the parties—the creditors and debtor—to agree on a plan. The definition of facilitate is to "make the occurrence of (something) easier; to render less difficult." *Black's Law Dictionary* 734 (11th Ed. 2019). As a result, the subchapter V trustee acts more like a mediator than an adversary. *See In re Seven Stars on the Hudson Corp.*, 618 B.R. 333, 346 n.81 (Bankr. S.D. Fla. 2020) ("A substantial part of the Subchapter V trustee's pre-confirmation role, therefore, should be to serve as a ***de facto* mediator** between the debtor and its creditors."). (Emphasis added).

Unlike the cases cited by the Court at the January 31, 2023 hearing, the court in *In re 218 Jackson LLC*, discussed the subchapter V trustee's role at length, and not just in dicta. The court in *218 Jackson* does not state that a subchapter V trustee has a fiduciary duty to creditors, and in fact, contrasts a subchapter V trustee's role with that of other trustees who "tend to be adversarial to the debtor as a result of their duties in **protecting the estate and creditors**." This language seems inapposite to the comments that the Court made at the January 31, 2023 hearing, *i.e.* that the Trustee is not "doing her job" because she "is not advocating for creditors" and "not going to bat for creditors." Moreover, the courts in *218 Jackson*, *Louis*, and *Seven Stars on the Hudson*, all describe a subchapter V trustee's role as a mediator. The notion of a subchapter V trustee serving as an active advocate for creditors seemingly runs contrary to the role of a mediator.

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Furthermore, none of the authorities cited by the Court are binding upon this Court. Therefore, the Trustee did not believe at the outset of this case that she had any fiduciary duty to advocate for creditors or to take the place of a creditors' committee. As a result, it would be unfair to penalize the Trustee by disallowing her fees in this case. Moreover, none of the cases cited by the Court resulted in the reduction or disallowance of a subchapter V trustee's fees based on his or her ostensible failure to "advocate for creditors," as this Court suggested at the January 31, 2023 hearing. In particular, the court in *Louis* (as this Court noted) had significant problems with both the debtor's counsel's and the subchapter V trustee's performance of their duties. Yet, the court in *Louis* still granted both the debtor's counsel's and the subchapter V trustee's requested professional fees in full: "Both fee applications here will be approved in full. Confirmation of a consensual Chapter 11 Subchapter V plan was achieved, and as a result, the Debtor has been granted his discharge and will have an opportunity at a fresh start. But it was a long haul getting there, complicated by problems that could have been easily curtailed or avoided altogether if both Attorney Pioletti and Trustee Bourne had been more attentive to their duties. *Louis*, *supra*, Bankr. LEXIS 1586, at *36.

B. <u>The Court Should Not Appoint a Committee in this Case</u>

The Court commented at the January 31, 2023 hearing: "If we conclude that a trustee is fiduciary for creditors, and the trustee is not doing that job, there may be ample cause [to appoint a committee]." Based on the *218 Jackson* and other cases, the Trustee has not failed at her duties as a subchapter V trustee. Although the court in *Ventura* (later quoted in *Penland*) states that a subchapter V trustee acts as a fiduciary for creditors, in lieu of an appointed creditors' committee, neither the *Ventura* court nor the *Penland* court consequently imposed a duty upon a subchapter V trustee to **advocate** for creditors to obtain a better recovery in a subchapter V plan. In addition, while the court in *Louis* made reference in a footnote to a subchapter V trustee's fiduciary duty, said duty was specifically tied to consensual confirmation of a plan, *i.e.* "the Trustee had a fiduciary duty to recommend and support efforts to obtain such a [consensual] confirmation." Here, the Trustee has fulfilled her duty of recommending, supporting, negotiating, and indeed, facilitating the confirmation of a consensual plan. Those efforts are described in the Trustee's prior

supplemental brief [Doc. 208], and are continuing.

With respect to the *Bonert* case, the Trustee spoke with Gregory Jones, the subchapter V trustee in the *Bonert* case. Mr. Jones provided some context behind the Jones Brief, including the fact that it was filed when subchapter V was very new, and the fact that the *Bonert* case was always going to result in a 100% plan. Thus, the facts here are distinguishable from the *Bonert* case. Also, Judge Robles' disbanding of the Committee in the *Bonert* case does not appear to have been in reliance upon the authorities cited in the Jones Brief. The Bonert Order clearly states that the Committee filed a statement with the Court that it did not oppose the disbanding of the Committee.

Lastly, the goals of subchapter V and the economics of this case do not support the appointment of a committee. It should be noted that no creditors have filed objections to any of the three versions of the subchapter V plans filed in this case. The Office of the United States Trustee ("UST") filed an objection to the First Amended Plan (now superseded), and the Trustee has worked with both the UST and the Debtor to resolve the objection. The few creditors who have participated in this case in any way have been contacted by the Trustee, who has helped to answer their questions about the Debtor's subchapter V plan, in an effort to build consensus. As many bankruptcy courts have pointed out, "the purpose of adding the Subchapter V provisions to the Code was to streamline the Chapter 11 process and make relief more accessible and cost-effective for small business debtors." *Louis*, *supra*, Bankr. LEXIS 1586, at *36, citing *In re MCM Natural Stone, Inc.*, 2022 Bankr. LEXIS 987, at *1 (Bankr. W.D.N.Y. Apr. 8, 2022) (citations omitted). Appointing a committee in this already "thin" case would only add to the administrative costs. A committee would likely need to hire counsel and perhaps a financial advisor, thereby depleting funds available for general unsecured creditors. The Trustee believes that the Debtor is opposed to the appointment of a committee for this very reason.

Moreover, if the Court does find that the Trustee has a fiduciary duty to advocate for creditors, the Trustee is ready and willing to take on this task. In fact, the Trustee has already submitted a proposal to the Debtor to increase distributions to general unsecured creditors. The Trustee should be afforded the opportunity to fulfill the role that this Court believes is the proper role of a subchapter V trustee.

IV.

CONCLUSION

Based on the foregoing, the Trustee requests that the Court grant the Trustee's Application in full.

DATED: February 27, 2023

BUCHALTER

By:/s/ Caroline Djang
CAROLINE DJANG
Subchapter V Trustee

PETER C. ANDERSON
UNITED STATES TRUSTEE
ABRAM S. FEUERSTEIN, SBN 133775
ASSISTANT U.S. TRUSTEE
CAMERON RIDLEY, SBN 324514
TRIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
3801 University Avenue, Suite 720
Riverside, CA 92501-3200
Telephone: (951) 276-6990
Facsimile: (951) 276-6973
Email: *Cameron.Ridley@usdoj.gov*

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

In re: INNERLINE ENGINEERING, INC., Debtor and Debtor-in-Possession.	Case No. 6:22-bk-10545-WJ Chapter 11 **UNITED STATES TRUSTEE'S BRIEF CONCERNING THE DUTIES OF A SUBCHAPTER V TRUSTEE; DECLARATION OF ADELA SALGADO IN SUPPORT THEREOF** **Hearing:** Date: March 7, 2023 Time: 2:00 p.m. Place: Courtroom 304 3420 Twelfth Street Riverside, CA 92501

TO THE HONORABLE WAYNE E. JOHNSON, UNITED STATES BANKRUPTCY JUDGE, THE DEBTOR, AND ALL PARTIES IN INTEREST:

Peter C. Anderson, the United States Trustee for Region 16 ("U.S. Trustee"), hereby files his "Brief Concerning The Duties Of A Subchapter V Trustee" ("Brief") as it relates to the first interim

fee application of the chapter 11 subchapter V trustee[1] in the bankruptcy case of Innerline Engineering, Inc. ("Debtor") commenced under subchapter V of chapter 11.

I. Background

The Debtor's two prior chapter 11, subchapter V, bankruptcy cases were dismissed: (1) Case No. 6:21-bk-11349-WJ was filed on March 16, 2021, and dismissed on March 31, 2021, for failure to file required bankruptcy case commencement documents[2], (2) Case No. 6:21-bk-14305-WJ was filed on August 9, 2021, and dismissed on January 28, 2022, pursuant to the U.S. Trustee's dismissal motion, for multiple reasons, including the misuse of cash collateral.[3]

The Debtor filed this third bankruptcy case on February 14, 2022.[4] The Debtor filed an initial chapter 11 subchapter V plan on May 16, 2022.[5] On August 5, 2022, the Debtor filed a notice to professionals to file fee applications.[6] On September 12, 2022, the subchapter V trustee filed her interim application for compensation ("Fee Application"), which was originally set for hearing on October 4, 2022.[7] On September 20, 2022, the Debtor filed its First Amended Chapter 11 subchapter V plan ("First Amended Plan"), and noticed a hearing on the First Amended Plan for October 4, 2022, with any comments or objections due on September 27, 2022.[8] On September 27, 2022, the U.S. Trustee filed an objection to the First Amended Plan, which raised concerns regarding the feasibility of the plan considering the Debtor's historical cash flow as evidenced in

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[1] Application For Payment Of: Interim Fees And/Or Expenses, ECF No. 160.
[2] Declaration of Adela Salgado ("Salgado Decl."), Exhibit ("Exh.") 1.
[3] Salgado Decl., Exh. 2 and 3.
[4] Salgado Decl., Exh. 4.
[5] Debtor's Chapter 11 Plan Of Reorganization, ECF No. 89.
[6] Notice To Professionals To File Fee Applications, ECF No. 124.
[7] ECF No. 160.
[8] Debtor's First Amended Chapter 11 Plan Of Reorganization, ECF No. 166 and Notice Of Status Conference Re Debtor's First Amended Chapter 11 Plan Of Reorganization, ECF No. 167.

the monthly operating reports.[9] On September 30, 2022, the Court entered a scheduling order continuing the status conference concerning the plan to November 1, 2022, and continuing hearings on the two fee applications that were filed to November 15, 2022.[10]

On January 10, 2023, the Debtor filed a second amended plan ("Second Amended Plan") and a disclosure statement pursuant to the Court's comments at the November 1, 2022, status conference.[11] The Second Amended Plan estimates that general unsecured claims will be paid $85,000, or approximately 2.57% of the debts totaling $3,310,590.[12] Also, on January 10, 2023, the subchapter V trustee filed a supplemental brief in support of her Fee Application pursuant to comments at the November 15, 2022, hearing.[13]

On January 20, 2023, the Court entered a scheduling order requesting a representative of the U.S. Trustee to appear at a continued hearing on the Fee Application on January 31, 2023.[14] At the hearing, the Court expressed concern with the anticipated distribution to unsecured creditors in this case and questioned whether (1) a subchapter V trustee has a duty to advocate for the best possible treatment of unsecured creditors, including whether (2) a subchapter V trustee has a similar obligation to that of a committee of unsecured creditors to advocate on behalf of all unsecured creditors. The Court requested supplemental briefing focusing on "(1) the scope of the duties of a subchapter V trustee, (2) whether or not such scope includes certain duties performed by a

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[9] *See* Objection Of United States Trustee To The Debtor's First Amended Chapter 11 Plan Of Reorganization, ECF No. 175. The U.S. Trustee filed an amended objection on September 28, 2022. *See* Amended Objection Of United States Trustee To The Debtor's First Amended Chapter 11 Plan Of Reorganization, ECF No. 176.

[10] Scheduling Order, ECF No. 177.

[11] Debtor's Disclosure Statement Describing Second Amended Chapter 11 Plan Of Reorganization, ECF No. 209; Debtor's Second Amended Chapter 11 Plan Of Reorganization, ECF No. 210.

[12] ECF No. 210, p. 15, lns. 6-15.

[13] Subchapter V Trustee's Supplemental Brief In Support Of First Interim Fee Application, ECF No. 208. An amended brief was filed on January 11, 2023. ECF No. 213.

[14] *See* Scheduling Order, ECF No. 215.

committee of creditors for the benefit of creditors and (3) whether or not a committee of creditors should be appointed in subchapter V cases such as this one."[15]

II. The Scope Of The Duties Of A Subchapter V Trustee

The Small Business Reorganization Act of 2019 ("SBRA") was enacted to provide a fast track for small businesses to confirm a consensual plan with the assistance of a private trustee, a subchapter V trustee. *See In re Ventura*, 615 B.R. 1, 12 (Bankr. E.D. N.Y. 2020) (citing H.R. REP. No. 116-171, at 1-2 (2019)). The statutory duties of a subchapter V trustee are set forth in § 1183(b), which incorporates by reference certain chapter 7 trustee duties as specified in § 704(a) and certain chapter 11 trustee duties as specified in § 1106.

A. Standard Duties In Every Case: Not "For Cause"

A subchapter V trustee is obligated, but not limited, to fulfilling the following duties (1) Be accountable for all property received [§ 704(a)(2)]; (2) If a purpose would be served, examine the proof of claims and object to the allowance of any claim that is improper [§704(a)(5)]; (3) If advisable, oppose the discharge of the debtor [§704(a)(6)]; (4) Unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest [§ 704(a)(7)]; (5) Make a final report and file a final account of the administration of the estate with the United States Trustee and the court [§704(a)(9)]; and, (6) Facilitate the development of a consensual plan of reorganization [§1183(b)(7)].

A subchapter V trustee's duty to facilitate a consensual plan of reorganization is a singular duty not shared by a chapter 7, 11, 12 or 13 trustee. *See In re 218 Jackson LLC*, 631 B.R. 937, 947 (Bankr. M.D. Fla. 2021). A consensual plan confirmation is achieved when all the requirements of § 1129(a), exclusive of paragraph (15), are met. 11 U.S.C. § 1191(a). Each subchapter V plan is

[15] *See* Scheduling Order, ECF No. 230.

required to contain, among other things, a liquidation analysis and projections concerning the ability of the debtor to make payments under the proposed plan. 11 U.S.C. § 1190(1)(B) and (C). These financial self-assessments by the debtor are relied upon by creditors to evaluate the proposed plan and inform a vote for acceptance or rejection. The liquidation analysis is intended to answer the creditor's question of whether the proposed plan is preferable to a liquidation of the debtor's assets or a sale of the going concern. The plan projections are intended to inform creditors whether the plan is feasible— the projections can be compared with historical financials. Consequently, § 1129(a)(7) contains the liquidation analysis requirement: the court may only confirm the plan if each impaired class of creditors has accepted the plan or will receive, as of the effective date of the plan, property of a value that is not less than the amount that would be paid on their claims if the estate of the debtor were liquidated under chapter 7.[16] Furthermore, 11 U.S.C. § 1129(a)(11) contains the feasibility requirement: the Court must find that the debtor is not likely to default on the terms of the plan and require liquidation or further financial reorganization. To facilitate a consensual plan, a subchapter V trustee will ensure that applicable requirements under § 1129 for confirmation may be satisfied.

The duty to facilitate a consensual plan also obligates a subchapter V trustee to proactively work with the debtor and its creditors to create consensus. *See In re 218 Jackson LLC*, 631 B.R. 937, 947-49 (Bankr. M.D. Fla. 2021) ("The definition of facilitate it to 'make the occurrence of (something) easier; to render less difficult.'") (citation omitted). It is improbable that a plan created without the benefit of creditor input, mindfulness to the Code's requirements or the creditor body's

[16] If a subchapter V trustee cannot effectively determine the liquidation value of a debtor, such as where the debtor holds valuable contracts, possesses good will or may have value as a going concern, in some circumstances, the trustee may prudently seek to employ professionals pursuant to § 327, such as a valuation expert, to assist in carrying out duties under title 11.

general financial interest, will result in a consensual plan. A trustee should be proactive in communicating with debtor's counsel and with creditors, and in promoting, facilitating, and participating in plan negotiations and formulation.

The Code also envisions that the trustee will raise and litigate issues that may be adverse to a debtor, or primarily for the benefit of creditors.[17] For instance, a trustee has a duty to oppose the discharge of the debtor if it is advisable, and to appear *and be heard* at any hearing that concerns the confirmation of a plan or the sale of estate property. 11 U.S.C. §§ 704(a)(6), 1183(b)(3) (emphasis added). Similarly, in the role of facilitating a consensual plan, a subchapter V trustee may object if any of the applicable § 1129(a) requirements—such as the liquidation analysis pursuant to 1129(a)(7) or the plan feasibility pursuant to §1129(a)(11)—is in doubt. *See* U.S. Dep't of Justice, *Handbook for Small Business Chapter 11 Subchapter V Trustees*, at 3-9 and 3-10 (February 2020).[18] Furthermore, a subchapter V trustee has a duty to refer suspected violations of federal criminal law to the appropriate United States Attorney. 18 U.S.C. § 3057.

B. Expanded "For Cause" Duties

The duties of a subchapter V trustee may be increased for cause. If the debtor ceases to be a debtor in possession pursuant to § 1185, the subchapter V trustee's role may be significantly increased under § 1183(b)(5).

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[17] The statutory language governing the duties of a subchapter V trustee does not specifically mention a Subchapter V trustee serving as a fiduciary or advocate for unsecured creditors. *See* Paul W. Bonapfel, *A Guide to the Small Business Reorganization Act of 2019*, 93 Am. Bankr. L.J. 571, 582-586 (2019) (discussing the role and duties of the subchapter V trustee). A revised version of *A Guide to the Small Business Reorganization Act of 2019* as of June 2022 is available at the following link: https://www.flsb.uscourts.gov/sites/flsb/files/documents/Guide_to_the_Small_Business_Act_of_2019_%28Hon._Paul_Bonapfel_rev._06-2022%29.pdf.

[18] "The Handbook for Small Business Chapter 11 Subchapter V Trustees" is accessible at the following link: https://www.justice.gov/ust/file/subchapterv_trustee_handbook.pdf/download.

Barring the removal of a debtor-in-possession, a court may order the trustee to investigate the accuracy of the information provided in the plan or the disclosure statement. Upon the request of a party in interest, the subchapter V trustee, or the United States Trustee, the court may order, for cause, that the subchapter V trustee perform the duties specified in paragraphs (3), (4), and (7) of § 1106(a). 11 U.S.C. § 1183(b)(2). If ordered, the trustee is required to: (a) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan [§1106(a)(3)]; and, (b) once the investigation is completed, file a statement of the investigation [§ 1106(a)(4)(A)]. While what constitutes "cause" under § 1183(b)(2) is not enumerated, the standard is likely not greater than that employed under §1185 for removing a subchapter V debtor in possession. *See 8 Collier on Bankruptcy* ¶ 1183.03 (Alan N. Resnick & Henry Sommer, eds., 16th ed. 2022).[19]

III. Whether Or Not The Scope Of Duties Performed By A Subchapter V Trustee Includes Certain Duties Performed By A Committee Of Creditors For The Benefit Of Creditors.

Although some duties required of a subchapter V trustee may overlap with those of a creditor's committee, the plain language of the statute defining the role and duties of a subchapter V trustee does not specifically incorporate the potential roles and duties of a creditor's committee under § 1103(c). *Compare* §1183(b), with § 1103(c). Rather, SBRA statutory amendments state "[u]nless the court for cause orders otherwise, a committee of creditors may not be appointed in […] a case under subchapter V of this chapter." 11 U.S.C. § 1102(a)(3).

[19] 11 U.S.C. § 1185(a) ("On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case, or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter").

If appointed, a creditor's committee, has the following duties:

> (c) A committee appointed under section 1102 of this title may—
> (1) consult with the trustee or debtor in possession concerning the administration of the case;
> (2) investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;
> (3) participate in the formulation of a plan, advise those represented by such committee of such committee's determinations as to any plan formulated, and collect and file with the court acceptances or rejections of a plan;
> (4) request the appointment of a trustee or examiner under section 1104 of this title; and
> (5) perform such other services as are in the interest of those represented.

11 U.S.C. § 1103(c).

First, the creditor committee's duty to consult with the trustee or debtor in possession concerning the administration of the case [§ 1102(c)(1)] and to participate in the formulation of a plan, and to advise those represented by the committee of the committee's determinations as to any plan formulated [§ 1103(c)(3)] generally overlaps with a subchapter V trustee's robust duty to facilitate the development of a consensual plan [§ 1183(b)(7)] and to furnish information concerning the estate to parties in interest [§ 704(a)(7)]. However, a committee's duty to act specifically on behalf of its representative body implies a more tailored and defined role as an advocate [§ 1103(c)(5)].[20] Second, the court may order a subchapter V trustee for cause shown to investigate the debtor [§ 1183(b)(2)], such that the obligation would encompass a committee's duty to investigate [§ 1103(c)(2)]. Third, each subchapter V case has a trustee appointed, so a committee's duty to request the appointment of a trustee or examiner [§ 1103(c)(4)] is mostly

[20] An unsecured creditor's committee has a fiduciary duty to all creditors represented by the committee. *See In re Nat'l R.V. Holdings, Inc.*, 390 B.R. 690, 700 (Bankr. C.D. Cal. 2008); *see also* 11 U.S.C. § 1103(c)(3) (stating that a committee ***may*** "advise those represented by such committee of such committee's determinations as to any plan formulated […]").

inapplicable, however, both a committee and a subchapter V trustee as a "party in interest" could theoretically move to remove a debtor in possession. 11 U.S.C. § 1185. Accordingly, a subchapter V trustee's duty may, especially if ordered for cause to investigate the debtor, generally encompass most of the duties of a committee. However, a committee specifically has a duty to advise those that it represents of its determinations as to any formulated plan, and thus an unsecured creditor committee for instance acquires the role of an advocate to a greater degree than a subchapter V trustee working towards a consensual plan.

IV. Whether Or Not A Committee Of Creditors Should Be Appointed In Subchapter V Cases Such As This One.

Section 1181(b) provides, in part, that unless the court for cause orders otherwise § 1103 (creditor's committees) and § 1125 (disclosure statement) do not apply in a subchapter V case. The Court has previously found cause to require a disclosure statement in this case. The standard to require the solicitation of a creditor's committee, to require a disclosure statement, to expand the duties of a subchapter V trustee or to remove the debtor-in-possession *is* cause.

Of these options—to remove the debtor-in-possession, to solicit a creditor's committee or to expand the duties of the subchapter V trustee to investigate the Debtor—an expanded role for the subchapter V trustee may be in keeping with the goal of the SBRA to "streamline the reorganization process for small business debtors." *See In re Bonert*, 619 B.R. 248, 252 (Bankr. C.D. Cal. 2020) quoting *In re Ventura*, 615 B.R. 1, 12 (Bankr. E.D. N.Y. 2020). However, expanding the subchapter V trustee's role likely would result in increased administrative expenses ultimately that could reduce creditor distributions.[21]

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[21] Given concerns relating to the proposed 2.57% distribution to the class of general unsecured creditors pursuant to the Second Amended Plan, the subchapter V trustee could file a request and show cause pursuant to § 1183(b)(2) to expand her duties to investigate the financial affairs of the debtor. If the subchapter V trustee's duties were expanded to encompass this role, the trustee could produce a report assessing the financial condition of the debtor, including whether the proposed

Alternatively, the Court could order the U.S. Trustee to solicit an unsecured creditor's committee. If appointed a committee generally would owe a fiduciary duty to advocate on behalf of the interests it represents. However, the appointment of a committee is largely dependent upon sufficient creditor interest, and it may take several weeks for a committee to hire professionals before it is active in the case. Further, the employment of professionals by a committee would heighten the level of administrative expenses – possibly beyond the financial capabilities of the Debtor. Of note, all three of the Debtor's cases have proceeded under subchapter V and to date creditor interest in the proceedings has been extremely limited.

V. CONCLUSION

The U.S. Trustee respectfully submits this briefing concerning the duties of a subchapter V trustee.

DATED: February 28, 2023

PETER C. ANDERSON
UNITED STATES TRUSTEE

By: /s/ Cameron Ridley
Cameron Ridley
Trial Attorney

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distribution to general unsecured creditors may reasonably be increased, the accuracy of the liquidation analysis, and the feasibility of the Debtor's projections, among other things. The results of the investigation would, presumably, assist with the facilitation of the creation of a consensual plan in furtherance of the goals of the SBRA. In keeping with the duty to facilitate a consensual plan, the subchapter V trustee has advised the U.S. Trustee that since the January 31, 2023, hearing, the Debtor and the subchapter V trustee are engaged in negotiations to increase the dividend available to unsecured creditors.

DECLARATION OF ADELA SALGADO

I, Adela Salgado, hereby declare:

1. I am employed as a Paralegal to the U.S. Trustee, Riverside District Office. I make this declaration of my own personal knowledge except where stated on information and belief and as to such matters, I believe them to be true. If called as a witness, I could and would testify to the information contained herein. To the extent I rely on other admissible evidence rather than on personal knowledge, I will specifically so state.

2. Attached as **Exhibit 1** is a true and correct copy of the docket from Case No. 6:21-bk-11349-WJ, which I obtained from the Court's electronic records.

3. Attached as **Exhibit 2** is a true and correct copy of the docket from Case No. 6:21-bk-14305-WJ, which I obtained from the Court's electronic records.

4. Attached as **Exhibit 3** is a true and correct copy of the Memorandum of Decision, ECF No. 54, from Case No. 6:21-bk-14305-WJ, which I obtained from the Court's electronic records.

5. Attached as **Exhibit 4** is a true and correct copy of the docket from Case No. 6:22-bk-10545-WJ, which I obtained from the Court's electronic records.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on February 28, 2023 at Riverside, California.

Adela Salgado

Adela Salgado

Exhibit 1

CLOSED, Subchapter_V, PlnDue, Incomplete, DISMISSED

U.S. Bankruptcy Court
Central District of California (Riverside)
Bankruptcy Petition #: 6:21-bk-11349-WJ

Assigned to: Wayne E. Johnson
Chapter 11
Voluntary
Asset

Date filed: 03/16/2021
Date terminated: 04/29/2021
Debtor dismissed: 03/31/2021
341 meeting: 04/12/2021
Deadline for objecting to discharge: 06/11/2021

Debtor disposition: Dismissed for Other Reason

Debtor
Innerline Engineering, Inc.
1663 Commerce Street
Corona, CA 92880
RIVERSIDE-CA
Tax ID / EIN: 33-0909707

represented by **Jeffrey B Smith**
301 E Ocean Blvd Ste 1700
Long Beach, CA 90802
562-624-1177
Fax : 562-624-1178
Email: jsmith@cgsattys.com

Trustee
Caroline Renee Djang (TR)
18101 Von Karman Ave., Suite 1000
Irvine, CA 92612
949-263-6586

U.S. Trustee
United States Trustee (RS)
3801 University Avenue, Suite 720
Riverside, CA 92501-3200
(951) 276-6990

represented by **Abram Feuerstein, esq**
Office of US Trustee
3801 University Avenue
St 720
Riverside, CA 92501
951-276-6975
Fax : 951-276-6973
Email: abram.s.feuerstein@usdoj.gov

Everett L Green
Office of the US Trustee
3801 University Avenue
Ste 720
Riverside, CA 92501
951-276-6063
Fax : 951-276-6973
Email: everett.l.green@usdoj.gov

Cameron C Ridley
Office of the United States Trustee
3801 University Ave Ste 720
Riverside, CA 92501
951-276-6354
Fax : 951-276-6973
Email: Cameron.Ridley@usdoj.gov

Filing Date	#	Docket Text
03/16/2021	1 (21 pgs; 3 docs)	Chapter 11 Subchapter V Voluntary Petition Non-Individual. Fee Amount $1738 Filed by Innerline Engineering, Inc. Summary of Assets and Liabilities (Form 106Sum or 206Sum) due 03/30/2021. Schedule A/B: Property (Form 106A/B or 206A/B) due 03/30/2021. Schedule C: The Property You Claim as Exempt (Form 106C) due 03/30/2021. Schedule D: Creditors Who Have Claims Secured by Property (Form 106D or 206D) due 03/30/2021. Schedule E/F: Creditors Who Have Unsecured Claims (Form 106E/F or 206E/F) due 03/30/2021. Schedule G: Executory Contracts and Unexpired Leases (Form 106G or 206G) due 03/30/2021. Schedule H: Your Codebtors (Form 106H or 206H) due 03/30/2021. Schedule I: Your Income (Form 106I) due 03/30/2021. Schedule J: Your Expenses (Form 106J) due 03/30/2021. Declaration About an Individual Debtors Schedules (Form 106Dec) due 03/30/2021. Statement of Financial Affairs (Form 107 or 207) due 03/30/2021. Chapter 11 Statement of Your Current Monthly Income (Form 122B) Due: 03/30/2021. Disclosure of Compensation of Attorney for Debtor (Form 2030) due 03/30/2021. Verification of Master Mailing List of Creditors (LBR Form F1007-1) due 03/30/2021. Incomplete Filings due by 03/30/2021. Chapter 11 Plan Subchapter V Due by 06/14/2021. (Smith, Jeffrey) WARNING: See docket entry no. 2 for corrective action. Case not deficient for Declaration about an Individual Debtor's Schedule. Not deficient for Schedule C, Not deficient for Schedule I, Not deficient for Schedule J, Not deficient for Statement of Your Current Monthly Income. Case is also deficient for Declaration Under Penalty of Perjury for Non-Individual Debtors (Form 202) due 03/30/2021. Corporate Ownership Statement (LBR Form F1007-4 - Missing Addendum Listing the Entities that Directly or Indirectly Own 10% or more) due by 3/30/2021. Modified on 3/16/2021 (Mason, Shari). (Entered: 03/16/2021)
03/16/2021		Set Case Commencement Deficiency Deadlines (ccdn) (RE: related document(s)1 Voluntary Petition (Chapter 11) filed by Debtor Innerline Engineering, Inc.) Corporate Ownership Statement (LBR Form F1007-4 - Missing Addendum Listing the Entities that Directly or Indirectly Own 10% or more) due by 3/30/2021. (Mason, Shari) (Entered: 03/16/2021)
03/16/2021	2	Notice to Filer of Correction Made/No Action Required: **Incorrect schedules /statements recorded as deficient. THE PROPER DEFICIENCY HAS BEEN ISSUED.** (RE: related document(s)1 Voluntary Petition (Chapter 11) filed by Debtor Innerline Engineering, Inc.) (Mason, Shari) (Entered: 03/16/2021)
03/16/2021		Receipt of Voluntary Petition (Chapter 11)(6:21-bk-11349) [misc,volp11] (1738.00) Filing Fee. Receipt number 52611305. Fee amount 1738.00. (re: Doc# 1) (U.S. Treasury) (Entered: 03/16/2021)
03/17/2021	3 (3 pgs)	Notice of appointment and acceptance of trustee *Notice of Appointment of SubChapter V Trustee* Filed by U.S. Trustee United States Trustee (RS). (Feuerstein, Abram) (Entered: 03/17/2021)
03/18/2021	4 (2 pgs)	Meeting of Creditors 341(a) meeting to be held on 4/12/2021 at 10:30 AM at UST-RS1, TELEPHONIC MEETING. CONFERENCE LINE:1-866-822-7121, PARTICIPANT CODE:6203551. Last day to oppose discharge or dischargeability is 6/11/2021. Proofs of Claims due by 5/25/2021.

		Government Proof of Claim due by 9/13/2021. (Eudy, Debra) (Entered: 03/18/2021)
03/18/2021	5 (2 pgs)	BNC Certificate of Notice (RE: related document(s)1 Voluntary Petition (Chapter 11) filed by Debtor Innerline Engineering, Inc.) No. of Notices: 1. Notice Date 03/18/2021. (Admin.) (Entered: 03/18/2021)
03/18/2021	6 (2 pgs)	BNC Certificate of Notice (RE: related document(s)1 Voluntary Petition (Chapter 11) filed by Debtor Innerline Engineering, Inc.) No. of Notices: 1. Notice Date 03/18/2021. (Admin.) (Entered: 03/18/2021)
03/19/2021	7 (2 pgs)	Notice *Of Telephonic Meeting of Creditors Pursuant To 11 U.S.C. 341(a) & Federal Rule of Bankruptcy Procedure 2003* Filed by U.S. Trustee United States Trustee (RS) (RE: related document(s)4 Meeting of Creditors 341(a) meeting to be held on 4/12/2021 at 10:30 AM at UST-RS1, TELEPHONIC MEETING. CONFERENCE LINE:1-866-822-7121, PARTICIPANT CODE:6203551. Last day to oppose discharge or dischargeability is 6/11/2021. Proofs of Claims due by 5/25/2021. Government Proof of Claim due by 9/13/2021.). (Green, Everett) (Entered: 03/19/2021)
03/20/2021	8 (5 pgs)	BNC Certificate of Notice (RE: related document(s)4 Meeting of Creditors Chapter 11 (Corporations or Partnerships under Subchapter V) (309F2)) No. of Notices: 41. Notice Date 03/20/2021. (Admin.) (Entered: 03/20/2021)
03/26/2021	9	Tax Documents for the Year for 2019 *; Balance Sheet and Cash Flow Statement (Profit & Loss) Submitted In Compliance with 11 U.S.C. Section 1116 $ 1187* Filed by Debtor Innerline Engineering, Inc.. (Smith, Jeffrey) (Entered: 03/26/2021)
03/30/2021	10 (1 pg)	Request for courtesy Notice of Electronic Filing (NEF) Filed by Choi, John. (Choi, John) (Entered: 03/30/2021)
03/30/2021	11 (4 pgs)	Motion to Extend Deadline to File Schedules or Provide Required Information, and/or Plan (Case Opening Documents) Filed by Debtor Innerline Engineering, Inc. (Smith, Jeffrey) (Entered: 03/30/2021)
03/30/2021	12 (2 pgs)	Disclosure of Compensation of Attorney for Debtor (Official Form 2030) Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)1 Voluntary Petition (Chapter 11)). (Smith, Jeffrey) (Entered: 03/30/2021)
03/30/2021	13 (3 pgs)	Statement of Corporate Ownership filed. Corporate parents added to case: I.E. Storm Tech Leasing, LLC. Filed by Debtor Innerline Engineering, Inc. (RE: related document(s) Set Case Commencement Deficiency Deadlines (ccdn)). (Smith, Jeffrey) (Entered: 03/30/2021)
03/31/2021	14 (11 pgs)	Order regarding the motion of the debtor to extend the time to file case initiation documents. See order for details (BNC-PDF) (Related Doc # 11) Signed on 3/31/2021. (Gooch, Yvonne) (Entered: 03/31/2021)
03/31/2021	15 (1 pg)	ORDER and notice of dismissal for failure to file schedules, statements, and/or plan - **Debtor** Dismissed. All pending motions and adversary proceedings are moot and dismissed. (BNC) Signed on 3/31/2021 (RE: related document(s)1 Voluntary Petition (Chapter 11) filed by Debtor Innerline Engineering, Inc., 4 Meeting of Creditors Chapter 11

		(Corporations or Partnerships under Subchapter V) (309F2)). (Gooch, Yvonne) (Entered: 03/31/2021)
04/02/2021	16 (4 pgs)	BNC Certificate of Notice (RE: related document(s)15 ORDER and notice of dismissal for failure to file schedules, statements, and/or plan (Option A or Option B) (BNC)) No. of Notices: 41. Notice Date 04/02/2021. (Admin.) (Entered: 04/02/2021)
04/02/2021	17 (13 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)14 Order on Motion to Extend Deadline to File Schedules and/or Plan (Case Opening Documents - All Chapters) (BNC-PDF)) No. of Notices: 1. Notice Date 04/02/2021. (Admin.) (Entered: 04/02/2021)
04/29/2021	18 (1 pg)	Chapter 11 Subchapter V Trustee's Report of No Distribution. Funds Collected: $0.00. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 1 months. Assets Abandoned (without deducting any secured claims): Not Applicable, Assets Exempt: Not Applicable, Claims Scheduled: $0.00, Claims Asserted: Not Available, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): Not Applicable. Filed by Trustee Caroline Renee Djang (TR). (Djang (TR), Caroline) (Entered: 04/29/2021)
04/29/2021	19	Bankruptcy Case Closed - DISMISSED. An Order dismissing the above referenced case was entered and notice was provided to parties in interest. Since it appears that no further matters are required that this case remain open, or that the jurisdiction of this Court continue, it is ordered that the case is closed and the Trustee is discharged, the bond is exonerated. (Gooch, Yvonne) Modified on 5/27/2021 (Corona, Heidi). (Entered: 04/29/2021)

PACER Service Center

Transaction Receipt

02/28/2023 16:13:03

PACER Login:	AMSalgado	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	6:21-bk-11349-WJ Fil or Ent: filed From: 11/30/2001 To: 2/28/2023 Doc From: 0 Doc To: 99999999 Term: included Format: html Page counts for documents: included
Billable Pages:	3	**Cost:**	0.30

Exhibit 2

Repeat-cacb, Subchapter_V, SmBus, DISMISSED, CLOSED

U.S. Bankruptcy Court
Central District of California (Riverside)
Bankruptcy Petition #: 6:21-bk-14305-WJ

Assigned to: Wayne E. Johnson
Chapter 11
Voluntary
Asset

Date filed: 08/09/2021
Date terminated: 03/22/2022
Debtor dismissed: 01/28/2022
341 meeting: 10/13/2021
Deadline for objecting to discharge: 11/09/2021

Debtor disposition: Dismissed for Other Reason

Debtor
Innerline Engineering, Inc.
1663 Commerce Street
Corona, CA 92880
RIVERSIDE-CA
Tax ID / EIN: 33-0909707

represented by **M. Jonathan Hayes**
Resnik Hayes Moradi LLP
17609 Ventura Blvd.
Suite 314
Encino, CA 91316
(818) 285-0100
Fax : (818) 855-7013
Email: jhayes@rhmfirm.com

Roksana D. Moradi-Brovia
RESNIK HAYES MORADI LLP
17609 Ventura Blvd., Suite 314
Encino, CA 91316
(818) 285-0100
Fax : (818) 855-7013
Email: Roksana@rhmfirm.com

Jeffrey B Smith
301 E Ocean Blvd Ste 1700
Long Beach, CA 90802
562-624-1177
Fax : 562-624-1178
Email: jsmith@cgsattys.com
TERMINATED: 01/18/2022

Trustee
Caroline Renee Djang (TR)
18101 Von Karman Ave., Suite 1000
Irvine, CA 92612
949-263-6586

U.S. Trustee
United States Trustee (RS)
3801 University Avenue, Suite 720
Riverside, CA 92501-3200
(951) 276-6990

represented by **Abram Feuerstein, esq**
Office of US Trustee
3801 University Avenue
St 720
Riverside, CA 92501
951-276-6975
Fax : 951-276-6973

Email: abram.s.feuerstein@usdoj.gov

Everett L Green
Office of the US Trustee
3801 University Avenue
Ste 720
Riverside, CA 92501
951-276-6063
Fax : 951-276-6973
Email: everett.l.green@usdoj.gov

Cameron C Ridley
Office of the United States Trustee
3801 University Ave Ste 720
Riverside, CA 92501
951-276-6354
Fax : 951-276-6973
Email: Cameron.Ridley@usdoj.gov

Filing Date	#	Docket Text
08/09/2021	1 (23 pgs; 3 docs)	Chapter 11 Subchapter V Voluntary Petition Non-Individual. Fee Amount $1738 Filed by Innerline Engineering, Inc. Summary of Assets and Liabilities (Form 106Sum or 206Sum) due 08/23/2021. Schedule A/B: Property (Form 106A/B or 206A/B) due 08/23/2021. Schedule D: Creditors Who Have Claims Secured by Property (Form 106D or 206D) due 08/23/2021. Schedule E/F: Creditors Who Have Unsecured Claims (Form 106E/F or 206E/F) due 08/23/2021. Schedule G: Executory Contracts and Unexpired Leases (Form 106G or 206G) due 08/23/2021. Schedule H: Your Codebtors (Form 106H or 206H) due 08/23/2021. Schedule I: Your Income (Form 106I) due 08/23/2021. Schedule J: Your Expenses (Form 106J) due 08/23/2021. Declaration About an Individual Debtors Schedules (Form 106Dec) due 08/23/2021. Declaration Under Penalty of Perjury for Non-Individual Debtors (Form 202) due 08/23/2021. Statement of Financial Affairs (Form 107 or 207) due 08/23/2021. Disclosure of Compensation of Attorney for Debtor (Form 2030) due 08/23/2021. Verification of Master Mailing List of Creditors (LBR Form F1007-1) due 08/23/2021. Incomplete Filings due by 08/23/2021. Chapter 11 Plan Small Business Subchapter V Due by 11/8/2021. (Smith, Jeffrey) (Entered: 08/09/2021)
08/10/2021		Receipt of Voluntary Petition (Chapter 11)(6:21-bk-14305) [misc,volp11] (1738.00) Filing Fee. Receipt number A53259053. Fee amount 1738.00. (re: Doc# 1) (U.S. Treasury) (Entered: 08/10/2021)
08/11/2021	2 (3 pgs)	Notice of Appointment of Trustee *Notice of Appointment of SubChapter V Trustee*. Caroline Renee Djang (TR) added to the case. Filed by U.S. Trustee United States Trustee (RS). (Ridley, Cameron) (Entered: 08/11/2021)
08/12/2021	3 (2 pgs)	Meeting of Creditors 341(a) meeting to be held on 9/10/2021 at 11:00 AM at UST-RS1, TELEPHONIC MEETING. CONFERENCE LINE:1-866-822-7121, PARTICIPANT CODE:6203551. Last day to oppose discharge or dischargeability is 11/9/2021. Proofs of Claims due by

		10/18/2021. Government Proof of Claim due by 2/7/2022. (Eudy, Debra) (Entered: 08/12/2021)
08/12/2021	4 (4 pgs)	Notice *Notice of Telephonic Meeting of Creditors Pursuant to 11 U.S.C. § 341(a) & FRBP 2003 with proof of service* Filed by U.S. Trustee United States Trustee (RS) (RE: related document(s)3 Meeting of Creditors 341(a) meeting to be held on 9/10/2021 at 11:00 AM at UST-RS1, TELEPHONIC MEETING. CONFERENCE LINE:1-866-822-7121, PARTICIPANT CODE:6203551. Last day to oppose discharge or dischargeability is 11/9/2021. Proofs of Claims due by 10/18/2021. Government Proof of Claim due by 2/7/2022.). (Ridley, Cameron) (Entered: 08/12/2021)
08/14/2021	5 (5 pgs)	BNC Certificate of Notice (RE: related document(s)3 Meeting of Creditors Chapter 11 (Corporations or Partnerships under Subchapter V) (309F2)) No. of Notices: 44. Notice Date 08/14/2021. (Admin.) (Entered: 08/14/2021)
08/18/2021	6 (3 pgs)	BNC Certificate of Notice (RE: related document(s)1 Voluntary Petition (Chapter 11) filed by Debtor Innerline Engineering, Inc.) No. of Notices: 1. Notice Date 08/18/2021. (Admin.) (Entered: 08/18/2021)
08/18/2021	7 (3 pgs)	BNC Certificate of Notice (RE: related document(s)1 Voluntary Petition (Chapter 11) filed by Debtor Innerline Engineering, Inc.) No. of Notices: 1. Notice Date 08/18/2021. (Admin.) (Entered: 08/18/2021)
08/20/2021	8 (1 pg)	Request for courtesy Notice of Electronic Filing (NEF) Filed by Garan, Todd. (Garan, Todd) (Entered: 08/20/2021)
08/23/2021	9 (2 pgs)	Disclosure of Compensation of Attorney for Debtor (Official Form 2030) Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)1 Voluntary Petition (Chapter 11)). (Smith, Jeffrey) (Entered: 08/23/2021)
08/23/2021	10 (47 pgs)	Declaration Under Penalty of Perjury for Non-Individual Debtors (Official Form 202) , Summary of Assets and Liabilities for Non-Individual (Official Form 106Sum or 206Sum) , Schedule A/B Non-Individual: Property (Official Form 106A/B or 206A/B) , Schedule D Non-Individual: Creditors Who Have Claims Secured by Property (Official Form 106D or 206D) , Schedule E/F Non-Individual: Creditors Who Have Unsecured Claims (Official Form 106F or 206F) , Schedule G Non-Individual: Executory Contracts and Unexpired Leases (Official Form 106G or 206G) , Schedule H Non-Individual: Your Codebtors (Official Form 106H or 206H) , Statement of Financial Affairs for Non-Individual Filing for Bankruptcy (Official Form 107 or 207) , Verification of Master Mailing List of Creditors (LBR Form F1007-1) , List of Creditors (Master Mailing List of Creditors) Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)1 Voluntary Petition (Chapter 11)). (Smith, Jeffrey) (Entered: 08/23/2021)
08/23/2021	11 (4 pgs)	Chapter 11 or Chapter 9 Cases Non-Individual:: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders (Form 104 or 204) *(Amended)* Filed by Debtor Innerline Engineering, Inc.. (Smith, Jeffrey) (Entered: 08/23/2021)
08/23/2021	12	Tax Documents for the Year for 2019 *Balance Sheet and Cash Flow Statement (Profit & Loss) submitted in Compliance with 11 U.S.C.*

		Section 1116 & 1187 Filed by Debtor Innerline Engineering, Inc.. (Smith, Jeffrey) (Entered: 08/23/2021)
08/27/2021	13 (1 pg)	Request for courtesy Notice of Electronic Filing (NEF) Filed by Mroczynski, Randall. (Mroczynski, Randall) (Entered: 08/27/2021)
09/08/2021	14 (6 pgs)	Statement *Of Disinterestedness For Employment Of Professional Person Under FRBP 2014* Filed by Debtor Innerline Engineering, Inc.. (Smith, Jeffrey) (Entered: 09/08/2021)
09/08/2021	15 (33 pgs)	Application to Employ Jeffrey B. Smith and Curd, Galindo & Smith as General Bankruptcy Attorney *Declarations a and Exhibits in Support Thereof* Filed by Debtor Innerline Engineering, Inc. (Smith, Jeffrey) (Entered: 09/08/2021)
09/08/2021	16 (41 pgs)	Notice of Motion For Order Without a Hearing (LBR 9013-1(p) or (q)) Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)15 Application to Employ Jeffrey B. Smith and Curd, Galindo & Smith as General Bankruptcy Attorney *Declarations a and Exhibits in Support Thereof* Filed by Debtor Innerline Engineering, Inc.). (Smith, Jeffrey) (Entered: 09/08/2021)
09/10/2021	17 (1 pg)	Request for courtesy Notice of Electronic Filing (NEF) Filed by Choi, John. (Choi, John) (Entered: 09/10/2021)
09/13/2021	18	Continuance of Meeting of Creditors (Rule 2003(e)) Filed by U.S. Trustee United States Trustee (RS). 341(a) Meeting Continued to 10/13/2021 at 11:00 AM at UST-RS1, TELEPHONIC MEETING. CONFERENCE LINE:1-866-822-7121, PARTICIPANT CODE:6203551. (Ridley, Cameron) (Entered: 09/13/2021)
09/15/2021	19 (4 pgs)	Notice *of Continued Telephonic Meeting of Creditors Pursuant to 11 U.S.C. § 341(a) & Federal Rule Bankruptcy Procedure 2003* Filed by U.S. Trustee United States Trustee (RS) (RE: related document(s) 18 Continuance of Meeting of Creditors (Rule 2003(e)) Filed by U.S. Trustee United States Trustee (RS). 341(a) Meeting Continued to 10/13/2021 at 11:00 AM at UST-RS1, TELEPHONIC MEETING. CONFERENCE LINE:1-866-822-7121, PARTICIPANT CODE:6203551.). (Ridley, Cameron) (Entered: 09/15/2021)
09/22/2021	20 (21 pgs)	Objection (related document(s): 15 Application to Employ Jeffrey B. Smith and Curd, Galindo & Smith as General Bankruptcy Attorney *Declarations a and Exhibits in Support Thereof* filed by Debtor Innerline Engineering, Inc.) *to Application by Debtor to Employ General Bankruptcy Counsel Curd, Galindo & Smith; Declaration of Cameron C. Ridley, Filed in Support Thereof* Filed by U.S. Trustee United States Trustee (RS) (Ridley, Cameron) (Entered: 09/22/2021)
10/08/2021	21 (5 pgs)	Notice *United States Trustees Notice of Debtors Delinquency and Failure to Comply with United States Trustee Reporting Requirements Pursuant to 11 U.S.C. § 1112 & Local Bankruptcy Rule 2015-2* Filed by U.S. Trustee United States Trustee (RS). (Ridley, Cameron) (Entered: 10/08/2021)
10/13/2021	22 (7 pgs)	Declaration Under Penalty of Perjury for Non-Individual Debtors (Official Form 202) , Amended Schedule A/B for Non-Individual: Property (Official Form 106A/B or 206A/B) , Amending Schedules (E/F)

		, Amendment to List of Creditors. Fee Amount $32 Filed by Debtor Innerline Engineering, Inc.. (Smith, Jeffrey) (Entered: 10/13/2021)
10/13/2021		Receipt of Amending Schedules D and/or E/F (Official Form 106D, 106E/F, 206D, or 206E/F) (Fee)(6:21-bk-14305-WJ) [misc,amdsch] (32.00) Filing Fee. Receipt number A53493472. Fee amount 32.00. (re: Doc# 22) (U.S. Treasury) (Entered: 10/13/2021)
10/13/2021		Receipt of Amended List of Creditors (Fee)(6:21-bk-14305-WJ) [misc,amdcm] (32.00) Filing Fee. Receipt number A53493472. Fee amount 32.00. (re: Doc# 22) (U.S. Treasury) (Entered: 10/13/2021)
10/14/2021	23 (1 pg)	Request for courtesy Notice of Electronic Filing (NEF) *Associated Traffic Safety, Inc.* Filed by Kennedy, Matthew. (Kennedy, Matthew) (Entered: 10/14/2021)
10/19/2021	24 (37 pgs)	Monthly Operating Report. Operating Report Number: 1. For the Month Ending August 2021 Filed by Debtor Innerline Engineering, Inc.. (Smith, Jeffrey) (Entered: 10/19/2021)
10/21/2021	25 (3 pgs; 2 docs)	Notice *of Non-Consent to Debtor's Use of Cash Collateral with Proof of Service* Filed by Creditor U.S. Small Business Administration. (Attachments: # 1 Proof of Service) (Levey, Elan) (Entered: 10/21/2021)
11/08/2021	26 (29 pgs)	Chapter 11 Small Business Plan Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)1 Chapter 11 Subchapter V Voluntary Petition Non-Individual. Fee Amount $1738 Filed by Innerline Engineering, Inc. Summary of Assets and Liabilities (Form 106Sum or 206Sum) due 08/23/2021. Schedule A/B: Property (Form 106A/B or 206A/B) due 08/23/2021. Schedule D: Creditors Who Have Claims Secured by Property (Form 106D or 206D) due 08/23/2021. Schedule E/F: Creditors Who Have Unsecured Claims (Form 106E/F or 206E/F) due 08/23/2021. Schedule G: Executory Contracts and Unexpired Leases (Form 106G or 206G) due 08/23/2021. Schedule H: Your Codebtors (Form 106H or 206H) due 08/23/2021. Schedule I: Your Income (Form 106I) due 08/23/2021. Schedule J: Your Expenses (Form 106J) due 08/23/2021. Declaration About an Individual Debtors Schedules (Form 106Dec) due 08/23/2021. Declaration Under Penalty of Perjury for Non-Individual Debtors (Form 202) due 08/23/2021. Statement of Financial Affairs (Form 107 or 207) due 08/23/2021. Disclosure of Compensation of Attorney for Debtor (Form 2030) due 08/23/2021. Verification of Master Mailing List of Creditors (LBR Form F1007-1) due 08/23/2021. Incomplete Filings due by 08/23/2021. Chapter 11 Plan Small Business Subchapter V Due by 11/8/2021.). (Smith, Jeffrey) (Entered: 11/08/2021)
12/02/2021	27 (1 pg)	Request for courtesy Notice of Electronic Filing (NEF) Filed by Butler, Chad. (Butler, Chad) (Entered: 12/02/2021)
12/17/2021	28 (38 pgs)	Monthly Operating Report. Operating Report Number: 2. For the Month Ending 9/30/21 Filed by Debtor Innerline Engineering, Inc.. (Smith, Jeffrey) (Entered: 12/17/2021)
12/17/2021	29 (39 pgs)	Monthly Operating Report. Operating Report Number: 3. For the Month Ending 10/31/21 Filed by Debtor Innerline Engineering, Inc.. (Smith, Jeffrey) (Entered: 12/17/2021)

12/17/2021	30 (5 pgs)	Order setting chapter 11 status conference Re: (BNC-PDF) (Related Doc # 1) Signed on 12/17/2021 (Gooch, Yvonne) (Entered: 12/17/2021)
12/17/2021	31	Hearing Set Status hearing to be held on 1/11/2022 at 02:30 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (Gooch, Yvonne) (Entered: 12/17/2021)
12/19/2021	32 (7 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)30 Order (Generic) (BNC-PDF)) No. of Notices: 1. Notice Date 12/19/2021. (Admin.) (Entered: 12/19/2021)
01/03/2022	33 (38 pgs)	Monthly Operating Report. Operating Report Number: Four. For the Month Ending 11/30/21 Filed by Debtor Innerline Engineering, Inc.. (Smith, Jeffrey) (Entered: 01/03/2022)
01/05/2022	34 (117 pgs; 3 docs)	Trustee's Motion to Dismiss Case *Memorandum of Points and Authorities; Declaration of Rhea Aquino in Support Thereof* Filed by U.S. Trustee United States Trustee (RS) (Attachments: # 1 Memorandum of Points and Authorities # 2 Declaration of Rhea Aquino) (Ridley, Cameron) (Entered: 01/05/2022)
01/05/2022	35	Hearing Set (RE: related document(s)34 Trustee's Motion to Dismiss Case filed by U.S. Trustee United States Trustee (RS)) The Hearing date is set for 2/8/2022 at 02:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (Gooch, Yvonne) (Entered: 01/05/2022)
01/05/2022	36 (1 pg)	Notice of UST's motion to dismiss or convert case - chapter 11 to 7 (BNC) (Gooch, Yvonne) (Entered: 01/05/2022)
01/06/2022	37 (4 pgs)	Proof of service *Supplemental Proof of Service* Filed by U.S. Trustee United States Trustee (RS) (RE: related document(s)34 Trustee's Motion to Dismiss Case *Memorandum of Points and Authorities; Declaration of Rhea Aquino in Support Thereof*). (Ridley, Cameron) (Entered: 01/06/2022)
01/07/2022	38 (2 pgs)	Scheduling order. See order for details Re: (BNC-PDF) (Related Doc # 1) Signed on 1/7/2022 (Gooch, Yvonne) (Entered: 01/07/2022)
01/07/2022	39	Hearing Rescheduled/Continued Status Conference. The Hearing date is set for 2/8/2022 at 02:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (Gooch, Yvonne) (Entered: 01/07/2022)
01/07/2022	40 (5 pgs)	BNC Certificate of Notice (RE: related document(s)36 Notice of UST's motion to dismiss or convert case - Ch 11 to 7 (BNC)) No. of Notices: 60. Notice Date 01/07/2022. (Admin.) (Entered: 01/07/2022)
01/09/2022	41 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)38 Order (Generic) (BNC-PDF)) No. of Notices: 1. Notice Date 01/09/2022. (Admin.) (Entered: 01/09/2022)
01/12/2022	42 (1 pg)	Document Hearing Held - Vacated (RE: related document(s)1 Voluntary Petition (Chapter 11) filed by Debtor Innerline Engineering, Inc.) (Gooch, Yvonne) (Entered: 01/12/2022)

01/18/2022	43 (8 pgs)	Substitution of attorney Filed by Debtor Innerline Engineering, Inc.. (Hayes, M.) (Entered: 01/18/2022)
01/19/2022	44 (14 pgs)	Notice *of: (1) Order Setting Chapter 11 Status Conference; and (2) Scheduling Order, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)30 Order setting chapter 11 status conference Re: (BNC-PDF) (Related Doc # 1) Signed on 12/17/2021, 38 Scheduling order. See order for details Re: (BNC-PDF) (Related Doc # 1) Signed on 1/7/2022). (Moradi-Brovia, Roksana) (Entered: 01/19/2022)
01/20/2022	45 (41 pgs; 2 docs)	Response to (related document(s): 34 Trustee's Motion to Dismiss Case *Memorandum of Points and Authorities; Declaration of Rhea Aquino in Support Thereof* filed by U.S. Trustee United States Trustee (RS)) *Joinder* Filed by Creditor Danny Song (Attachments: # 1 Declaration of John H Choi) (Choi, John) (Entered: 01/20/2022)
01/21/2022	46 (2 pgs)	Proof of service *(SUPPLEMENTAL)* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)44 Notice). (Moradi-Brovia, Roksana) (Entered: 01/21/2022)
01/21/2022	47 (33 pgs)	Small Business Monthly Operating Report for Filing Period December 2021 Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 01/21/2022)
01/24/2022	48 (44 pgs)	Application to Employ Resnik Hayes Moradi, LLP as General Bankruptcy Counsel *;Declarations of J.C. Yeh and Roksana D. Moradi-Brovia in Support Thereof, with proof of service* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 01/24/2022)
01/24/2022	49 (12 pgs)	Notice of motion/application *of Debtor and Debtor-In- Possession for Authority to Employ Resnik Hayes Moradi LLP as General Bankruptcy Counsel, with proof of service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)48 Application to Employ Resnik Hayes Moradi, LLP as General Bankruptcy Counsel *;Declarations of J.C. Yeh and Roksana D. Moradi-Brovia in Support Thereof, with proof of service* Filed by Debtor Innerline Engineering, Inc.). (Moradi-Brovia, Roksana) (Entered: 01/24/2022)
01/25/2022	50 (66 pgs)	Status Report for Chapter 11 Status Conference *; Declaration of J.C. Yeh in Support Thereof, with Proof of Service* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 01/25/2022)
01/25/2022	51 (19 pgs)	Opposition to (related document(s): 34 Trustee's Motion to Dismiss Case *Memorandum of Points and Authorities; Declaration of Rhea Aquino in Support Thereof* filed by U.S. Trustee United States Trustee (RS)) *; Declaration of J.C. Yeh in Support Thereof, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 01/25/2022)
01/25/2022	52 (103 pgs)	Motion to Use Cash Collateral *Motion to Authorize Debtor to Give Certain Lienholders a Postpetition Lien on Cash Collateral for Unauthorized Use of Cash Collateral and for Approval of Use of Cash Collateral for the Period February through April 2022; Memorandum of*

		Points and Authorities; Declaration of J.C. Yeh in Support Thereof Filed by Debtor Innerline Engineering, Inc. (Hayes, M.) (Entered: 01/25/2022)
01/25/2022	53 (11 pgs)	Application shortening time *Re: Motion to Authorize Debtor to Give Certain Lienholders a Postpetition Lien on Cash Collateral for Unauthorized Use of Cash Collateral and for Approval of Use of Cash Collateral for the Period February through April 2022; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof [Docket No. 52]* Filed by Debtor Innerline Engineering, Inc. (Hayes, M.) (Entered: 01/25/2022)
01/28/2022	54 (4 pgs)	Memorandum of decision (BNC-PDF) Signed on 1/28/2022. (Gooch, Yvonne) (Entered: 01/28/2022)
01/28/2022	55 (2 pgs)	Order Dismissing Case - **Debtor** Dismissed (BNC-PDF). Signed on 1/28/2022 (RE: related document(s)3 Meeting of Creditors Chapter 11 (Corporations or Partnerships under Subchapter V) (309F2), 18 Continuance of Meeting of Creditors (Rule 2003(e)) (by Trustee/US Trustee - No PDF) filed by U.S. Trustee United States Trustee (RS), 31 Hearing Set (Other) (BK Case - BNC Option), 34 Trustee's Motion to Dismiss Case filed by U.S. Trustee United States Trustee (RS), 39 Hearing Rescheduled/Continued (Other) (BK Case - BNC Option)). (Gooch, Yvonne) (Entered: 01/28/2022)
01/28/2022	56 (1 pg)	Notice of dismissal (BNC) (Gooch, Yvonne) (Entered: 01/28/2022)
01/30/2022	57 (5 pgs)	BNC Certificate of Notice (RE: related document(s)56 Notice of dismissal (BNC)) No. of Notices: 60. Notice Date 01/30/2022. (Admin.) (Entered: 01/30/2022)
01/30/2022	58 (6 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)54 Memorandum of decision (BNC-PDF)) No. of Notices: 1. Notice Date 01/30/2022. (Admin.) (Entered: 01/30/2022)
01/30/2022	59 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)55 Order Dismissing Case (BNC-PDF)) No. of Notices: 1. Notice Date 01/30/2022. (Admin.) (Entered: 01/30/2022)
02/01/2022	60 (29 pgs)	Application for Compensation *//First and Final* for Caroline Renee Djang (TR), Trustee, Period: 8/11/2021 to 2/1/2022, Fee: $7737.00, Expenses: $0. Filed by Attorney Caroline Renee Djang (TR) (Djang (TR), Caroline) (Entered: 02/01/2022)
02/01/2022	61 (8 pgs)	Notice of Hearing Filed by Trustee Caroline Renee Djang (TR) (RE: related document(s)60 Application for Compensation *//First and Final* for Caroline Renee Djang (TR), Trustee, Period: 8/11/2021 to 2/1/2022, Fee: $7737.00, Expenses: $0. Filed by Attorney Caroline Renee Djang (TR) (Djang (TR), Caroline)). (Djang (TR), Caroline) (Entered: 02/01/2022)
02/02/2022	62	Hearing Set (RE: related document(s)60 Application for Compensation filed by Trustee Caroline Renee Djang (TR)) The Hearing date is set for 2/22/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (Gooch, Yvonne) (Entered: 02/02/2022)

02/08/2022	64 (1 pg)	Document Hearing Held - Vacated (RE: related document(s)1 Voluntary Petition (Chapter 11) filed by Debtor Innerline Engineering, Inc.) (Gooch, Yvonne) (Entered: 02/09/2022)
02/09/2022	63 (1 pg)	Document Hearing Held - Vacated (RE: related document(s)34 Trustee's Motion to Dismiss Case filed by U.S. Trustee United States Trustee (RS)) (Gooch, Yvonne) (Entered: 02/09/2022)
02/16/2022	65 (4 pgs)	Voluntary Dismissal of Motion Filed by Trustee Caroline Renee Djang (TR) (RE: related document(s)60 Application for Compensation *//First and Final* for Caroline Renee Djang (TR), Trustee, Period: 8/11/2021 to 2/1/2022, Fee: $7737.00, Expenses: $0.). (Djang (TR), Caroline) (Entered: 02/16/2022)
02/16/2022	66 (1 pg)	Chapter 11 Subchapter V Trustee's Report of No Distribution. Funds Collected: $0.00. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 1 months. Assets Abandoned (without deducting any secured claims): Not Applicable, Assets Exempt: Not Applicable, Claims Scheduled: $6627403.08, Claims Asserted: Not Available, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): Not Applicable. Filed by Trustee Caroline Renee Djang (TR). (Djang (TR), Caroline) (Entered: 02/16/2022)
02/22/2022	67 (1 pg)	Document Hearing Held - Vacated (RE: related document(s)60 Application for Compensation filed by Trustee Caroline Renee Djang (TR)) (Gooch, Yvonne) (Entered: 02/23/2022)
03/22/2022	68	Bankruptcy Case Closed - DISMISSED. An Order dismissing the above referenced bankruptcy case was entered and notice was provided to parties in interest. Since it appears that no further matters are required that this case remain open, or that the jurisdiction of this Court continue, it is ordered that the Trustee is discharged, the bond is exonerated, and this case is therefore closed. (Gooch, Yvonne) (Entered: 03/22/2022)

PACER Service Center			
Transaction Receipt			
02/28/2023 16:21:00			
PACER Login:	AMSalgado	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	6:21-bk-14305-WJ Fil or Ent: filed From: 11/30/2001 To: 2/28/2023 Doc From: 0 Doc To: 99999999 Term: included Format: html Page counts for documents: included
Billable Pages:	7	**Cost:**	0.70

Exhibit 3

FILED & ENTERED

JAN 28 2022

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY gooch DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

RIVERSIDE DIVISION

In re: INNERLINE ENGINEERING, INC., Debtor.	Case No.: 6:21-bk-14305-WJ CHAPTER 11 **MEMORANDUM OF DECISION** Hearing: Date: February 8, 2022 Time: 2:00 p.m. Place: United States Bankruptcy Court Courtroom 304 3420 Twelfth Street Riverside, CA 92501

At present, the following matters are pending before this Court. First, on August 9, 2021, the debtor, Innerline Engineering, Inc. ("Innerline"), filed this chapter 11 case with the assistance of chapter 11 debtor's counsel: Curd, Galindo & Smith LLP ("Smith Firm"). About a month later, the Smith Firm filed an employment application [docket #15] ("Smith Application"). Thereafter, the Office of the United States Trustee filed an objection to the Smith Application [docket #20] ("OUST Objection"). The Smith Firm never set a hearing regarding the Smith Application which remains pending.

Second, on January 1, 2022, the United States Trustee filed a motion to dismiss or convert this chapter 11 case [docket #34] ("Dismissal Motion").[1] Creditor Danny Song joined in the motion [docket #45] ("Joinder").[2] A hearing regarding the Dismissal Motion is currently scheduled for February 8, 2022.

After the filing of the Dismissal Motion, the Smith Firm substituted out of the case and new counsel has substituted into the case: Resnik Hayes Moradi, LLP ("Resnik Firm"). On January 25, 2022, the Resnik Firm filed opposition to the Dismissal Motion [docket #51] ("Opposition")[3] on behalf of Innerline.

Third, the Resnik Firm also filed a motion pertaining to the misuse of cash collateral by Innerline [docket #52] ("Cash Collateral Motion") as well as an application for an order shortening time to hear the Cash Collateral Motion on shortened notice [docket #53] ("Application").

The Court has considered the Smith Application, the OUST Objection, the Dismissal Motion, the Joinder, the Opposition, the Cash Collateral Motion and the Application. The Court finds that no oral argument regarding the Dismissal Motion is necessary and, pursuant to Rule 9013-1(j)(3) of the Local Bankruptcy Rules, the Court hereby takes off calendar the hearing

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[1] The pleading is entitled "Notice of Motion and Motion by United States Trustee to Convert or Dismiss Chapter 11 Case or Remove Debtor From Possession".

[2] The pleading is entitled "Creditor Danny Song's Notice of Joinder and Joinder in the Unites States Trustee's Motion to Convert or Dismiss Chapter 11 Case".

[3] The pleading is entitled "Debtor's opposition to United States Trustee's Motion to Convert or Dismiss Chapter 11 Case or Remove Debtor From Possession; Declaration of J.C. Yeh in Support Thereof".

and waives appearances. No hearing shall occur.

The Court shall grant the Dismissal Motion for the reasons set forth in the Dismissal Motion. It is beyond dispute that Innerline failed for months to turn over proof of insurance to the U.S. Trustee despite multiple requests including the October 8, 2021 notice filed with the Court [docket #21]. It is also undisputed that Innerline did not obey the scheduling order issued by this Court which required Innerline to provide notice of the status conference and submit a status report. Innerline did not do so until long after the required deadlines and only after the United States Trustee filed the Dismissal Motion based (in part) upon these failures.

In addition, Innerline has repeatedly misused cash collateral ever since the beginning of the case. The United States Trustee specifically warned Innerline and the Smith Firm about this issue over four months ago in the OUST Objection (page 3, lines 8-10) ("Notwithstanding Mr. Smith's background as described in the Employment Application, for whatever reason, the Applicant has failed to timely resolve cash collateral issues in this case, and take curative action regarding Debtor's unauthorized use of cash collateral."). Indeed, the misuse of cash collateral and the failure to address cash collateral issues are the primary reasons why the United States Trustee filed its objection to the Smith Application. And yet, the Smith Firm filed no motion to address the cash collateral problems. The Smith Firm did not even set a hearing regarding the Smith Application after receiving the OUST Objection.

All of the grounds set forth in the Dismissal Motion amply support dismissal of the case. In the Opposition, the Resnik Firm has acknowledged the errors which the firm has now inherited. Given the prior delays and misconduct (which is not the fault of the Resnik Firm), granting the Dismissal Motion is not only the right course of action under the law but will also better orient the curative efforts of the Resnik Firm. If Innerline can successfully navigate a chapter 11 case, it will be a future case, not this one. The defaults and missteps that occurred before the appearance of the Resnick Firm have been too extensive.

The United States Trustee suggests that conversion of the case to chapter 7 may be appropriate but Mr. Song argues for dismissal in the Joinder. Likewise, Innerline and the Resnik Firm suggest that dismissal is preferable over conversion provided that no bar to refiling occurs. Indeed, ruling on this matter now without waiting for the pending hearing is also consistent with the indication by the Resnick Firm in the Opposition that the Debtor intends to "quickly refile" another case. In that regard, the United States Trustee has not argued for a dismissal with a bar to re-filing. Therefore, dismissal with no bar to re-filings seems most appropriate.

Now that Innerline has retained the Resnik Firm – a very well experienced bankruptcy firm – Innerline and counsel can evaluate whether filing another chapter 11 case sbest suits the needs of Innerline. In so ruling, the Court is not suggesting that a third chapter 11 case by Innerline will turn out any differently than the first two cases but with the Resnik Firm representing Innerline, its chances have improved considerably.

With respect to the Smith Application, the Court shall deny the application for failure to prosecute. Mr. Smith never set the matter for a hearing as required under the local rules.

This ruling moots the Cash Collateral Motion and the Application.

IT IS SO ORDERED.

###

Date: January 28, 2022

Wayne Johnson
United States Bankruptcy Judge

Exhibit 4

Repeat-cacb, Subchapter_V

U.S. Bankruptcy Court
Central District of California (Riverside)
Bankruptcy Petition #: 6:22-bk-10545-WJ

Assigned to: Wayne E. Johnson
Chapter 11
Voluntary
Asset

Date filed: 02/14/2022
341 meeting: 04/12/2022
Deadline for filing claims: 04/25/2022
Deadline for filing claims (govt.): 08/15/2022
Deadline for objecting to discharge: 05/16/2022

Debtor
Innerline Engineering, Inc.
1663 Commerce Street
Corona, CA 92880
RIVERSIDE-CA
Tax ID / EIN: 33-0909707

represented by **Michale R. Weinstein and Farris & Britton**
501 West Broadway Suite 1450
San Diego, CA 92101
619-233-3131

Roksana D. Moradi-Brovia
RHM Law LLP
17609 Ventura Blvd., Suite 314
Encino, CA 91316
(818) 285-0100
Fax : (818) 855-7013
Email: Roksana@rhmfirm.com

Matthew D. Resnik
RHM Law LLP
17609 Ventura Blvd., Suite 314
Encino, CA 91316
818-285-0100
Email: Matt@rhmfirm.com

Trustee
Caroline Renee Djang (TR)
BUCHALTER
18400 Von Karman Ave Suite 80
Irvine, CA 92612
949-263-6586

U.S. Trustee
United States Trustee (RS)
3801 University Avenue, Suite 720
Riverside, CA 92501-3200
(951) 276-6990

represented by **Abram Feuerstein, esq**
Office of US Trustee
3801 University Avenue
St 720
Riverside, CA 92501
951-276-6975
Fax : 951-276-6973
Email: abram.s.feuerstein@usdoj.gov

Everett L Green
Office of the US Trustee
3801 University Avenue

Ste 720
Riverside, CA 92501
951-276-6063
Fax : 951-276-6973
Email: everett.l.green@usdoj.gov

Ali Matin
Office of the United States Trustee
3801 University Avenue, Suite 720
Riverside, CA 92501
951-276-6990
Fax : 951-276-6973
Email: ali.matin@usdoj.gov

Cameron C Ridley
Office of the United States Trustee
3801 University Ave Ste 720
Riverside, CA 92501
951-276-6354
Fax : 951-276-6973
Email: Cameron.Ridley@usdoj.gov

Filing Date	#	Docket Text
02/14/2022	1 (66 pgs)	Chapter 11 Subchapter V Voluntary Petition Non-Individual. Fee Amount $1738 Filed by Innerline Engineering, Inc. Chapter 11 Plan Subchapter V Due by 05/16/2022. (Resnik, Matthew) (Entered: 02/14/2022)
02/14/2022		Receipt of Voluntary Petition (Chapter 11)(6:22-bk-10545) [misc,volp11] (1738.00) Filing Fee. Receipt number A53934338. Fee amount 1738.00. (re: Doc# 1) (U.S. Treasury) (Entered: 02/14/2022)
02/14/2022	2 (13 pgs)	Motion for Continuation of Utility Service and Approval of Adequate Assurance of Payment to Utility Company Under Section 366(b) *, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 02/14/2022)
02/14/2022	3 (27 pgs)	Motion to Assume Lease or Executory Contract *Notice of Motion and Motion for Entry of an Order Authorizing Debtor to Assume Unexpired Nonresidential Real Property Lease Pursuant to 11 U.S.C. §365; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 02/14/2022)
02/14/2022	4 (119 pgs)	Motion to Use Cash Collateral *for the Period February 14, 2022 through April 30, 2022; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 02/14/2022)
02/14/2022	5	Hearing Set (RE: related document(s)3 Motion to Assume Lease or Executory Contract filed by Debtor Innerline Engineering, Inc.) The Hearing date is set for 3/22/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (Gooch, Yvonne) (Entered: 02/14/2022)

02/14/2022	6 (11 pgs)	Application shortening time *Re Motion for Authority to Use Cash Collateral [Docket No. 4]* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 02/14/2022)
02/14/2022	7 (8 pgs)	Statement *Regarding Cash Collateral or Debtor in Possession Financing [FRBP 4001; LBR 4001-2]* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 02/14/2022)
02/14/2022	8	Balance Sheet, Cash Flow Statement for Small Business, Tax Documents for the Year for 2020 *; Debtor's Financial Documents Submitted Pursuant to 11 U.S.C. §1116(1)(A)* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 02/14/2022)
02/14/2022	9 (3 pgs)	Chapter 11 or Chapter 9 Cases Non-Individual:: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders (Form 104 or 204) Filed by Debtor Innerline Engineering, Inc.. (Resnik, Matthew) : Warning: see docket entry #10 for corrective action. Modified on 2/15/2022 (Gooch, Yvonne). (Entered: 02/14/2022)
02/15/2022	10	Notice to Filer of Error and/or Deficient Document . The balance sheet and cash flow statement should be file separate from the tax doc. (RE: related document(s)8 Balance Sheet filed by Debtor Innerline Engineering, Inc., Cash Flow Statement, Tax Documents) (Gooch, Yvonne) (Entered: 02/15/2022)
02/15/2022	11 (4 pgs)	Balance Sheet, Cash Flow Statement for Small Business Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 02/15/2022)
02/15/2022	12 (3 pgs)	Declaration re: *of J.C. Yeh re Small Business Case Financial Information Pursuant to 11 U.S.C. §1116(1)(B)* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 02/15/2022)
02/15/2022	13	Tax Documents for the Year for 2020 Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 02/15/2022)
02/15/2022	14 (50 pgs)	Application to Employ Resnik Hayes Moradi LLP as General Bankruptcy Counsel *; Memorandum of Points and Authorities; Declarations of J.C. Yeh and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 02/15/2022)
02/15/2022	15 (14 pgs)	Notice of motion/application , *with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)14 Application to Employ Resnik Hayes Moradi LLP as General Bankruptcy Counsel *; Memorandum of Points and Authorities; Declarations of J.C. Yeh and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service* Filed by Debtor Innerline Engineering, Inc.). (Moradi-Brovia, Roksana) (Entered: 02/15/2022)
02/15/2022	16 (1 pg)	Withdrawal re: Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)8 Balance Sheet, Cash Flow Statement, Tax Documents). (Moradi-Brovia, Roksana) (Entered: 02/15/2022)
02/15/2022	17 (3 pgs)	Order granting application and seting hearing on shortened notice regarding the motion to use cash collateral. See order for details (BNC-PDF) (Related Doc # 6) Signed on 2/15/2022 (Gooch, Yvonne) (Entered: 02/15/2022)

02/15/2022	18	Hearing Set (RE: related document(s)4 Motion to Use Cash Collateral filed by Debtor Innerline Engineering, Inc.) The Hearing date is set for 2/17/2022 at 02:30 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (Gooch, Yvonne) (Entered: 02/15/2022)
02/15/2022	19 (132 pgs)	Notice of Hearing *on Shortened Time Re Debtor's Motion for Authority to Use Cash Collateral [Docket No. 4]* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)4 Motion to Use Cash Collateral *for the Period February 14, 2022 through April 30, 2022; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof, with Proof of Service* Filed by Debtor Innerline Engineering, Inc.). (Moradi-Brovia, Roksana) (Entered: 02/15/2022)
02/16/2022	20 (1 pg)	Request for courtesy Notice of Electronic Filing (NEF) Filed by Choi, John. (Choi, John) (Entered: 02/16/2022)
02/16/2022	21 (7 pgs)	Stipulation By United States Small Business Administration and *w/ Proof of Service* Filed by Creditor United States Small Business Administration (Levey, Elan) (Entered: 02/16/2022)
02/16/2022	22 (10 pgs)	Declaration re: *Declaration of W. Sloan Youkstetter Regarding Service of Notice of Hearing on Shortened Time Re Motion for Authority to Use Cash Collateral for the Period February 14, 2022 Through April 30, 2022* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)4 Motion to Use Cash Collateral *for the Period February 14, 2022 through April 30, 2022; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof, with Proof of Service*, 6 Application shortening time *Re Motion for Authority to Use Cash Collateral [Docket No. 4]*, 17 ORDER shortening time (BNC-PDF)). (Moradi-Brovia, Roksana) (Entered: 02/16/2022)
02/16/2022	23 (4 pgs)	Notice of lodgment *w/ Proof of Service* Filed by Creditor United States Small Business Administration (RE: related document(s)21 Stipulation By United States Small Business Administration and *w/ Proof of Service* Filed by Creditor United States Small Business Administration). (Levey, Elan) (Entered: 02/16/2022)
02/16/2022	24 (3 pgs)	Notice of appointment and acceptance of trustee *Notice of Appointment of SubChapter V Trustee* Filed by U.S. Trustee United States Trustee (RS). (Ridley, Cameron) (Entered: 02/16/2022)
02/17/2022	25 (3 pgs)	Supplemental *Amended Budget in Support of Debtor's Motion for Authority to Use Cash Collateral* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 02/17/2022)
02/17/2022		Hearing Rescheduled/Continued (Motion) (BK Case - BNC Option) (RE: related document(s) 4 MOTION TO USE CASH COLLATERAL filed by Innerline Engineering, Inc.) Hearing to be held on 03/22/2022 at 02:30 PM 3420 Twelfth Street Courtroom 304 Riverside, CA 92501 for 4 , (Gooch, Yvonne) (Entered: 02/17/2022)
02/17/2022	26 (2 pgs)	Document Hearing Continued (RE: related document(s)4 Motion to Use Cash Collateral filed by Debtor Innerline Engineering, Inc.) The Hearing date is set for 3/22/2022 at 02:30 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (Gooch, Yvonne) (Entered: 02/17/2022)

02/17/2022	27 (5 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)17 ORDER shortening time (BNC-PDF)) No. of Notices: 1. Notice Date 02/17/2022. (Admin.) (Entered: 02/17/2022)
02/18/2022	28 (3 pgs)	Proof of service *(Supplemental)* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)4 Motion to Use Cash Collateral *for the Period February 14, 2022 through April 30, 2022; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof, with Proof of Service*, 6 Application shortening time *Re Motion for Authority to Use Cash Collateral [Docket No. 4]*, 7 Statement, 19 Notice of Hearing (BK Case), 25 Supplemental). (Moradi-Brovia, Roksana) (Entered: 02/18/2022)
02/18/2022	29 (7 pgs)	Proof of service Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)25 Supplemental). (Moradi-Brovia, Roksana) (Entered: 02/18/2022)
02/18/2022	30 (3 pgs)	Order granting an interim basis the debtor's motion for authority to use cash collateral through April 30, 2022. See order for details (BNC-PDF) (Related Doc # 4) Signed on 2/18/2022 (Gooch, Yvonne) (Entered: 02/18/2022)
02/18/2022	31 (11 pgs)	Notice *of (1) Order Granting on an Interim Basis the Debtor's Motion for Authority to Use Cash Collateral through April 30, 2022; (2) Continued Hearing on Debtor's Motion for Authority to Use Cash Collateral, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)4 Motion to Use Cash Collateral *for the Period February 14, 2022 through April 30, 2022; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof, with Proof of Service* Filed by Debtor Innerline Engineering, Inc., 25 Supplemental *Amended Budget in Support of Debtor's Motion for Authority to Use Cash Collateral* Filed by Debtor Innerline Engineering, Inc.., 30 Order granting an interim basis the debtor's motion for authority to use cash collateral through April 30, 2022. See order for details (BNC-PDF) (Related Doc # 4) Signed on 2/18/2022). (Moradi-Brovia, Roksana) (Entered: 02/18/2022)
02/20/2022	32 (5 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)30 Order on Motion to Use Cash Collateral (BNC-PDF)) No. of Notices: 1. Notice Date 02/20/2022. (Admin.) (Entered: 02/20/2022)
02/23/2022	33 (7 pgs)	Stipulation By United States Small Business Administration and *Amended for Adequate Protection and Use of Cash Collateral w/ Proof of Service* Filed by Creditor United States Small Business Administration (Levey, Elan) (Entered: 02/23/2022)
02/23/2022	34 (4 pgs)	Notice of lodgment *w/ Proof of Service* Filed by Creditor United States Small Business Administration (RE: related document(s)33 Stipulation By United States Small Business Administration and *Amended for Adequate Protection and Use of Cash Collateral w/ Proof of Service* Filed by Creditor United States Small Business Administration). (Levey, Elan) (Entered: 02/23/2022)
02/23/2022	35 (2 pgs)	Meeting of Creditors 341(a) meeting to be held on 3/16/2022 at 10:00 AM at UST, TELEPHONIC MEETING. CONTACT THE OFFICE OF U.S. TRUSTEE FOR INSTRUCTIONS. Last day to oppose discharge or dischargeability is 5/16/2022. Proofs of Claims due by 4/25/2022. Government Proof of Claim due by 8/15/2022. (English, Melissa) COMMENT: This Notice Not Generated thru BNC due to Incorrect Hearing Location Contact Information. See docket entry #37 for Correct Notice re Contact Information. Modified on 2/23/2022 (English, Melissa). (Entered: 02/23/2022)

02/23/2022	36 (4 pgs)	Notice *Of Telephonic Meeting of Creditors Pursuant To 11 U.S.C.§ 341(a) & FRBP 2003* Filed by U.S. Trustee United States Trustee (RS) (RE: related document(s)35 Meeting of Creditors 341(a) meeting to be held on 3/16/2022 at 10:00 AM at UST, TELEPHONIC MEETING. CONTACT THE OFFICE OF U.S. TRUSTEE FOR INSTRUCTIONS. Last day to oppose discharge or dischargeability is 5/16/2022. Proofs of Claims due by 4/25/2022. Government Proof of Claim due by 8/15/2022.). (Ridley, Cameron) COMMENT: See docket entry #37 for the Correct 341(a) Meeting of Creditors Notice. Modified on 2/23/2022 (English, Melissa). (Entered: 02/23/2022)
02/23/2022	37 (2 pgs)	Meeting of Creditors 341(a) meeting to be held on 3/16/2022 at 10:00 AM at UST-RS1, TELEPHONIC MEETING. CONFERENCE LINE:1-866-822-7121, PARTICIPANT CODE:6203551. Last day to oppose discharge or dischargeability is 5/16/2022. Proofs of Claims due by 4/25/2022. Government Proof of Claim due by 8/15/2022. (English, Melissa) (Entered: 02/23/2022)
02/25/2022	38 (5 pgs)	BNC Certificate of Notice (RE: related document(s)37 Meeting of Creditors Chapter 11 (Corporations or Partnerships under Subchapter V) (309F2)) No. of Notices: 59. Notice Date 02/25/2022. (Admin.) (Entered: 02/25/2022)
03/02/2022	39 (12 pgs)	Objection (related document(s): 14 Application to Employ Resnik Hayes Moradi LLP as General Bankruptcy Counsel *; Memorandum of Points and Authorities; Declarations of J.C. Yeh and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service* filed by Debtor Innerline Engineering, Inc.) Filed by U.S. Trustee United States Trustee (RS) (Ridley, Cameron) (Entered: 03/02/2022)
03/03/2022	40 (1 pg)	Request for courtesy Notice of Electronic Filing (NEF) Filed by Garan, Todd. (Garan, Todd) (Entered: 03/03/2022)
03/03/2022	41 (2 pgs)	Notice of Change of Address *or Law Firm* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 03/03/2022)
03/03/2022	42 (1 pg)	Disclosure of Compensation of Attorney for Debtor (Official Form 2030) *Amended* Filed by Debtor Innerline Engineering, Inc.. (Resnik, Matthew) (Entered: 03/03/2022)
03/03/2022	43 (4 pgs)	Notice of Hearing *, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)14 Application to Employ Resnik Hayes Moradi LLP as General Bankruptcy Counsel *; Memorandum of Points and Authorities; Declarations of J.C. Yeh and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service* Filed by Debtor Innerline Engineering, Inc.). (Moradi-Brovia, Roksana) (Entered: 03/03/2022)
03/03/2022	44	Hearing Set (RE: related document(s)14 Application to Employ filed by Debtor Innerline Engineering, Inc.) The Hearing date is set for 3/22/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (Gooch, Yvonne) (Entered: 03/03/2022)
03/04/2022	45 (22 pgs)	Declaration That No Party Requested a Hearing on Motion (LBR 9013-1(o)(3)) *with proof of service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)2 Motion for Continuation of Utility Service and Approval of Adequate Assurance of Payment to Utility Company Under Section 366(b) *, with Proof of Service*). (Moradi-Brovia, Roksana) (Entered: 03/04/2022)
03/04/2022	46 (1 pg)	Order Granting Motion for Continuation of Utility Service and Approval of Adequate Assurance of Payment to Utility Company Under Section 366(b)

		(BNC-PDF) (Related Doc # 2) Signed on 3/4/2022 (Jewell, Cynthia Renee) (Entered: 03/04/2022)
03/06/2022	47 (3 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)46 Order on Motion for Continuation of Utility Service (BNC-PDF)) No. of Notices: 1. Notice Date 03/06/2022. (Admin.) (Entered: 03/06/2022)
03/15/2022	48 (6 pgs)	Reply to (related document(s): 39 Objection filed by U.S. Trustee United States Trustee (RS)) , *with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (Resnik, Matthew) (Entered: 03/15/2022)
03/18/2022	49	Continuance of Meeting of Creditors (Rule 2003(e)) Filed by U.S. Trustee United States Trustee (RS). 341(a) Meeting Continued to 4/12/2022 at 11:00 AM at UST-RS1, TELEPHONIC MEETING. CONFERENCE LINE:1-866-822-7121, PARTICIPANT CODE:6203551. (Ridley, Cameron) (Entered: 03/18/2022)
03/18/2022	50 (4 pgs)	Notice *of Continued Telephonic Meeting of Creditors Pursuant to 11 U.S.C. § 341(a) & Federal Rule Bankruptcy Procedure 2003* Filed by U.S. Trustee United States Trustee (RS) (RE: related document(s) 49 Continuance of Meeting of Creditors (Rule 2003(e)) Filed by U.S. Trustee United States Trustee (RS). 341(a) Meeting Continued to 4/12/2022 at 11:00 AM at UST-RS1, TELEPHONIC MEETING. CONFERENCE LINE:1-866-822-7121, PARTICIPANT CODE:6203551.). (Ridley, Cameron) (Entered: 03/18/2022)
03/21/2022	51 (21 pgs)	Notice of Motion and Motion in Individual Ch 11 Case for Order Employing Professional (LBR 2014-1): Ashley Cecil and Cohn Handler Sturm as Accountant *with proof of service* Filed by Debtor Innerline Engineering, Inc. (Resnik, Matthew) (Entered: 03/21/2022)
03/22/2022	52 (20 pgs)	Monthly Operating Report. Operating Report Number: 1. For the Month Ending February 2022 Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 03/22/2022)
03/22/2022	53 (2 pgs)	Document Hearing Held - Granted (RE: related document(s)3 Motion to Assume Lease or Executory Contract filed by Debtor Innerline Engineering, Inc.) (Gooch, Yvonne) (Entered: 03/23/2022)
03/22/2022	54 (2 pgs)	Document Hearing Held - Granted (RE: related document(s)14 Application to Employ filed by Debtor Innerline Engineering, Inc.) (Gooch, Yvonne) (Entered: 03/23/2022)
03/22/2022	55 (2 pgs)	Document Hearing Held - Granted (RE: related document(s)4 Motion to Use Cash Collateral filed by Debtor Innerline Engineering, Inc.) (Gooch, Yvonne) (Entered: 03/23/2022)
03/23/2022	56 (2 pgs)	Order approving use of cash collateral on a final basis. See order for details (BNC-PDF) (Related Doc # 4) Signed on 3/23/2022 (Gooch, Yvonne) (Entered: 03/23/2022)
03/24/2022	57 (2 pgs)	Order Granting Motion To Assume Lease or Executory Contract (BNC-PDF) (Related Doc # 3) Signed on 3/24/2022 (Gooch, Yvonne) (Entered: 03/24/2022)
03/25/2022	58 (1 pg)	Request for courtesy Notice of Electronic Filing (NEF) Filed by Butler, Chad. (Butler, Chad) (Entered: 03/25/2022)

03/25/2022	59 (7 pgs)	Declaration re: *(Supplemental) of Roksana D. Moradi-Brovia and Matthew D. Resnik in Support of Application of Debtor and Debtor-in-Possession for Authority to Employ RHM LAW LLP as its General Bankruptcy Counsel, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)14 Application to Employ Resnik Hayes Moradi LLP as General Bankruptcy Counsel *; Memorandum of Points and Authorities; Declarations of J.C. Yeh and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service*, 48 Reply). (Moradi-Brovia, Roksana) (Entered: 03/25/2022)
03/25/2022	60 (7 pgs)	Notice of lodgment , *with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)14 Application to Employ Resnik Hayes Moradi LLP as General Bankruptcy Counsel *; Memorandum of Points and Authorities; Declarations of J.C. Yeh and Roksana D. Moradi-Brovia in Support Thereof, with Proof of Service*). (Moradi-Brovia, Roksana) (Entered: 03/25/2022)
03/25/2022	61 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)56 Order on Motion to Use Cash Collateral (BNC-PDF)) No. of Notices: 1. Notice Date 03/25/2022. (Admin.) (Entered: 03/25/2022)
03/26/2022	62 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)57 Order on Motion to Assume Lease or Executory Contract (BNC-PDF)) No. of Notices: 1. Notice Date 03/26/2022. (Admin.) (Entered: 03/26/2022)
03/28/2022	63 (33 pgs)	Amending Schedules (D) (E/F) , Amended Schedule A/B for Non-Individual: Property (Official Form 106A/B or 206A/B) *with Proof of Service* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 03/28/2022)
03/28/2022		Receipt of Amending Schedules D and/or E/F (Official Form 106D, 106E/F, 206D, or 206E/F) (Fee)(6:22-bk-10545-WJ) [misc,amdsch] (32.00) Filing Fee. Receipt number A54083957. Fee amount 32.00. (re: Doc# 63) (U.S. Treasury) (Entered: 03/28/2022)
03/29/2022	64 (38 pgs)	Motion to Use Cash Collateral *Notice of Motion and Motion for Authority to Use Cash Collateral on Final Basis; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 03/29/2022)
03/29/2022	65 (8 pgs)	Statement *Regarding Cash Collateral or Debtor in Possession Financing [FRBP 4001; LBR 4001-2]* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 03/29/2022)
03/30/2022	66	Hearing Set (RE: related document(s)64 Motion to Use Cash Collateral filed by Debtor Innerline Engineering, Inc.) The Hearing date is set for 4/19/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (Gooch, Yvonne) (Entered: 03/30/2022)
03/30/2022	67 (7 pgs)	Errata *Notice of Errata re: Statement Regarding Cash Collateral or Debtor-In-Possession Financing [Docket No. 65] to Correct Hearing Time, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)65 Statement). (Moradi-Brovia, Roksana) (Entered: 03/30/2022)
04/01/2022	68 (3 pgs)	Order Granting Application to Employ Resnik Hayes Moradi LLP as Bankruptcy Counsel (BNC-PDF) (Related Doc # 14) Signed on 4/1/2022. (Hawkinson, Susan) (Entered: 04/01/2022)

04/03/2022	69 (5 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)68 Order on Application to Employ (BNC-PDF)) No. of Notices: 1. Notice Date 04/03/2022. (Admin.) (Entered: 04/03/2022)
04/12/2022	70 (5 pgs)	Supplemental *Declaration of J.C. Yeh in Support of Motion in Chapter 11 Case for Order Authorizing Debtor-In-Possession to Employ Professional (Other Than General Bankruptcy Counsel) [Ashley Cecil and Cohn Handler Sturm as CPA for the Estate] [Docket No. 51], with Proof of Service* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 04/12/2022)
04/12/2022	71 (32 pgs)	Declaration That No Party Requested a Hearing on Motion (LBR 9013-1(o)(3)) *with proof of service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)51 Notice of Motion and Motion in Individual Ch 11 Case for Order Employing Professional (LBR 2014-1): Ashley Cecil and Cohn Handler Sturm as Accountant *with proof of service*). (Resnik, Matthew) (Entered: 04/12/2022)
04/12/2022	72 (44 pgs)	Motion to Assume Lease or Executory Contract *Notice of Motion and Motion for Entry of an Order Authorizing Debtor to Assume Unexpired Nonresidential Real Property Lease Pursuant to 11 U.S.C. §365; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 04/12/2022)
04/12/2022	73	Hearing Set (RE: related document(s)72 Motion to Assume Lease or Executory Contract filed by Debtor Innerline Engineering, Inc.) The Hearing date is set for 5/17/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (Gooch, Yvonne) (Entered: 04/12/2022)
04/14/2022	74 (2 pgs)	Order Granting Motion in Individual Ch 11 Case for Order Employing Professional (LBR 2014-1) (BNC-PDF) Ashely Cecil and Cohn Handler Sturm (Related Doc # 51) Signed on 4/14/2022. (Gooch, Yvonne) (Entered: 04/14/2022)
04/15/2022	75 (9 pgs)	Stipulation By Innerline Engineering, Inc. and *the United States (Amended Stipulation) for Adequate Protection and Use of Cash Collateral [Exhibit B to Docket No. 64], with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 04/15/2022)
04/16/2022	76 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)74 Order on Motion For Order Employing Professional (Ch 11)-(LBR 2014-1) (BNC-PDF)) No. of Notices: 1. Notice Date 04/16/2022. (Admin.) (Entered: 04/16/2022)
04/19/2022	77 (2 pgs)	Order approving use of cash collateral. See order for details (BNC-PDF) (Related Doc # 64) Signed on 4/19/2022 (Gooch, Yvonne) (Entered: 04/19/2022)
04/19/2022	79 (2 pgs)	Document / Hearing Held - Granted (RE: related document(s)64 Motion to Use Cash Collateral filed by Debtor Innerline Engineering, Inc.) (Hawkinson, Susan) (Entered: 04/20/2022)
04/20/2022	78 (1 pg)	Request for courtesy Notice of Electronic Filing (NEF) Filed by Tran, Kelly Ann. (Tran, Kelly Ann) (Entered: 04/20/2022)
04/21/2022	80 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)77 Order on Motion to Use Cash Collateral (BNC-PDF)) No. of Notices: 1. Notice Date

		04/21/2022. (Admin.) (Entered: 04/21/2022)
04/22/2022	81 (39 pgs)	Monthly Operating Report. Operating Report Number: 2. For the Month Ending March 2022 Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 04/22/2022)
05/02/2022	82 (2 pgs)	Statement *//Subchapter V Trustee's Estimated Fees and Expenses for Purposes of Plan Confirmation* Filed by Trustee Caroline Renee Djang (TR). (Djang (TR), Caroline) (Entered: 05/02/2022)
05/02/2022	83 (79 pgs)	Application to Employ Michael R. Weinstein and Ferris & Britton, A Professional Corporation as Special Counsel *; Declarations of J.C. Yeh and Michael R. Weinstein in Support Thereof* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 05/02/2022)
05/03/2022	84	Hearing Set (RE: related document(s)83 Application to Employ filed by Debtor Innerline Engineering, Inc.) The Hearing date is set for 6/2/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (YG) (Entered: 05/03/2022)
05/04/2022	85 (13 pgs)	Amending Schedules (E/F) *with Proof of Service* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 05/04/2022)
05/05/2022		Receipt of Amending Schedules D and/or E/F (Official Form 106D, 106E/F, 206D, or 206E/F) (Fee)(6:22-bk-10545-WJ) [misc,amdsch] (32.00) Filing Fee. Receipt number A54216849. Fee amount 32.00. (re: Doc# 85) (U.S. Treasury) (Entered: 05/05/2022)
05/09/2022	86 (16 pgs)	Amending Schedules (D) *with Proof of Service* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 05/09/2022)
05/09/2022		Receipt of Amending Schedules D and/or E/F (Official Form 106D, 106E/F, 206D, or 206E/F) (Fee)(6:22-bk-10545-WJ) [misc,amdsch] (32.00) Filing Fee. Receipt number A54225620. Fee amount 32.00. (re: Doc# 86) (U.S. Treasury) (Entered: 05/09/2022)
05/13/2022	87 (6 pgs)	Schedule G Non-Individual: Executory Contracts and Unexpired Leases (Official Form 106G or 206G) , Amendment to List of Creditors. *With Proof of Service* Fee Amount $32 Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 05/13/2022)
05/13/2022		Receipt of Amended List of Creditors (Fee)(6:22-bk-10545-WJ) [misc,amdcm] (32.00) Filing Fee. Receipt number A54241464. Fee amount 32.00. (re: Doc# 87) (U.S. Treasury) (Entered: 05/13/2022)
05/16/2022	88 (2 pgs)	Non-Opposition Filed by Creditor Operating Engineers' Health And Welfare Trust Fund, et al.. (Minser, Matthew) (Entered: 05/16/2022)
05/16/2022	89 (81 pgs)	Chapter 11 Plan of Reorganization , *with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)1 Chapter 11 Subchapter V Voluntary Petition Non-Individual. Fee Amount $1738 Filed by Innerline Engineering, Inc. Chapter 11 Plan Subchapter V Due by 05/16/2022.). (Moradi-Brovia, Roksana) (Entered: 05/16/2022)
05/17/2022	90 (2 pgs)	Document Hearing Held - Granted (RE: related document(s)72 Motion to Assume Lease or Executory Contract filed by Debtor Innerline Engineering,

		Inc.) (YG) (Entered: 05/18/2022)
05/19/2022	91 (9 pgs)	Objection (related document(s): 83 Application to Employ Michael R. Weinstein and Ferris & Britton, A Professional Corporation as Special Counsel *; Declarations of J.C. Yeh and Michael R. Weinstein in Support Thereof* filed by Debtor Innerline Engineering, Inc.) Filed by U.S. Trustee United States Trustee (RS) (Matin, Ali) (Entered: 05/19/2022)
05/19/2022	92 (2 pgs)	Order Granting Motion To Assume Lease or Executory Contract (BNC-PDF) (Related Doc # 72) Signed on 5/19/2022 (YG) (Entered: 05/19/2022)
05/20/2022	93 (35 pgs)	Monthly Operating Report. Operating Report Number: 3. For the Month Ending April 2022 Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 05/20/2022)
05/20/2022	94 (1 pg)	Request for special notice Filed by Creditor Operating Engineers' Health And Welfare Trust Fund, et al.. (Minser, Matthew) (Entered: 05/20/2022)
05/21/2022	95 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)92 Order on Motion to Assume Lease or Executory Contract (BNC-PDF)) No. of Notices: 1. Notice Date 05/21/2022. (Admin.) (Entered: 05/21/2022)
05/25/2022	96 (38 pgs)	Reply to (related document(s): 91 Objection filed by U.S. Trustee United States Trustee (RS)) Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 05/25/2022)
06/02/2022	97 (2 pgs)	Document Hearing Held - Motion granted in part (RE: related document(s)83 Application to Employ filed by Debtor Innerline Engineering, Inc.) (YG) (Entered: 06/03/2022)
06/09/2022	98 (3 pgs)	Order Granting Application to Employ Michael R. Weinstein Ferris & Britton (BNC-PDF) (Related Doc # 83) Signed on 6/9/2022. (YG) (Entered: 06/09/2022)
06/11/2022	99 (5 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)98 Order on Application to Employ (BNC-PDF)) No. of Notices: 2. Notice Date 06/11/2022. (Admin.) (Entered: 06/11/2022)
06/23/2022	100 (24 pgs)	Motion to Approve Compromise Under Rule 9019 *Notice of Motion and Motion to Approve Settlement with Cues, Inc.; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 06/23/2022)
06/27/2022	101 (35 pgs)	Monthly Operating Report. Operating Report Number: 4. For the Month Ending May 2022 Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 06/27/2022)
07/06/2022	102 (8 pgs)	Stipulation By JPMorgan Chase Bank, N.A. and *Innerline Engineering, Inc. Re: Adequate Protection and Treatment of Creditor's Claim Under Debtor's SubChapter V Chapter 11 Plan of Reorganization, with proof of service* Filed by Creditor JPMorgan Chase Bank, N.A. (Garan, Todd) (Entered: 07/06/2022)

07/06/2022	103 (15 pgs; 2 docs)	Motion *for Approval of Stipulation Re: Adequate Protection and Treatment of Creditor's Claim Under Debtor's SubChapter V Chapter 11 Plan of Reorganization, with proof of service* Filed by Creditor JPMorgan Chase Bank, N.A. (Attachments: # 1 Exhibit A) (Garan, Todd) WARNING: See docket entry #105 for corrective action. Modified on 7/6/2022 (YG). (Entered: 07/06/2022)
07/06/2022	104 (4 pgs)	Notice of Hearing *on Motion for Approval of Stipulation Re: Adequate Protection and Treatment of Creditor's Claim Under Debtor's SubChapter V Chapter 11 Plan of Reorganization, with proof of service* Filed by Creditor JPMorgan Chase Bank, N.A. (RE: related document(s)102 Stipulation By JPMorgan Chase Bank, N.A. and *Innerline Engineering, Inc. Re: Adequate Protection and Treatment of Creditor's Claim Under Debtor's SubChapter V Chapter 11 Plan of Reorganization, with proof of service* Filed by Creditor JPMorgan Chase Bank, N.A., 103 Motion *for Approval of Stipulation Re: Adequate Protection and Treatment of Creditor's Claim Under Debtor's SubChapter V Chapter 11 Plan of Reorganization, with proof of service* Filed by Creditor JPMorgan Chase Bank, N.A. (Attachments: # 1 Exhibit A)). (Garan, Todd) WARNING: See docket entry #106 for corrective action Modified on 7/6/2022 (YG). (Entered: 07/06/2022)
07/06/2022	105	Notice to Filer of Error and/or Deficient Document **Incorrect hearing date/time/location was selected. THE FILER IS INSTRUCTED TO FILE AN AMENDED NOTICE OF MOTION/HEARING WITH THE CORRECT HEARING INFORMATION.** (RE: related document(s)103 Generic Motion filed by Creditor JPMorgan Chase Bank, N.A.) (YG) (Entered: 07/06/2022)
07/06/2022	106	Notice to Filer of Error and/or Deficient Document **Incorrect hearing date/time/location was selected. THE FILER IS INSTRUCTED TO FILE AN AMENDED NOTICE OF MOTION/HEARING WITH THE CORRECT HEARING INFORMATION.** (RE: related document(s)104 Notice of Hearing (BK Case) filed by Creditor JPMorgan Chase Bank, N.A.) (YG) (Entered: 07/06/2022)
07/07/2022	107 (4 pgs)	Notice of Hearing *Amended, 4001(d) MOTION FOR APPROVAL OF STIPULATION RE: ADEQUATE PROTECTION AND TREATMENT OF CREDITORS CLAIM UNDER DEBTORS SUBCHAPTER V CHAPTER 11 PLAN OF REORGANIZATION* Filed by Creditor JPMorgan Chase Bank, N.A. (RE: related document(s)103 Motion *for Approval of Stipulation Re: Adequate Protection and Treatment of Creditor's Claim Under Debtor's SubChapter V Chapter 11 Plan of Reorganization, with proof of service* Filed by Creditor JPMorgan Chase Bank, N.A. (Attachments: # 1 Exhibit A) (Garan, Todd) WARNING: See docket entry #105 for corrective action. Modified on 7/6/2022 (YG).). (Garan, Todd) (Entered: 07/07/2022)
07/07/2022	108	Hearing Set (RE: related document(s)103 Generic Motion filed by Creditor JPMorgan Chase Bank, N.A.) The Hearing date is set for 8/9/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (CJ) (Entered: 07/07/2022)
07/12/2022	109 (32 pgs)	Declaration That No Party Requested a Hearing on Motion (LBR 9013-1(o)(3)) *with proof of service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)100 Motion to Approve Compromise Under Rule 9019 *Notice of Motion and Motion to Approve Settlement with Cues, Inc.;*

		Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof). (Moradi-Brovia, Roksana) (Entered: 07/12/2022)
07/12/2022	110 (1 pg)	Order Granting Motion to Approve Settlement with Cues, Inc (BNC-PDF) (Related Doc # 100) Signed on 7/12/2022. (CJ) (Entered: 07/12/2022)
07/14/2022	111 (3 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)110 Order on Motion to Approve Compromise Under Rule 9019 (BNC-PDF)) No. of Notices: 2. Notice Date 07/14/2022. (Admin.) (Entered: 07/14/2022)
07/19/2022	112 (3 pgs)	Notice of Change of Address Filed by Trustee Caroline Renee Djang (TR). (Djang (TR), Caroline) (Entered: 07/19/2022)
07/20/2022	113 (38 pgs)	Monthly Operating Report. Operating Report Number: 5. For the Month Ending June 2022 Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 07/20/2022)
07/25/2022	114 (12 pgs)	Motion *and Notice of Motion to Approve Stipulation re: Treatment of Ford Motor Credit Company LLC's Secured Claim Under Debtor's Subchapter V Chapter 11 Plan of Reorganization; Declaration of Randall P. Mroczynski in Support Thereof* Filed by Creditor Ford Motor Credit Company LLC (Mroczynski, Randall) (Entered: 07/25/2022)
08/04/2022	115 (5 pgs)	Order setting chapter 11 status conference. See order for details Re: (BNC-PDF) (Related Doc # 1) Signed on 8/4/2022 (YG) (Entered: 08/04/2022)
08/04/2022	116	Hearing Set Status Conference hearing to be held on 9/6/2022 at 02:30 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (YG) (Entered: 08/04/2022)
08/04/2022	117 (2 pgs)	Scheduling order. See order for details (BNC-PDF) (Related Doc # 103) Signed on 8/4/2022 (YG) (Entered: 08/04/2022)
08/04/2022		Hearing Rescheduled/Continued (Motion) (BK Case - BNC Option) (RE: related document(s) 103 GENERIC MOTION filed by JPMorgan Chase Bank, N.A.) Hearing to be held on 09/20/2022 at 02:30 PM 3420 Twelfth Street Courtroom 304 Riverside, CA 92501 for 103 , (YG) (Entered: 08/04/2022)
08/05/2022	118 (114 pgs)	Motion RE: Objection to Claim Number 16,20 by Claimant James Aanderud. *Notice of Objection and Debtor's Objection to Proof of Claim Nos. 16 and 20 Filed by James Aanderud; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 08/05/2022)
08/05/2022	119 (38 pgs)	Motion RE: Objection to Claim Number 22 by Claimant AirX Utility Surveyors, Inc.. *Notice of Objection and Debtor's Objection to Proof of Claim No. 22 Filed By AirX Utility Surveryors, Inc.; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 08/05/2022)
08/05/2022	120	Hearing Set (RE: related document(s)118 Motion RE: Objection to Claim filed by Debtor Innerline Engineering, Inc.) The Hearing date is set for

		9/6/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (YG) (Entered: 08/05/2022)
08/05/2022	121	Hearing Set (RE: related document(s)119 Motion RE: Objection to Claim filed by Debtor Innerline Engineering, Inc.) The Hearing date is set for 9/6/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (YG) (Entered: 08/05/2022)
08/05/2022	122 (6 pgs)	Proof of service Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)118 Motion RE: Objection to Claim Number 16,20 by Claimant James Aanderud. *Notice of Objection and Debtor's Objection to Proof of Claim Nos. 16 and 20 Filed by James Aanderud; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support). (Moradi-Brovia, Roksana) (Entered: 08/05/2022)*
08/05/2022	123 (6 pgs)	Proof of service Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)119 Motion RE: Objection to Claim Number 22 by Claimant AirX Utility Surveyors, Inc.. *Notice of Objection and Debtor's Objection to Proof of Claim No. 22 Filed By AirX Utility Surveryors, Inc.; Memorandum of Points and Authorities; Declaration of J.). (Moradi-Brovia, Roksana) (Entered: 08/05/2022)*
08/05/2022	124 (2 pgs)	Notice *to Professionals to File Fee Applications* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 08/05/2022)
08/06/2022	125 (7 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)115 Order (Generic) (BNC-PDF)) No. of Notices: 2. Notice Date 08/06/2022. (Admin.) (Entered: 08/06/2022)
08/06/2022	126 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)117 Order on Generic Motion (BNC-PDF)) No. of Notices: 2. Notice Date 08/06/2022. (Admin.) (Entered: 08/06/2022)
08/08/2022	127 (6 pgs)	Proof of service Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)124 Notice). (Moradi-Brovia, Roksana) (Entered: 08/08/2022)
08/08/2022	128 (6 pgs)	Notice *of Order Setting Chapter 11 Status Conference* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)115 Order setting chapter 11 status conference. See order for details Re: (BNC-PDF) (Related Doc # 1) Signed on 8/4/2022 (YG)). (Moradi-Brovia, Roksana) (Entered: 08/08/2022)
08/08/2022	129 (8 pgs)	Proof of service Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)128 Notice). (Moradi-Brovia, Roksana) (Entered: 08/08/2022)
08/08/2022	130 (4 pgs)	Notice of Hearing *Continued Hearing* Filed by Creditor JPMorgan Chase Bank, N.A. (RE: related document(s)102 Stipulation By JPMorgan Chase Bank, N.A. and *Innerline Engineering, Inc. Re: Adequate Protection and Treatment of Creditor's Claim Under Debtor's SubChapter V Chapter 11 Plan of Reorganization, with proof of service* Filed by Creditor JPMorgan Chase Bank, N.A.). (Garan, Todd) (Entered: 08/08/2022)
08/08/2022	131 (15 pgs; 2 docs)	Memorandum of points and authorities *in Support of Movant's Motion for Approval of Stipulation Re: Adequate Protection and Treatment of Creditor's Claim Under Debtor's Subchapter V Chapter 11 Plan of Reorganization* Filed by Creditor JPMorgan Chase Bank, N.A..

		(Attachments: # 1 Exhibit A - Stipulation) (Garan, Todd) (Entered: 08/08/2022)
08/09/2022	132 (1 pg)	Document Hearing Held - Vacated (RE: related document(s)103 Generic Motion filed by Creditor JPMorgan Chase Bank, N.A.) (YG) (Entered: 08/10/2022)
08/16/2022	133 (11 pgs)	Amending Schedules (E/F) Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 08/16/2022)
08/16/2022		Receipt of Amending Schedules D and/or E/F (Official Form 106D, 106E/F, 206D, or 206E/F) (Fee)(6:22-bk-10545-WJ) [misc,amdsch] (32.00) Filing Fee. Receipt number A54557797. Fee amount 32.00. (re: Doc# 133) (U.S. Treasury) (Entered: 08/16/2022)
08/16/2022	134 (6 pgs)	Proof of service Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) Warning: see docket entry #135 for corrective action. Modified on 8/16/2022 (YG). (Entered: 08/16/2022)
08/16/2022	135	Notice to Filer of Error and/or Deficient Document . WARNING: Document filed as interactive pdf. Please re-file as flattened pdf (RE: related document(s)134 Proof of service filed by Debtor Innerline Engineering, Inc.) (YG) (Entered: 08/16/2022)
08/17/2022	136 (6 pgs)	Proof of service *Reuploaded with Correct PDF* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 08/17/2022)
08/18/2022	137 (15 pgs)	Declaration re: *Non-Receipt of Opposition to Motion to Approve Stipulation re: Treatment of Ford Motor Credit Company LLC's Secured Claim Under Debtor's Subchapter V Chapter 11 Plan of Reorganization* Filed by Creditor Ford Motor Credit Company LLC (RE: related document(s)114 Motion *and Notice of Motion to Approve Stipulation re: Treatment of Ford Motor Credit Company LLC's Secured Claim Under Debtor's Subchapter V Chapter 11 Plan of Reorganization; Declaration of Randall P. Mroczynski in Support Thereof*). (Mroczynski, Randall) (Entered: 08/18/2022)
08/18/2022	138 (6 pgs)	Stipulation By Ford Motor Credit Company LLC and *Debtor re: Treatment of Ford Motor Credit Company LLC's Secured Claim Under Debtor's Subchapter V Chapter 11 Plan of Reorganization* Filed by Creditor Ford Motor Credit Company LLC (Mroczynski, Randall) (Entered: 08/18/2022)
08/19/2022	139 (2 pgs)	Scheduling order. See order for details Re: (BNC-PDF) (Related Doc # 138) Signed on 8/19/2022 (YG) (Entered: 08/19/2022)
08/19/2022	140	Hearing Set (RE: related document(s)114 Generic Motion filed by Creditor Ford Motor Credit Company LLC) The Hearing date is set for 9/20/2022 at 02:30 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (YG) (Entered: 08/19/2022)
08/21/2022	141 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)139 Order (Generic) (BNC-PDF)) No. of Notices: 2. Notice Date 08/21/2022. (Admin.) (Entered: 08/21/2022)

08/22/2022	142 (36 pgs)	Monthly Operating Report. Operating Report Number: 6. For the Month Ending July 2022 Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 08/22/2022)
08/23/2022	143 (7 pgs)	Notice of Hearing Filed by Creditor Ford Motor Credit Company LLC (RE: related document(s)114 Motion *and Notice of Motion to Approve Stipulation re: Treatment of Ford Motor Credit Company LLC's Secured Claim Under Debtor's Subchapter V Chapter 11 Plan of Reorganization; Declaration of Randall P. Mroczynski in Support Thereof* Filed by Creditor Ford Motor Credit Company LLC). (Mroczynski, Randall) (Entered: 08/23/2022)
08/23/2022	144 (1 pg)	Withdrawal of Claim(s): 21 Filed by Creditor AirX Utility Surveyors, Inc.. (Brody, David) (Entered: 08/23/2022)
08/23/2022	145 (41 pgs)	Status report *; Declaration of J.C. Yeh in Support Thereof, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)1 Voluntary Petition (Chapter 11)). (Moradi-Brovia, Roksana) (Entered: 08/23/2022)
08/24/2022	146 (8 pgs)	Proof of service Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)145 Status report). (Moradi-Brovia, Roksana) (Entered: 08/24/2022)
08/25/2022	147 (4 pgs)	Voluntary Dismissal of Motion *, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)119 Motion RE: Objection to Claim Number 22 by Claimant AirX Utility Surveyors, Inc.. *Notice of Objection and Debtor's Objection to Proof of Claim No. 22 Filed By AirX Utility Surveryors, Inc.; Memorandum of Points and Authorities; Declaration of J.). (Moradi-Brovia, Roksana) (Entered: 08/25/2022)*
08/30/2022	148 (24 pgs)	Motion to Use Cash Collateral *Notice of Motion and Motion for Authority to Use Cash Collateral on Final Basis; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 08/30/2022)
08/30/2022	149 (2 pgs)	Statement *Regarding Cash Collateral or Debtor in Possession Financing [FRBP 4001; LBR 4001-2]* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 08/30/2022)
08/30/2022	150	Hearing Set (RE: related document(s)148 Motion to Use Cash Collateral filed by Debtor Innerline Engineering, Inc.) The Hearing date is set for 9/20/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (YG) (Entered: 08/30/2022)
08/31/2022	151 (8 pgs)	Proof of service Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)148 Motion to Use Cash Collateral *Notice of Motion and Motion for Authority to Use Cash Collateral on Final Basis; Memorandum of Points and Authorities; Declaration of J.C. Yeh in Support Thereof*, 149 Statement). (Moradi-Brovia, Roksana) (Entered: 08/31/2022)
09/06/2022	154 (2 pgs)	Document Hearing Held - Granted (RE: related document(s)118 Motion RE: Objection to Claim filed by Debtor Innerline Engineering, Inc.) (YG) (Entered: 09/07/2022)

09/06/2022	155 (1 pg)	Document Hearing Held - Vacated (RE: related document(s)119 Motion RE: Objection to Claim filed by Debtor Innerline Engineering, Inc.) (YG) (Entered: 09/07/2022)
09/06/2022	156 (2 pgs)	Document Hearing Held - Status Conference Continued to 10/4/22 at 1:30 p.m. (RE: related document(s)1 Voluntary Petition (Chapter 11) filed by Debtor Innerline Engineering, Inc.) (YG) (Entered: 09/07/2022)
09/07/2022	152	Hearing Rescheduled/Continued Status Conference hearing to be held on 10/4/2022 at 01:30 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (YG) (Entered: 09/07/2022)
09/07/2022	153 (2 pgs)	Scheduling order. See order for details (BNC-PDF) (Related Doc # 103) Signed on 9/7/2022 (YG) (Entered: 09/07/2022)
09/07/2022		Hearing Rescheduled/Continued (Motion) (BK Case - BNC Option) (RE: related document(s) 103 GENERIC MOTION filed by JPMorgan Chase Bank, N.A.) Hearing to be held on 11/15/2022 at 01:30 PM 3420 Twelfth Street Courtroom 304 Riverside, CA 92501 for 103 , (YG) (Entered: 09/07/2022)
09/07/2022		Hearing Rescheduled/Continued (Motion) (BK Case - BNC Option) (RE: related document(s) 114 GENERIC MOTION filed by Ford Motor Credit Company LLC) Hearing to be held on 11/15/2022 at 01:30 PM 3420 Twelfth Street Courtroom 304 Riverside, CA 92501 for 114 , (YG) (Entered: 09/07/2022)
09/07/2022	157 (2 pgs)	Order Granting Motion RE: Objection to Claim Number 16 in the amount of $707,318.00. See order for details (BNC-PDF) (Related Doc # 118) Signed on 9/7/2022 (YG) (Entered: 09/07/2022)
09/09/2022	158 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)153 Order on Generic Motion (BNC-PDF)) No. of Notices: 2. Notice Date 09/09/2022. (Admin.) (Entered: 09/09/2022)
09/09/2022	159 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)157 Order on Motion RE: Objection to Claim (BNC-PDF)) No. of Notices: 2. Notice Date 09/09/2022. (Admin.) (Entered: 09/09/2022)
09/12/2022	160 (22 pgs)	Application for Compensation *//Interim* for Caroline Renee Djang (TR), Trustee, Period: 2/16/2022 to 9/12/2022, Fee: $10268.50, Expenses: $135.66. Filed by Attorney Caroline Renee Djang (TR) (Djang (TR), Caroline) (Entered: 09/12/2022)
09/13/2022	161	Hearing Set (RE: related document(s)160 Application for Compensation filed by Trustee Caroline Renee Djang (TR)) The Hearing date is set for 10/4/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (YG) (Entered: 09/13/2022)
09/13/2022	162 (120 pgs)	Application for Compensation *First Interim Application by RHM LAW, LLP, General Bankruptcy Counsel for the Debtor, for Allowance of Fees and Reimbursement of Costs for the Period February 14, 2022 Through September 1, 2022; Declarations of J.C.Yeh and Roksana D. Moradi-Brovia in Support Thereof, Hearing Date October 4, 2022 @ 1:00pm in Ctrm 304, with proof of service* for Roksana D. Moradi-Brovia, Debtor's Attorney, Period: 2/14/2022 to 9/1/2022, Fee: $86,395.00, Expenses:

		$3,823.12. Filed by Attorney Roksana D. Moradi-Brovia (Moradi-Brovia, Roksana) (Entered: 09/13/2022)
09/13/2022	163 (3 pgs)	Notice of motion/application *Hearing Date October 4, 2022 @ 1:00pm in Ctrm 304* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)162 Application for Compensation *First Interim Application by RHM LAW, LLP, General Bankruptcy Counsel for the Debtor, for Allowance of Fees and Reimbursement of Costs for the Period February 14, 2022 Through September 1, 2022; Declarations of J.C.Yeh and Roksana D. Moradi-Brovia in Support Thereof, Hearing Date October 4, 2022 @ 1:00pm in Ctrm 304, with proof of service* for Roksana D. Moradi-Brovia, Debtor's Attorney, Period: 2/14/2022 to 9/1/2022, Fee: $86,395.00, Expenses: $3,823.12. Filed by Attorney Roksana D. Moradi-Brovia). (Moradi-Brovia, Roksana) (Entered: 09/13/2022)
09/13/2022	164 (8 pgs)	Proof of service Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)163 Notice of motion/application). (Moradi-Brovia, Roksana) (Entered: 09/13/2022)
09/13/2022	165	Hearing Set (RE: related document(s)162 Application for Compensation filed by Debtor Innerline Engineering, Inc.) The Hearing date is set for 10/4/2022 at 01:00 PM at Crtrm 304, 3420 Twelfth St., Riverside, CA 92501. The case judge is Wayne E. Johnson (YG) (Entered: 09/13/2022)
09/20/2022	166 (98 pgs)	Amended Chapter 11 Plan *of Reorganization* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)89 Chapter 11 Plan of Reorganization *, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)1 Chapter 11 Subchapter V Voluntary Petition Non-Individual. Fee Amount $1738 Filed by Innerline Engineering, Inc. Chapter 11 Plan Subchapter V Due by 05/16/2022.).). (Moradi-Brovia, Roksana) (Entered: 09/20/2022)
09/20/2022	167 (2 pgs)	Notice of Hearing */Status Conference re: Debtor's First Amended Chapter 11 Plan of Reorganization* Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 09/20/2022)
09/20/2022	172 (3 pgs)	Document Hearing Held - Granted (RE: related document(s)148 Motion to Use Cash Collateral filed by Debtor Innerline Engineering, Inc.) (YG) (Entered: 09/21/2022)
09/21/2022	168 (8 pgs)	Proof of service Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)166 Amended Chapter 11 Plan, 167 Notice of Hearing (BK Case)). (Moradi-Brovia, Roksana) (Entered: 09/21/2022)
09/21/2022	169 (4 pgs)	Status report Filed by Creditor Ford Motor Credit Company LLC (RE: related document(s)114 Motion *and Notice of Motion to Approve Stipulation re: Treatment of Ford Motor Credit Company LLC's Secured Claim Under Debtor's Subchapter V Chapter 11 Plan of Reorganization; Declaration of Randall P. Mroczynski in Support Thereof*). (Mroczynski, Randall) (Entered: 09/21/2022)
09/21/2022	170 (4 pgs)	Voluntary Dismissal of Motion Filed by Creditor Ford Motor Credit Company LLC (RE: related document(s)114 Motion *and Notice of Motion to Approve Stipulation re: Treatment of Ford Motor Credit Company LLC's Secured Claim Under Debtor's Subchapter V Chapter 11 Plan of Reorganization; Declaration of Randall P. Mroczynski in Support Thereof*). (Mroczynski, Randall) (Entered: 09/21/2022)

09/21/2022	171 (38 pgs)	Monthly Operating Report. Operating Report Number: 7. For the Month Ending 08/31/2022 Filed by Debtor Innerline Engineering, Inc.. (Moradi-Brovia, Roksana) (Entered: 09/21/2022)
09/22/2022	173 (2 pgs)	Order Granting Motion To Use Cash Collateral On Final Basis. See Order For Details (BNC-PDF) (Related Doc # 148) Signed on 9/22/2022 (YG) (Entered: 09/22/2022)
09/24/2022	174 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)173 Order on Motion to Use Cash Collateral (BNC-PDF)) No. of Notices: 2. Notice Date 09/24/2022. (Admin.) (Entered: 09/24/2022)
09/27/2022	175 (77 pgs)	Objection (related document(s): 166 Amended Chapter 11 Plan filed by Debtor Innerline Engineering, Inc.) Filed by U.S. Trustee United States Trustee (RS) (Ridley, Cameron) (Entered: 09/27/2022)
09/28/2022	176 (79 pgs)	Objection (related document(s): 166 Amended Chapter 11 Plan filed by Debtor Innerline Engineering, Inc.) *Amended Objection to Include Declaration of Rhea Aquino* Filed by U.S. Trustee United States Trustee (RS) (Ridley, Cameron) (Entered: 09/28/2022)
09/30/2022	177 (2 pgs)	Scheduling order. See order for details Re: (BNC-PDF) Signed on 9/30/2022 (RE: related document(s)160 Application for Compensation filed by Trustee Caroline Renee Djang (TR), 162 Application for Compensation filed by Debtor Innerline Engineering, Inc.). (YG) (Entered: 09/30/2022)
09/30/2022		Hearing Rescheduled/Continued (Motion) (BK Case - BNC Option) (RE: related document(s) 160 APPLICATION FOR COMPENSATION filed by Caroline Renee Djang (TR)) Hearing to be held on 11/01/2022 at 02:00 PM 3420 Twelfth Street Courtroom 304 Riverside, CA 92501 for 160 , (YG) (Entered: 09/30/2022)
09/30/2022		Hearing Rescheduled/Continued (Motion) (BK Case - BNC Option) (RE: related document(s) 162 APPLICATION FOR COMPENSATION filed by Innerline Engineering, Inc.) Hearing to be held on 11/15/2022 at 01:30 PM 3420 Twelfth Street Courtroom 304 Riverside, CA 92501 for 162, (YG) (Entered: 09/30/2022)
10/02/2022	178 (4 pgs)	BNC Certificate of Notice - PDF Document. (RE: related document(s)177 Order (Generic) (BNC-PDF)) No. of Notices: 2. Notice Date 10/02/2022. (Admin.) (Entered: 10/02/2022)
10/04/2022	179 (1 pg)	Document Hearing Held - Vacated (RE: related document(s)160 Application for Compensation filed by Trustee Caroline Renee Djang (TR)) (YG) (Entered: 10/05/2022)
10/04/2022	180 (1 pg)	Document Hearing Held - Vacated (RE: related document(s)162 Application for Compensation filed by Debtor Innerline Engineering, Inc.) (YG) (Entered: 10/05/2022)
10/04/2022	181 (1 pg)	Document Hearing Held - Vacated (RE: related document(s)1 Voluntary Petition (Chapter 11) filed by Debtor Innerline Engineering, Inc.) (YG) (Entered: 10/05/2022)

10/10/2022	182 (65 pgs)	Amended Chapter 11 Plan *(REDLINED)* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)166 Amended Chapter 11 Plan *of Reorganization* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)89 Chapter 11 Plan of Reorganization *, with Proof of Service* Filed by Debtor Innerline Engineering, Inc. (RE: related document(s)1 Chapter 11 Subchapter V Voluntary Petition Non-Individual. Fee Amount $1738 Filed by Innerline Engineering, Inc. Chapter 11 Plan Subchapter V Due by 05/16/2022.).).). (Moradi-Brovia, Roksana) (Entered: 10/10/2022)
10/12/2022	183 (4 pgs)	Withdrawal re: *Movant's Motion to Approve Stipulation Re: Adequate Protection and Treatment of Creditor's Claim Under Debtor's Subchapter V Chapter 11 Plan of Reorganization* Filed by Creditor JPMorgan Chase Bank, N.A. (RE: related document(s)103 Motion *for Approval of Stipulation Re: Adequate Protection and Treatment of Creditor's Claim Under Debtor's SubChapter V Chapter 11 Plan of Reorganization, with proof of service*, 104 Notice of Hearing (BK Case), 107 Notice of Hearing (BK Case)). (Garan, Todd) (Entered: 10/12/2022)
10/18/2022	184 (33 pgs)	Reply to (related document(s): 176 Objection filed by U.S. Trustee United States Trustee (RS)) *Reply to Amended Objection of United States Trustee to the Debtor's First Amended Chapter 11 Plan of Reorganization; Declaration of J.C. Yeh in Support Thereof* Filed by Debtor Innerline Engineering, Inc. (Moradi-Brovia, Roksana) (Entered: 10/18/2022)

American Bankruptcy Institute
Winter Leadership Conference
Scottsdale, Arizona
December 13, 2024

A Deep Dive Into SUBCHAPTER V Confirmation Issues

Materials for Topic: Expanding the Role of the Sub V Trustee

Leonard M. Shulman - Bar No. 126349
Franklin J. Contreras, Jr. - Bar No. 235932
SHULMAN BASTIAN FRIEDMAN & BUI LLP
100 Spectrum Center Drive, Suite 600
Irvine, California 92618
Telephone: (949) 340-3400
Facsimile: (949) 340-3000
Email: LShulman@shulmanbastian.com
FContreras@shulmanbastian.com

Attorneys for Secured Creditor
Lexington National Insurance Corporation

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE

In re

POWER BAIL BONDS, INC.

Debtor.

Case No. 6:20-bk-14155-MW

Chapter 11

LEXINGTON NATIONAL INSURANCE CORPORATION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER REMOVING DEBTOR IN POSSESSION PURSUANT TO 11 U.S.C. §1185 OR, IN THE ALTERNATIVE, AUTHORIZING AUDIT

[REQUEST FOR JUDICIAL NOTICE AND DECLARATIONS OF RANDY PARTON, LISA SLATER AND LEONARD M. SHULMAN FILED CONCURRENTLY HEREWITH]

Hearing Date
Date: September 22, 2020
Time: 2:00 p.m.
Place: Video Courtroom 225
3420 Twelfth Street
Riverside, CA 92501

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SHULMAN BASTIAN FRIEDMAN & BUI LLP
100 Spectrum Center Drive
Suite 600
Irvine, CA 92618

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STATUTES

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100 Spectrum Center Drive
Suite 600
Irvine, CA 92618

Secured Creditor, Lexington National Insurance Corporation ("LNIC"), submits the following memorandum of points and authorities in support of its motion for an order removing Debtor Power Bail Bonds, Inc. ("Debtor") as debtor in possession pursuant to 11 U.S.C. §1185 or, in the alternative, authorizing audit (the "Motion") and represents the following:

I. SUMMARY OF ARGUMENT

The Debtor in this admitted liquidating Chapter 11 should be removed as a debtor in possession because LNIC's investigation, together with Debtor's admissions, demonstrates the existence of fraud, dishonesty, incompetence, and gross mismanagement both before and after the Debtor filed its Sub-Chapter V Petition. Specifically, the Debtor fraudulently underpaid premiums owed to LNIC by hundreds of thousands of dollars. The Debtor committed this fraud by certifying in writing that it was charging the proper rate on bonds when, in fact, it was improperly charging a lower rate, which resulted in an underpayment to LNIC. Furthermore, the Debtor's books and records reflect that it has written approximately 1,100 bonds for which the Debtor has not collected one single payment. In addition, the Debtor admits that its accounts receivable includes 13,567 of its total accounts for which no payments have been received in the last 90 days. The dollar value for these accounts is $43,041,152.15. Finally, during the 341a hearing, the Debtor testified that it received a $300,000.00 cash loan from its President Marcus Romero to the Debtor shortly after year end distributions were made to shareholders including Mr. Romero. Subsequent to the 341a hearing, it was discovered that the Debtor received the "loan proceeds" prior to the execution of any loan documentation. Moreover, the Debtor failed to complete the proper forms to report the receipt of the $300,000.00 to the Internal Revenue Service. This conduct clearly demonstrates fraud, dishonesty, incompetence and/or gross mismanagement that warrants removal of the Debtor as debtor in possession pursuant to Section 1185. And if all of this was not disconcerting enough, the Debtor admits in its SOFA that (a) on the eve of bankruptcy it paid off numerous creditors where Marcus Romero has personally guaranteed the debt, (b) despite being apparently in need of a loan, the Debtor made year-end distributions in the form of dividends to its shareholders, including Mr. Romero, and (c) within months before the filing of this case, the Debtor paid back money to Mr. Romero on account of his $300,000.00 cash loan. It would be illogical to think that the Debtor can

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100 Spectrum Center Drive
Suite 600
Irvine, CA 92618

fulfill its fiduciary duty to creditors and seek return of these preferential and fraudulent transfers. Alternatively, in the event the Court is not inclined to remove the debtor in possession, LNIC requests that it be authorized to conduct a brief audit to verify if it is adequately protected by the Debtor's accounts receivable, which make up LNIC's cash collateral. It is significant that this request comes after LNIC made three (3) separate requests to the Debtor to allow LNIC to conduct these audits without the need for law and motion.[1] The Debtor admits that although the face value of its accounts receivable is approximately $53 million, its estimated value is only approximately $13 million. However, LNIC's review of the Debtor's books and records indicates that only $8 million of the Debtor's accounts receivable have made a payment in the last 120 days.[2] LNIC's secured claim exceeds $8 million and therefore, LNIC may not be adequately protected if the aged accounts receivable are not collectible or have little value. As such, if the Debtor is not removed as debtor in possession, LNIC requests authority allowing it to contact individuals who are delinquent on their accounts with the Debtor to obtain information required to evaluate the collectability for those accounts. This analysis is necessary for LNIC to determine whether it is adequately protected or if it should instead be aggressively pursuing indemnitors of said accounts. Through this audit procedure, LNIC is **NOT** seeking to collect the Debtor's accounts receivable. Rather, LNIC is only seeking to verify the validity and collectability of its collateral.

II. BACKGROUND INFORMATION[3]

A. The Debtor's Assets

The Debtor's only income producing asset is its accounts receivable, which have an alleged face value of approximately $53 million. In its Emergency Motion for Order Authorizing Use of

[1] LNIC's counsel also raised the issue of removing the Debtor as debtor in possession with Debtor's counsel via email on August 19, 2020 but has not received a response. *See* ¶ 6 of the Declaration of Leonard M. Shulman ("Shulman Decl.") filed concurrently herewith.

[2] As part of two separate court-approved cash collateral stipulations, LNIC has access to the Debtor's Captira and Simplicity software which the Debtor uses to manage and maintain its accounts receivable. LNIC's review is based on information gleaned from Captira and/or Simplicity.

[3] For the sake of brevity, LNIC does not repeat here background information regarding the Debtor's business or LNIC's relationship with the Debtor. In the event the Court desires such information, LNIC directs the Court to its opposition papers to Debtor's emergency cash collateral motion, a true and correct copy of which is attached as **Exhibit 1** to the Request for Judicial Notice ("RJN") filed concurrently herewith.

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Cash Collateral filed on June 17, 2020, the Debtor asserts that the value of its accounts receivable is approximately $13 million:

> Debtor has in excess of $53,000,000.00 in accounts receivable. Based on Debtor's historical collection rate, Debtor calculates that it will be able to collect a minimum of $13,96360.32 of its existing accounts receivable, based on its historical collection rate (see Romero Declaration, pars 9-11, Exhibit 3).

See, Cash Collateral Motion, p. 5, lines 20-24, attached as **Exhibit 8** to the RJN.

B. The Debtor's Captira Software

The Debtor uses a software program called Captira. ¶ 3 of the Declaration of Lisa Slater ("Slater Decl."). Debtor enters into Captira information about each bond posted by Debtor, including the premium charged to the customer. *Id.* at ¶ 4. Debtor also uses Captira to store a digital copy of documents related to a bond transaction, including Bail Bond Application, Indemnitor Agreements, Premium Receipts and Collateral Receipts. *Id.*

Debtor continues to use Captira to track its accounts receivable. *Id.* Captira has an automated method for sending text and email messages to every person who owes money to Debtor. *Id.* Creating a simple message to delinquent accounts is a quick and easy process. *Id.*

C. LNIC's Contract with Debtor

LNIC is an insurance company authorized to write all lines of surety business in the State of California, including bail bonds. ¶ 10 of the Declaration of Randy Parton ("Parton Decl."). LNIC does not have retail operations in the State of California. *Id.* Instead, LNIC appoints contracted producers (like the Debtor) as independent contractors, with the limited power to solicit, write, and administer bail bonds. *Id.*

In May 2017, LNIC and the Debtor entered into a written contract (the "Producer Agreement") authorizing the Debtor to act as an independent producer to solicit, write, and administer bail bonds on behalf of LNIC. Parton Decl. at ¶ 11. Section 4 of the Producer Agreement requires the Debtor to keep complete records of all bonds written and gives LNIC an exclusive right to the possession of and unrestricted use of said records, *to wit*:

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> 4. RECORDS. The Producer and all Sub-Producers shall keep complete records in such form as the Company may indicate, of all bail business written by him or them for the Company and all such records and all accounts, documents, vouchers and memoranda connected with the business shall be open and made available at all times to the Company. The Producer acknowledges that all original documentation pertaining to the each bond is and shall be the property of the Company, returnable to it on demand. Company shall, without necessity of judicial proceedings, have lien on, and exclusive right to possession of, all files, written data and information (whether in writing, in computer format, or otherwise) on every bond written under this Agreement, **as well as full right to unrestricted use of all such records**. Should the Company deem necessary, the Company shall have the right, without further notice or proceedings, to take possession of and remove any such records.

Parton Decl. at ¶ 11. Section 6 of the Producer Agreement states that the "premium to be charged and collected on behalf of the Company **shall be at such rates as may be approved by the Department of Insurance**…." *Id.* at ¶ 12. The Section further states that any credit extended to customers for premium "shall be for the Producer's own account and Producer shall pay Company in full as though premium were collected in full at the time of the writing of the bonds." *Id.* Finally, the Section states that "all premiums collected for the Company by the Producer shall be deemed **trust funds**, shall not be mingled with other non-trust funds, and shall be turned over immediately to the Company with the applicable report…." *Id.*

Exhibit A to the Producer Agreement sets forth Producer's commission schedule. Parton Decl. at ¶ 13. The Exhibit requires Debtor to pay LNIC 6% of "the gross premium charged by the Producer to the bail bond customer based on the Company's approved, filed rate." *Id.* The Exhibit further provides: "Producer's commission shall be the difference between the amount of premium charged in accordance with the Company's rate filing and the amount paid to the Company in accordance with" the Exhibit. *Id.* Uncollected premium and rebates are expressly stated to have no effect on the premium amount remitted by Producer to Company. *Id.*

Section 8 of the Producer Agreement places the risk of loss on the Producer for all bonds written by the Producer. Parton Decl. at ¶ 14. The risk of loss includes all bond forfeitures, fugitive recovery fees, attorneys fees, and other forfeiture related expenses. *Id.*

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Irvine, CA 92618

D. LNIC's Bail Bond Rates

LNIC has a three-tiered premium rating system for bail bonds that has been approved by the California Department of Insurance. Parton Decl. at ¶ 15. The rating system charges a lower rate to customers with lower risks and a higher rate for customers with higher risks. *Id.* Defined criteria are used to determine the proper rate:

% Rate	Requirements
7%	Two of the following three requirements are met: (1) defendant has hired private attorney, (2) 50% cash collateral or 100% equity in real estate provided, and (3) full premium paid before bond posted.
8%	One of the following requirements is met: Defendant or indemnitor is a senior citizen; defendant, indemnitor or immediate family is a union member, former or active military, or former or current law enforcement; or any of the 3 items in the 7% category.
10%	Anyone who does not meet the requirements for a 7% or 8% rate.

Parton Decl. at ¶ 15. Although the rate charged the customer was required to comply with LNIC's rating plan, Debtor was free to rebate any amount of its commission to a customer. *Id.* Thus, a customer may only qualify for the 10% rate, but Debtor could rebate 3% to the customer so that the customer was only required to pay the net 7%. *Id.* The amount rebated, however, did not reduce the amount Debtor was required to pay LNIC under the Producer Agreement. *Id.*

E. LNIC is a Perfected Secured Creditor

To ensure full payment and performance of all obligations by Debtor under the Producer Agreement, Debtor granted LNIC a blanket security interest in all of its assets including, without limitation, "all Accounts, Accounts Receivable, …" Parton Decl. at ¶ 18. In connection with the grant of the continuing security interest, LNIC caused to be filed with the California Secretary of State a UCC filing statement. *Id.*

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F. LNIC's Secured Claim

LNIC's secured claim against the Debtor under the Producer Agreement is summarized in the following tables:

CURRENT LIABILITIES

Description	Amount
Summary judgments paid	$2,359,124.56
Claim Attorney fees paid	$356,066.96
Recovery fees paid	$866,396.46
Creditor Litigation fees	$233,231.13
Subtotal	$3,814,819.11
Reimbursement from Debtor	<$1,235,160.78>
Net Paid as of August 10, 2020	$2,579,658.33
Bonds in summary judgment status (103)	$3,379,500.00
Current total liability	$5,959,159.33[4]

CURRENT ADDITIONAL LIABILITY

Description	Amount
Under-Reporting of Premium	$300,000 - $1,100,000

CONTINGENT LIABILITIES

Description	Amount
Bonds in forfeiture status	$32,967,454.00
Open liability (18,132 bonds)	$648,940,092.00
Anticipated claims expenses	$1,800,000.00[5]

[4] Amount excludes contract interest owed at the rate of 10% per annum from date of payment.

[5] Estimated legal and fugitive recovery expenses for remaining open bonds.

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Irvine, CA 92618

Parton Decl. at ¶ 19. LNIC's losses for bond forfeitures and fugitive recovery expenses will continue to mount as the Debtor continues to breach its obligations to LNIC and to deplete LNIC's security. *Id.* The breaches of contract alleged herein are ongoing and expected to continue to cause LNIC additional significant losses. *Id.*

G. The $300,000 Cash Loan from Marcus Romero

During the continued 341a hearing on August 11, 2020, the Debtor admitted that it received a $300,000.00 cash loan from its President Marcus Romero shortly after year end distributions were made to Mr. Romero and the two other shareholders. Shulman Decl. at ¶ 2. The Debtor also admitted through its counsel that it received the "loan proceeds" prior to the execution of any loan documentation and that Debtor did not file an 8300 form with the IRS. *Id.* at ¶¶ 2 and 3.

H. The Two Stipulations for Use of Cash Collateral

LNIC has gone to great lengths to work cooperatively with the Debtor to allow it to proceed towards a proposed plan of reorganization while at the same time protecting its cash collateral. Specifically, in June 2020, LNIC and the Debtor entered into a stipulation which covered the period from June 15, 2020 to July 15, 2020 (the "First Stipulation") wherein the Debtor was authorized to use cash collateral under certain conditions. *See* RJN, **Exhibit 2**. The Court entered its Order approving the First Stipulation on June 24, 2020. RJN, **Exhibit 3**. LNIC and the Debtor performed all of their respective obligations under the First Stipulation.

In July 2020, LNIC and the Debtor entered into a second stipulation which covers the period from July 16, 2020 to September 30, 2020 (the "Second Stipulation") wherein the Debtor is further authorized to use cash collateral. RJN, **Exhibit 4**. The Court entered its Order approving the Second Stipulation on July 21, 2020. RJN, **Exhibit 5**.

I. LNIC's Multiple Meet and Confer Efforts with Debtor regarding the Audit

On August 13, 2020, August 17, 2020 and August 18, 2020, LNIC's counsel sent three separate emails to Debtor's counsel, Douglas Plazak, requesting that the Debtor consent to and allow LNIC to conduct an audit to verify if it is adequately protected by the Debtor's accounts receivable which make up LNIC's cash collateral. Shulman Decl. at ¶4. The Debtor denied all of LNIC's requests. *Id.*

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100 Spectrum Center Drive
Suite 600
Irvine, CA 92618

III. ARGUMENT

A. Bankruptcy Code Section 1185 Authorizes the Removal of a Fiduciary

11 U.S.C. §1185 provides in pertinent part:

> (a) In general. On request of a party in interest, and after notice and a hearing, the court shall order that the debtor shall not be a debtor in possession for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor, either before or after the date of commencement of the case, or for failure to perform the obligations of the debtor under a plan confirmed under this subchapter [11 U.S.C. §§ 1181 et seq.].

As set forth below, LNIC has uncovered incontrovertible evidence of fraud, dishonesty, incompetence and gross mismanagement by the Debtor which warrants its immediate removal as debtor in possession.

B. The Debtor's Fraud, Dishonesty, Incompetence and Gross Management

The Debtor's admissions and LNIC's review of the Debtor's books and records demonstrate cause under Section 1185 to remove it as debtor in possession.

1. Fraudulent Underpayment of Premiums to LNIC

The amount Debtor owed to LNIC for any bond was based on the premium rate charged by Debtor and the Debtor was required by law and the Producer Agreement to charge the proper premium on bonds. Parton Decl. at ¶ 16. The lower the premium rate charged by Debtor, the lower the amount owed by Debtor to LNIC. *Id.* The Debtor had an incentive to only charge 7%, and thus reduce the amount owed to LNIC, even though the requirements for a 7% rate were not met because it is a common occurrence in this industry for the Debtor to give a rebate resulting in net premium at or below 7%. *Id.* The Debtor is further incentivized to only charge 7% because it is also common in the industry that customers are not likely to pay more than 7%. *Id.*

To guard against improper rate classification, LNIC required Debtor to submit an Affidavit of Rate Compliance with each report. Parton Decl. at ¶ 17. The approximately 65 Affidavits read the same except for the date of the report. *Id.*

SHULMAN BASTIAN FRIEDMAN & BUI LLP
100 Spectrum Center Drive
Suite 600
Irvine, CA 92618

Affidavit of Rate Compliance

I, Marcus Romero, represent, warrant and certify that I am the owner of Powers Bail Bonds and for each bail bond listed on the attached report dated 6/15 - 6/30, 2017:

1. The proper rate class (10%, 8%, or 7%) was charged;
2. A signed Defendant Application and Agreement, signed Indemnitor Application and Agreement, fully executed Premium Receipt, and, if applicable, Collateral Receipt are in my files;
3. The documents listed in #2 above provide documentation to support the premium rate charged; and
4. The documents listed in #2 shall be maintained in my files for five years after the bond is exonerated and then destroyed pursuant to 10 C.C.R. §2104.

Signature 7/15/17 Date

Debtor reported 13,875 bonds as being properly charged at 7%. Slater Decl. at ¶ 6. The total face amount of these bonds is $613,135,548. *Id.*. At a 7% premium rate, the net premium owed is $2,943,014. *Id.* Records in Captira, however, show that thousands of these bonds did not qualify for the 7% rate. *Id.* at ¶ 7. At an 8% premium rate, the net premium owed by Debtor to LNIC for all of these bonds would be $2,943,014. *Id.*. Debtor's misrepresentation of the proper rate thus resulted in a premium underpayment of hundreds of thousands of dollars.[6] *Id.*. Debtor's counsel was asked on August 19, 2020 to explain the misreporting of premium, but no response has been provided. Shulman Decl. at ¶ 6. Debtor's certification that the proper rate was charged was either intentional, and thus fraudulent, or unintentional, and thus incompetent and gross management.[7] Either way, Debtor should be removed as Debtor in possession.

[6] If all of the 7% bonds only qualified for the 10% rate, then the additional premium owed would be $1,103,625. LNIC is in the process of conducting a sample audit to determine the underpayment.

[7] As an example, Brianna Rublalcava is one of the bonds included on the 10/16 - 10/31, 2019 report submitted by Debtor to LNIC with an Affidavit of Compliance signed by Marcus Romero on December 2, 2019. On October 18, 2019, the Debtor posted a $20,000 bond for Ms. Rubalcava. Slater Decl. at ¶ 10. The Debtor charged Ms. Rubalcava a 7% premium rate and thus she owed $1,400 of premium. *Id.* The Debtor then paid LNIC 6% of $1,400, which is $84. *Id.* However, Ms. Rubalcava did not qualify for a 7% rate despite the fact that Mr. Romero "represents, warrants, and certifies" that she was charged the proper rate. *Id.* The Debtor's books and records reflect that the full $1,400 of premium was being paid over time, not before the bond was posted. *Id.* Furthermore, the books and records do not reflect that the collateral requirement for a 7% bond was met. *Id.* Nor is there any evidence in the books and records

SHULMAN BASTIAN FRIEDMAN & BUI LLP
100 Spectrum Center Drive
Suite 600
Irvine, CA 92618

2. **1100 Bonds without any Payment**

LNIC's review of the Debtor's books and records also reveals that the Debtor wrote approximately 1,100 bonds for which the Debtor has not collected a single payment. Slater Decl. at ¶ 8. The premium owed to Debtor for these bonds is approximately $2,000,000.00. *Id.* The Debtor's books and records reflect that it paid its surety approximately $120,000.00 for those bonds, even though it collected nothing from its customers. *Id.* In addition, the Debtor admits that its accounts receivable includes 13,567 accounts for which no payments have been received in the last 90 days. Shulman Decl. at ¶ 5. The dollar value for these accounts is $43,041,152.15. *Id.* This data demonstrates that the Debtor is either not competent to collect on its accounts receivable or that it has grossly mismanaged the collection of same. It goes without saying that the Debtor's underwriting practices were horrific but that fact is not germane at this juncture. Either way, this evidence demonstrates that the Debtor should be removed as debtor in possession.

3. **The $300,000 Cash Loan from Marcus Romero**

Debtor collected huge amounts of cash before it stopped writing new bonds and filed bankruptcy. The average monthly cash collected in 2017 was $280,000. Slater Decl. at ¶ 9. That amount increased to $360,000 per month in 2018, and $429,000 in 2019. *Id.* That is a lot of cash moving through the business. During the continued 341a hearing on August 11, 2020, the Debtor testified that it received a $300,000.00 cash loan from its President Marcus Romero. Shulman Decl. at ¶ 2. The Debtor admitted through its counsel that it received the "loan proceeds" prior to the execution of any loan documentation and that Debtor did not file the required 8300 form with the IRS upon receipt of the $300,000 cash. *Id.* This violation demonstrates either dishonesty or incompetence. Mr. Romero's personal counsel at the 341a hearing instructed him not to answer the question of where he came up with $300,000 of cash. *Id.*

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that Ms. Rubalcava has retained an attorney. *Id.* As such, Ms. Rubalcava did not qualify for a 7% rate. *Id.* Nor do the books and records reflect that Ms. Rubalcava qualified for an 8% rate. *Id.* Therefore, the Debtor should have charged Ms. Rubalcava 10% which would have resulted in a payment by the Debtor to LNIC of $120, not $84. *Id.* This represents a 43% underpayment. *Id.*

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Suite 600
Irvine, CA 92618

4. **Debtor's Inability to Fulfill Fiduciary Duty**

In the Debtor's Statement of Financial Affairs, Pages 38-42, Debtor admits that it made numerous payments within 90 days of the filing of the bankruptcy case to the following creditors:

3.2	Capital One	$115,114.55
3.3	Capital One	$60,214.97
3.11	Kabbage	$94,647.69
3.12	Blue Vine	$90,461.25
3.15	FCS	$346,684.61
TOTAL		$707,123.07

RJN, **Exhibit 7**. The Debtor confirmed in its 341(a) testimony that the above debts were guaranteed by Marcus Romero, the Debtor's President. Shulman Decl. at ¶ 2.

Additionally, the Debtor admits that it paid Marcus Romero $124,839.23 from 3/18/20-6/1/20 as Shareholder Distributions or Loan Repayments. Mr. Romero is scheduled to have a claim of $238,000.00 (Page 26, 3.2 of Schedules). Thus, the loan made in January, 2020 was paid down pre-petition in the sum of at least $62,000.00.[8] If this is not enough, the Debtor further admits on Pages 48-49 of its Schedules that the following distributions to insiders were made within one year prior to the bankruptcy filing:

30.1	Marcus Romero	$568,500.00
30.4	Michael Kessler	$102,500.00 Dividends
		$15,000.00 Shareholder Buyout
30.5	Randy Devolder	$72,825.00 Dividends
		$32,500.00 Shareholder Buyout
TOTAL		$791,325.00

RJN, **Exhibit 7**. It goes without saying that all of the above distributions were made with LNIC's cash collateral and during a time when LNIC was not receiving any payments. More importantly,

[8] Per the terms of the Promissory Note, Mr. Romero not only was paid interest but the $62,000 paydown represents an acceleration of payment on the Promissory Note. Shulman Decl, ¶ 8. These are hardly the actions of a fiduciary for a company on the eve of filing a bankruptcy.

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100 Spectrum Center Drive
Suite 600
Irvine, CA 92618

how can this Debtor, under this management and control, be trusted to investigate and seek the return of the aforementioned preferential transfers and fraudulent transfers?

C. Alternatively, LNIC Should be Authorized to Conduct an Audit

In the event the Court is not inclined to remove the Debtor as debtor in possession, LNIC requests authorization to audit the Debtor's accounts receivable by taking necessary steps to contact the Debtor's delinquent accounts in an effort to obtain information required to analyze the Debtor's accounts receivable to evaluate the collectability and value for those accounts so that LNIC can determine whether it is adequately protected.

LNIC should be allowed to take steps to verify if it is adequately protected by the Debtor's accounts receivable. These steps are necessary because: (1) the Debtor admits its accounts receivable is worth only approximately $13 million even though its face value is in excess of $52 million; (2) only $8 million of the Debtor's accounts receivable has made any payment in the last 120 days; and (3) LNIC's claim likely exceeds $8 million. Therefore, LNIC requests the Court's approval allowing it to contact individuals whose accounts are over 120 days old without any payment to analyze the collectability of those accounts.

LNIC seeks authority to send a text and/or email message to all delinquent accounts from Captira that includes the amount owed per Captira, and then asks the customer to just reply "1" for agree, "2" for disagree, or "3" for don't know. This data can then be collected through Captira. LNIC also seeks authority to send a simple automated survey to delinquent accounts to learn about prior payments and balance due. An order authorizing LNIC to proceed with this discovery will allow it to: (a) evaluate the value and collectability of Debtor's accounts receivable, (b) determine how many delinquent account holders are likely to be responsive to future recovery attempts, (c) determine the accuracy of Debtor's books and records for aged accounts; and (d) evaluate whether the Debtor's contemplated plan of reorganization, which will purportedly pay LNIC over a period of 3-5 years, is viable.

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100 Spectrum Center Drive
Suite 600
Irvine, CA 92618

1. **Most of the Debtor's Accounts Receivable Are Over 120 Days Old Without Any Payment.**

A review of the Debtor's books and records maintained in its Captira and Simplicity software programs reflects that all but approximately $8 million of its accounts receivable are more than 120 days old without any payment activity. Slater Decl. at ¶ 5. More specifically, the Debtor has received a payment within the last 120 days on only 2,658 accounts which have a total receivable amount of $8,256,444.60. *Id.* On the other hand, the Debtor has not received any payments within the last 120 days on 13,372 accounts which have a total receivable amount of $42,451,837.26. *Id.*

2. **LNIC's Claim Exceeds $8 Million.**

LNIC's secured claim against the Debtor under the Producer Agreement exceeds $8 million, which raises legitimate questions regarding whether the Debtor's accounts receivable provides LNIC with adequate protection. Parton Decl. at ¶ 19. Unless significant payments are collected from the delinquent accounts, LNIC's secured asset will be insufficient to cover LNIC's claim. *Id.*

3. **LNIC is Entitled to Contact Debtor's Delinquent Accounts Under the Terms of the Producer Agreement**

Absent the filing of this bankruptcy case, LNIC would be entitled to take the requested steps to contact the Debtor's delinquent accounts. Parton Decl. at ¶ 11. Specifically, Section 4 of the Producer Agreement expressly grants LNIC the "right to unrestricted use" of the Debtor's books and records, *to wit*:

> 4. RECORDS. The Producer and all Sub-Producers shall keep complete records . . . Company shall, without necessity of judicial proceedings, have lien on, and exclusive right to possession of, all files, written data and information (whether in writing, in computer format, or otherwise) on every bond written under this Agreement, **as well as full right to unrestricted use of all such records**.

Parton Decl. at ¶ 11. As such, the requested relief is contemplated under the contract between the Debtor and LNIC. There is no reason that LNIC should not be granted the limited relief requested herein.

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SHULMAN BASTIAN FRIEDMAN & BUI LLP
100 Spectrum Center Drive
Suite 600
Irvine, CA 92618

4. **Requesting Information from Accounts is a permitted form of third party Discovery**.

Pursuant to the Second Stipulation, LNIC agreed to forbear from taking any 2004 exams until September 30, 2020, however nothing in the Second Stipulation or anywhere else precludes third party discovery. Shulman Decl. at ¶ 7. Further the First Stipulation and Second Stipulation provide, *to wit*:

> **Full Force and Effect of Producer Agreement.** Except as otherwise expressly provided in this Stipulation, the terms and conditions of the Producer Agreement shall remain in full force and effect and LNIC shall have all of its rights and remedies thereunder, subject to the provisions of Bankruptcy Code, the Bankruptcy Rules, the Local Rules, any other applicable law, and any others of the Bankruptcy Code.

RJN, **Exhibit 2 and 4**.

IV. CONCLUSION

LNIC has presented overwhelming evidence of the Debtor's fraud, dishonesty, incompetence and gross negligence in the management of its affairs. Debtor should therefore be removed as Debtor in possession. In the alternative, LNIC is entitled to information from Debtor's delinquent accounts and thus the audit described above should be permitted.

SHULMAN BASTIAN FRIEDMAN & BUI LLP

DATED: August 28, 2020

By: /s/ *Franklin J. Contreras, Jr.*
Leonard M. Shulman
Franklin J. Contreras, Jr.
Attorneys for Secured Creditor
Lexington National Insurance Corporation

SHULMAN BASTIAN FRIEDMAN & BUI LLP
100 Spectrum Center Drive
Suite 600
Irvine, CA 92618

PETER C. ANDERSON
UNITED STATES TRUSTEE
Jill M. Sturtevant
Assistant United States Trustee
Dare Law, SBN 155714
Trial Attorney
Office of the United States Trustee
915 Wilshire Blvd, Suite 1850
Los Angeles, CA 90017
Tel: (213) 894-4925
Fax: (213) 894-2603
Email: dare.law@usdoj.gov

CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re

LIAT TALASAZAN

Debtor.

Case No. 2:19-bk-23664 NB

Chapter 11

ORDER REMOVING DEBTOR AS DEBTOR IN POSSESSION AND EXPANDING DUTIES OF SUB CHAPTER V TRUSTEE IN ACCORDANCE WITH THE COURT'S ORDER TO SHOW CAUSE [docket # 209]

Hearing Date
Date: June 2, 2020
Time: 1:00 p.m.
Courtroom 1545
255 E. Temple St.
Los Angeles, CA 90017

The Court's Order to Show Cause and explain why this court should not (i) remove debtor as a debtor in possession (11 U.S.C. section 1185(a)) and/or expand the sub chapter V Trustee's duties (11 U.S.C. section 1183(b) (2)&(5), or alternatively (ii) convert or dismiss this case (11 U.S.C. section 1112)("OSC")[docket # 209] was heard on the above date and time indicated above. Appearances were made as reflected on the record. The Court having considered the record herein, all written responses to the OSC, the arguments of counsel and interested parties,

with findings of fact and conclusions of law stated on the record and in the tentative ruling attached hereto as Exhibit A, and for good cause appearing,

IT IS HEREBY ORDERED that the Debtor is removed as debtor in possession pursuant to 11 U.S.C. 1185(a)) and it is

FURTHER ORDERED that the Subchapter V Trustee shall have all of the powers and duties set forth in 11 U.S.C. 1183(b)(2) and (5), and it is

FURTHER ORDERED that the Trustee is to authorize and directed to conduct only such investigation as the Trustee deems appropriate under that statutory provision (incorporating by reference 11 U.S.C. 1106(a)(3)), bearing in mind the costs and benefits of any such investigation, and it is

FURTHER ORDERED that the requirement that the Trustee must file any written statement of the investigation is suspended and Trustee is to provide oral reports at future status conferences unless and until otherwise ordered by the Court.

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Date: June 5, 2020

Neil W. Bason
United States Bankruptcy Judge

EXHIBIT A

Tentative Ruling for 6/2/20:
Appearances required.

Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice**. Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 6/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

(1) Current issues

(a) Order to show cause (dkt. 209, "OSC"), and responses (dkt.223-28)

Remove Debtor as a debtor in possession (11 U.S.C. 1185(a)) and expand the duties of the Subchapter V Trustee (the "Trustee") (11 U.S.C. 1183(b)(2)&(5)), for the reasons set forth in the OSC (dkt.209, incorporating dkt.208) and in the responses by the United States Trustee ("UST") and other non-debtor parties in interest (dkt.223-24 & 226-28). The tentative ruling is that, although Debtor's desire to save her family's homes and conduct her businesses is understandable, and although Debtor's reluctance to refinance or sell any properties at this time is also understandable, Debtor has lost the privilege of having primary control over the chapter 11 case based on her unauthorized merchandizing business(es) and, alternatively, the each of the other separate causes for such relief as set forth in the OSC and the non-debtor parties' responses, including but not limited to gross mismanagement and, alternatively, lack of compliance with her disclosure requirements.

Debtor is reminded that, even if she is no longer a debtor in possession, she will still have duties, including cooperation with the Trustee's attempts to faciliatate a chapter 11 plan. *See, e.g.,* 11 U.S.C. 1187, 1189. Any failure to comply with such duties may result in sanctions, conversion of the case to chapter 7, and/or other remedies.

Regarding the scope of the Trustee's powers and duties, the tentative ruling is to order that the Trustee shall have all of the powers and duties set forth in 11 U.S.C. 1183(b)(2) and (5). But, as to the Trustee's investigation, the tentative ruling is to authorize and direct the Trustee to conduct only such investigation as the Trustee deems appropriate under that statutory provision (incorporating by reference 11 U.S.C. 1106(a)(3)), bearing in mind the costs and benefits of any such investigation. In addition, the tentative ruling is to suspend any requirement that the Trustee must file any written statement of the investigation. Instead, the tentative ruling is that it is appropriate to adopt the more efficient and flexible alternative of relying on the Trustee's oral reports at future status conferences (unless and until otherwise ordered by this Court).

(b) Motion for postpetition DIP financing (dkt.198), Oxygen funding, Inc.'s ("Oxygen") opposition (dkt. 211), Debtor's reply & supplemental papers (dkt. 202, 203, 213, 214, 215, 216, 222)

The tentative ruling is to overrule Oxygen's objections, but to defer granting the motion and instead continue this matter to the same time as the continued status conference (see part "(2)" of this tentative ruling, below). The basis for such continuance is to give the Trustee and opportunity to conduct investigations and make a

recommendation whether or not to authorize the refinancing requested in the motion (or if, instead, some other transaction would be preferable). The grounds for overruling Oxygen's objections are:

(i) there is no evidence that Oxygen made any fixture filing or otherwise perfected any alleged lien as against the Fuller Ave. property, and therefore any interest it may have in that property appears unperfected and avoidable (11 U.S.C. 544),

(ii) the proposed reduction in interest rate appears to generate a benefit to the bankruptcy estate that will (after a few months) more than offset the transaction costs, all of which may aid Debtor's husband's cash flow, which provides potentially greater flexibility in attempting to negotiate a plan (and, although Debtor's husband may not have any legal obligation to assist, he appears to have both personal and financial incentives to do so), and

(iii) neither Oxygen nor any other party in interest appears to be prejudiced in the long term by the proposed refinancing of the senior lien.

2) Deadlines/dates. This case was filed on 11/20/19, converted from chapter 13 to chapter 11 on 1/2/20, and designated by Debtor as a Subchapter V case on 3/2/20 (dkt.128).

(a) Bar date: 6/29/20, dkt. 179 (timely served, dkt. 184)
(b) Procedures order: dkt. 50 (timely served, dkt. 58)
(c) Plan/Disclosure Statement*: TBD (prior, insufficient versions were filed 4/15/20, dkt. 171, 172)
(d) Continued status conference: 6/16/20 at 1:00 p.m., concurrent with other matters. *Brief* written status report due 6/9/20.

*Warning: special procedures apply (*see* order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

[PRIOR TENTATIVE RULINGS OMITTED (see Memorialization of Tentative Rulings, dkt.208, filed 5/19/20)]

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re: Liat Talasazan, Debtor(s)	Case No.: 2:19-bk-23664-NB Chapter: 11 **MEMORIALIZATION OF TENTATIVE RULINGS** Hearing Dates: Dates: January 28, 2020, February 18, 2020, March 3, 2020, March 10, 2020, March 31, 2020, April 7, 2020, May 12, 2020, & May 19, 2020 Time: 1:00 p.m. Place: Courtroom 1545 255 E. Temple Street Los Angeles, CA 90012

This Court's tentative rulings for the above-captioned hearings are hereby memorialized as set forth in **Exhibit A** attached hereto.

###

Date: May 19, 2020

Neil W. Bason
United States Bankruptcy Judge

EXHIBIT A

Tentative Ruling for 5/19/20:
Appearances required.

Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice**. Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 6/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

(1) Current issues

(a) Compliance and reporting issues

The tentative ruling is to issue an order to show cause ("OSC") why this Court should not (i) remove Debtor as a debtor in possession (11 U.S.C. 1185(a)) and expand the Subchapter V Trustee's duties (11 U.S.C. 1183(b)(2)&(5)), or alternatively (ii) convert or dismiss this case (11 U.S.C. 1112). The grounds for such OSC are set forth below, in the tentative rulings for this hearing and prior hearings.

Such grounds include evidence of gross mismanagement of the affairs of Debtor, incompetence, dishonesty, apparent failure to maintain appropriate insurance that poses a risk to the estate or to the public, apparently unauthorized use of cash collateral substantially harmful to one or more creditors, unexcused failure to satisfy timely the filing and reporting requirements established by the Bankruptcy Code and federal and local rules of this Court, failure to comply with the orders of this Court regarding disclosures and compliance with Debtor's obligations, failure timely to provide information reasonably requested by the United States Trustee, or other "cause" within the meaning of the cited statutory provisions. The tentative ruling is to set a hearing on the OSC concurrent with the continued status conference (see below), with a **deadline of 5/20/20** for Debtor to serve the OSC on all parties in interest, and a **deadline of 5/28/20** for Debtor and any other party in interest to file a response to the OSC.

After this hearing, this Court intends to issue a Memorialization of Tentative Rulings, as well as the OSC incorporating that memorialization by reference. The OSC will direct Debtor to serve those documents on all parties in interest.

(b) Debtor's motion for authority to conduct business out of the ordinary course (dkt. 204), oppositions due at the hearing

The tentative ruling is to deny this motion in full - including Debtor's "merchandizing" business(es), her "brokerage" business(es), her real estate development busines(es), and any other businesses. But the tentative ruling is to do so without prejudice, and permit Debtor, for as long as she continues to be authorized to act as a debtor in possession, to file and serve future notices of proposed transactions under this motion, which she may self-calendar on 14 days' notice concurrent with any future status conference, with a deadline of 7 days prior to the hearing for any objection,

and any reply permitted orally at the hearing. The grounds for this tentative ruling are as follows.

(i) Statutory requirements

Debtor is prohibited from engaging in any use, sale, or lease of property of the bankruptcy estate "other than in the ordinary course of business." 11 U.S.C. 363(b)(1). Even as to "ordinary course" transactions, Debtor may not use cash or cash equivalents in which any entity has an interest ("cash collateral") (*e.g.,* rents that are subject to an assignment of rents) without either authorization from this Court (after notice and a hearing) or such entity's consent (which is typically conditioned on things that require authorization from this Court, such as replacement liens).

What is "ordinary course" typically is measured in two ways. In broad terms, the "vertical" test looks to whether the transactions at issue are consistent with creditors' expectations based on Debtor's past transactions, and the "horizontal" test looks to what typically is done by other persons engaged in the same line of business as the subject debtor. *See generally In re Dant & Russell, Inc.,* 853 F.2d 700 (9th Cir. 1988).

In this case, Debtor has not provided any evidence regarding the vertical test - *i.e.,* that historically she engaged in a pattern of transactions similar to any of the businesses she now seeks to do. To the contrary, as set forth in prior tentative rulings (reproduced below) she has represented that her businesses were limited to the defunct "Hot Ginger" clothing business and ownership of some rental properties. Nor has Debtor provided any evidence regarding the horizontal test.

Therefore Debtor was and is required to seek authorization from this Court under 11 U.S.C. 363(b), after notice and a hearing, to engage in any of the businesses she describes in her motion. In addition, Debtor is cautioned that other limitations may apply to any proposed transaction. *See, e.g.,* 11 U.S.C. 363(c) (cash collateral), 11 U.S.C. 364 (extensions of credit), *and* 28 U.S.C. 959(b) (compliance with nonbankruptcy laws).

With this background, this Court turns to the matters addressed in Debtor's motion for authority to use, sell, or lease property of the bankruptcy estate out of the ordinary course of business.

(ii) Three more previously undisclosed matters

This Court repeatedly has warned Debtor about the need for full and accurate disclosures (see the tentative rulings reproduced below, *passim*). But only in this latest motion has Debtor revealed that previously she has engaged in "three merchandizing transactions ...." Dkt.204, p.5:22. Why did Debtor fail to seek prior authorization for these transactions, and why did she fail to reveal them until now?

(iii) What is the third merchandizing transaction?

Debtor describes only two mechandizing transactions. See dkt.204, pp.5:20-6:9. What is the third transaction?

(iv) Where is Debtor's evidence?

Where is Debtor's declaration in support of the allegations in her papers regarding these three (or two) transactions? Where is the evidence supporting her allegations about her alleged gross profits, expenses, etc.?

In addition, where is Debtor's declaration affirming that at long last she has scoured her records and consulted again with her bankruptcy counsel and now fully understands her disclosure obligations and requirement for prior authorization under

section 363(b) (and other legal requirements)? Where is her declaration that despite her previous failures to disclose her real estate development business, her PPE brokerage business, and the additional two or three transactions that she now reveals, she has now finally disclosed everything that she is required to disclose?

(v) The first transaction (Lifethreads) is not sufficiently disclosed

As to the first of these most recently disclosed transactions (with Lifethreads LLC), Debtor's disclosures continue to be insufficient. She claims this transaction - the nature of which is not described - resulted in "a virtual zero net gain." Dkt.204, p.5:23 (emphasis added). What does this mean?

Is "virtual" zero a negative number? In other words, did Debtor lose money? How much?

Even if Debtor did not lose money, what was the risk that Debtor would lose money (in this unauthotized transaction)? More generally, what did Debtor buy and sell? Did she use cash collateral of one or more creditors to engage in this transaction? If she alleges that she did not, where did the funds for this transaction come from?

(vi) The second (C Health/Imperial) transaction is not sufficiently disclosed

As to the second of these most recent transactions (with C Health Co. LLC and Imperial Glove & Safety LLC) Debtor discloses that she paid "$50,000 for the merchandise in April and $30,000 in May plus [a $4,000?] commission for her broker counterpart" resulting in "a profit of over $6,000." Where is the evidence that this is an appropriate transaction from a cost/benefit standpoint?

In this C Health/Imperial transaction Debtor apparently spent approximately $84,000 to buy goods (PPE?). Again, where did this money come from, and is it cash collateral of one or more creditors?

What risks did the bankruptcy estate bear that Debtor might not have been able to resell the goods at a profit (as with the first transaction)? What other risks did the estate bear, such as the risk that the goods were defective? What steps did Debtor take to assure that the goods were not defective, or to obtain indemnities, or provide adequate disclaimers of warranties, or any other appropriate precautions?

What was Debtor's net profit (if any)? Debtor states that she made a modest gross profit of $6,000, after cost of goods and broker's commission. Again, there is no evidence of any of this. Nor is there any precise accounting. What is the net profit after deducting income taxes, insurance, and any any other costs and expenses that are properly allocable to this transaction?

(vii) Debtor's PPE brokerage business

Debtor appears to argue that there is no real risk to the bankruptcy estate in the brokerage transactions. First, once again, there is no evidence to support this assertion: all of Debtor's allegations are unsupported by any declaration or other evidence.

Second, Debtor conflates her lack of any written guarantees or warranties with a lack of risk of liability. They are not the same, as explained below.

Debtor asserts that she "makes no guaranty regarding any aspect of the PPE and requires the the purchaser inspect the PPE directly before the purchaser agrees to purchase it" and she makes "no warranties or commitments as they are not necessary under this business model." Dkt.204, p.4:3-17. But the alleged lack of guarantees, warranties, and commitments is not the same as insulation from possible liability for

breach of contract or tort. To use a hypothetical analogy solely for purposes of illustration, if Debtor recklessly brokered the sale of toxic snake oil by a charlatan to a hospital, Debtor might be liable for the resulting deaths.

Debtor admits that "the broker transactions involve securing PPE inventory following strict Food and Drug Administration (FDA) guidelines" (dkt.204, p.4:16-18, emphasis added) but, despite the sensitive nature of these transactions, they "occur fast" with "no formal brokering contracts involved" (*id.*, p.4:25-27). Is Debtor asking creditors and this Court to believe that, when she brokers PPE "to hospitals, state agencies, and municipalities" (*id.*, p.4:17-18), she never makes assurances that she has a qualified supplier who is ready, willing, and able to deliver the PPE, and there is never a risk that some of her oral communications will be misconstrued as providing some sort of promise that could be the basis for a breach of contract claim, or tort liability?

The point is not that any transaction must be risk-free. Rather, the point is that Debtor has not acknowledged and disclosed whatever risks are involved, and what cost/benefit analysis is involved, in her proposed transactions.

(viii) Conclusion as to proposed transactions

Debtor is gambling with creditors' money, and there is no evidence that Debtor herself knows the odds. In any event, she has not disclosed any assessment of the risks and any cost/benefit analysis. Moreover, given that the Hot Ginger business has been closed (for some time), the tentative ruling is that reopening that business would be a transaction out of the ordinary course. Therefore, Debtor has not met her burden to justify engaging in any transactions in future beyond her rental of the four properties she disclosed earlier in this case.

(c) Motion for relief from stay (as amended, dkt. 93), debtor supplemental declaration (dkt.129), previously-filed papers (see tentative ruling for 3/3/20, reproduced at calendar no.9, 5/12/20 at 1:00 p.m.)

Continue this matter to the same date as the continued status conference (see below).

(d) Motion for postpetition DIP financing (dkt.198)

This motion is not on for hearing until 6/2/20. But, as part of this Status Conference, the tentative ruling is to direct Debtor **no later than 5/20/20** to file Local Form 4001-2 (as required by the posted Procedures of Judge Bason, available at www.cacb.uscourts.gov). This Court recognizes that Debtor has included a list (dkt.198, pp.6-7) that might or might not be identical to the form; but parties in interest (and this Court should not have to do a line-by-line comparison).

In addition, the tentative ruling is to set the **same deadline** to file declaration(s) specifying exactly which liens Debtor proposes to prime (only Oxygen Funding's lien?) and an explanation of the source of funds for the estimated $63,664.02 "Due from Borrower" listed in the draft escrow statement (dkt.198, Ex.5, at PDF p.64). Is Debtor's husband going to pay this, out of his separate property?

2) Deadlines/dates. This case was filed on 11/20/19, converted from chapter 13 to chapter 11 on 1/2/20, and designated by Debtor as a Subchapter V case on 3/2/20 (dkt.128).

(a) Bar date: 6/29/20, dkt. 179 (timely served, dkt. 184)
(b) Procedures order: dkt. 50 (timely served, dkt. 58)
(c) Plan/Disclosure Statement*: TBD (prior, insufficient versions were filed 4/15/20, dkt. 171, 172)
(d) Continued status conference: 6/2/20 at 1:00 p.m., concurrent with other matters. *Brief* written status report due 5/25/20.
*Warning: special procedures apply (*see* order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

Tentative Ruling for 5/12/20:
Appearances required.

Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice**. Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 6/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

(1) Current issues

(a) Compliance and reporting issues

Can creditors or this Court rely on anything Debtor says?

(i) What is Debtor's business?

In the status report filed on 1/21/20 (the "Principal Status Report," dkt.65, p.2) Debtor asserted that her businesses were Hot Ginger, Inc. (although that apparently is not operating) and owning four rental properties. So it appeared that Debtor was a landlord.

There was no mention of any real estate development business. But Debtor's declaration of postpetition income at expenses (dkt.194, at PDF p.5), asserts that Debtor's business has been "turn-key" real estate development including prefabriacted section 8/veterans' housing. Debtor declares that the Covid-19 pandemic has shut down that business, but the pandemic did not shut down any businesses until after January, so why was that business not mentioned anywhere in the Principal Status Report?

And now Debtor reveals that she has started a new business as a broker of Personal Protective Equipment ("PPE"). She has not provided any notice to creditors of

this new business, nor has she obtained authorization from this Court for starting transactions out of the ordinary course of business (11 U.S.C. 363(b)). *See* dkt.188, p.3, *and* dkt.191, last page. Does Debtor have any necessary or appropriate licenses or insurance? What are the risks, expenses, and potential benefits? What happens if Debtor brokers $1m of PPE for a local hospital and then fails to deliver that PPE? Is there potential liability for the bankruptcy estate?

Debtor lists "self-employment" gross income of $5,000.00/mo. with no expenses (dkt.184 at PDF p.9). What is that "self-employment" business? Is it the PPE business? Or the real estate development business? Or some other (undisclosed) business?

(ii) What are the income and expenses of Debtor's non-rental business(es)?

Debtor reports no expenses associated with her "self-employment" business (whatever that is). Can that be so?

Perhaps the lack of any self-employment or income taxes can be explained based on Debtor's unsupported assumption that she will receive tax refunds of $193,000.00 (dkt.194 at PDF p.3). But are there really no other business expenses: no telephone, internet, computer, printer, supplies, office space, etc.?

Given Debtor's assertion that she made such huge miscalculations that she over-paid past years' taxes to the tune of $193,000.00, what confidence can creditors or this Court have that her projected revenues and (lack of) expenses are accurate? On tax issues specifically, how can anyone have confidence that Debtor is taking appropriate deductions and paying appropriate taxes for whatever businesses she currently operates?

(iii) In the rental business, what are Debtor's income and expenses?

Debtor's declaration of postpetition income and expenses (dkt.194, at PDF pp.7-8) lists $3,000.00/mo. of rental income for each of the "626" and "622" properties. But she reports actual income from the "626" property of $2,800.00/mo. (dkt.188 at PDF p.8), and $-0- for the "622" property (dkt.188 at PDF p.9).

As for expenses, Debtor lists $0 for maintenance, repairs, real estate taxes, insurance, utilities, any gardener, or anything else at the Jefferson Plaza property, other than the mortgages. *See* dkt.194, at PDF p.6. The same is true for the "626" and "622" properties, except for $37.50/mo. for maintenance. *See* dkt.194, at PDF pp.7-8. How is that remotely realistic?

It also appears that, even if there were no expenses other than the mortgages, some of the properties might operate at a net loss. For example, the "626" property (the one with $3,000.00/mo. of alleged income and $2,800.00 of actual income) apparently has a monthly mortgage expense of $5,625.00 (dkt.188 at PDF p.10). How does it make sense for the bankruptcy estate to retain properties that appear to be a drain on income?

Perhaps in recognition of the need for more revenue, Debtor reports that the Jefferson Plaza rents/revenue may increase (dkt.194, p.2). Is that realistic? This Court takes judicial notice of economic projections that, in the wake of the Covid-19 closures

of many restaurants and other businesses, landlords might be facing a difficult time attracting and retaining enough tenants. Is it realistic for Debtor to plan to raise rents?

(iv) What else is going unreported, and is unauthorized?

Debtor lists $36,171.94 in receipts from "insurance" (dkt.188 at PDF p.9), with no explanation. Was there a fire or some other damage that was insured? Did that occur pre- or postpetition? Will the insurance cover all repair costs or only part?

Debtor reveals expenditures of $15,000.00 for construction (dkt.188, at PDF p.11). Is that construction within the ordinary course of Debtor's business (in which case why was that business not disclosed?) or was it out of the ordinary course (in which case why did Debtor fail to provide prior notice and seek authorization under section 363(b))?

Debtor has explained that some restaurant meals and other expenditures are being paid by her non-debtor husband. Both the expense and the husband's reimbursement should appear on the monthly operating reports, but if the reimbursements are disclosed they were not immediately apparent to this Court.

What else is going on that is not disclosed and/or not authorized?

(v) Conclusion regarding compliance and reporting

All of the foregoing deficiencies are on top of months of incomplete, inconsistent, and erroneous financial reporting, and unauthorized expenditures and use of cash collateral, as set forth in prior tentative rulings (reproduced below). Debtor, the Subchapter V Trustee, and counsel for the United States Trustee are directed to address at the hearing what remedies this Court should impose.

(b) Motion for relief from stay (as amended, dkt. 93), debtor supplemental declaration (dkt.129), previously-filed papers (see tentative ruling for 3/3/20, reproduced at calendar no.9, 5/12/20 at 1:00 p.m.)

The parties should be prepared to address whether they have agreed upon procedures for valuing the property and whether further briefing is necessary regarding any issues of debtor's alleged bad faith. *See* dkt.132, 138.

2) Deadlines/dates. This case was filed on 11/20/19, converted from chapter 13 to chapter 11 on 1/2/20, and designated by Debtor as a Subchapter V case on 3/2/20 (dkt.128).

(a) Bar date: 6/29/20, dkt. 179 (timely served, dkt. 184)
(b) Procedures order: dkt. 50 (timely served, dkt. 58)
(c) Plan/Disclosure Statement*: TBD (prior, insufficient versions were filed 4/15/20, dkt. 171, 172)
(d) Continued status conference: 6/16/20 at 1:00 p.m. *Brief* written status report due 6/2/20.
*Warning: special procedures apply (*see* order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov)

then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

Tentative Ruling for 4/7/20:
Appearances required, but pursuant to Judge Bason's COVID19 Procedures, **telephonic appearances are REQUIRED until further notice**.

Please contact CourtCall at (888) 882-6878 to make arrangements for any telephonic appearance. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

(1) Current issues

(a) Inadequate status report (dkt.169)

Debtor's status report simply repeats what is on the docket. It does not address any of the issues raised at prior status conferences and noted below. The tentative ruling is that no fees should be charged for preparation of the status report.

(b) Partially adequate Disclosures

This Court has reviewed Debtor's supplemental disclosures about her non-debtor husband's finances and related matters (dkt. 145, 146, 147, 148, 158, 159, 167) in response to this Court's order issued on 3/4/20 (dkt. 133). The tentative ruling is that the disclosures are partially adequate.

On the one hand, Debtor has provided a copy of the premarital agreement (dkt.146, Ex.1), which is very important, and has also filed amended bankruptcy schedules I, J and D, as well as a statement of postpetition income and expenses, and Monthly Operating Reports ("MORs"). On the other hand, these disclosures are incomplete, unclear, and internally inconsistent.

(i) Incompleteness

The incompleteness includes that, as Debtor acknowledges, she has yet to provide an amended Statement of Financial Affairs ("SOFA") because her family is dealing with the loss of a close family member (dkt.146, p.3, para.7 & 9). It is unclear what else might be missing: creditors and this Court cannot know what they and this Court do not know. The tentative ruling is to set a **deadline of 4/21/20** to file the amended SOFA and any other documents that were required under this Court's prior order (dkt. 133).

(ii) Lack of clarity

The MORs are unclear:

(A) There are two business accounts (-8997 and -9003) but which account relates to which property/business?

(B) Why are there only two business accounts when Debtor apparently shares in the income from the Jefferson Plaza business and has four properties (535 N Fuller, 636 N Laurel, 622 E 35th, and 626 E 35th) at least two of which are rental properties?

(C) Why are there two personal checking accounts (-9011 and -6492)?

(D) Why is one account overdrawn (account -6492 shows a balance of -$437, dkt.165, at PDF p.14)?

(E) Debtor's January MOR vaguely lists many entries as "Household." From other information about some of these "Household" expenses, it is not clear that they are appropriate for a debtor in possesion: for example, $350 for "Your Hair By Ellie" on 1/31/20 (dkt.165, p.12, last entry) and $390.92 for "Sephora" on 1/21/20 (dkt.165, p.11, 3d line from bottom). True, Debtor alleges that there is equity in various properties, but that is far from certain and she might well be insolvent. In addition, the MOR lists a lot of restaurant meals (dkt.165, pp.11-12), and again, it is not clear that this is appropriate budgeting for a debtor in possession. The tentative ruling is to set a **deadline of 4/21/20** for Debtor to file amended MORs that address these issues.

Debtor's alleged equity in her various properties is also far less clear than it should be. Although that information probably can be pieced together from various other documents, the tentative ruling is to set a **deadline of 4/21/20** for Debtor to file a declaration with an attached spreadsheet showing, for each property or business, Debtor's estimate of value, the source of that estimate, the liens against each property (listed by lienholder, in order of seniority), the dollar amount of the claim secured by that lien (according to Debtor and, alternatively, according to the holder of the lien), and the sources of those data.

(iii) Internal inconsistency

One internal inconsistency is that the latest Bankruptcy Schedules I&J list $16,000 as Debtor's net income from rental properties/businesses (dkt.159, p.2, line 8a) but the attached statements for each property/business list $10,000 of net income (consisting of $10,000 from Jefferson Plaza, LLC, $0 from 622 E 36th St, and $0 from 626 E. 36th St.). Dkt. 159, pp.5-7. What is the source of the other $6,000?

This Court has considered the possibility that Debtor has mixed up gross and net income. But that does not work either because the gross income is $22,700 ($16,700 + $3,000 + $3,000 = $22,700). Dkt. 159, pp.5-7.

The latest declaration of postpetition income and expenses (dkt.158) has yet more numbers that are different, but no explanation and no attached disclosures of gross income, expenses, and calculation of net income.

The tentative ruling is to set a **deadline of 4/21/20** for Debtor to file (A) further amended Bankruptcy Schedules I and J and (B) a further amended statement of postpetition income and expenses, with a complete explanation of any differences between the former and the latter.

(iv) Conclusion as to Debtor's financial disclosure

How can creditors and this Court rely on Debtor to make accurate financial reporting of anything in this case if even basic information is missing, unclear, or incorrect? The tentative ruling is to give Debtor one more opportunity for complete, candid, and clear financial disclosures.

(c) No discernable progress since last hearing

At a hearing on 3/10/20, this Court noted that the docket does not reflect any motion to sell or refiance any property, or other evidence of adequate prosecution of this case, but took no action other than to caution Debtor to be cognizant of the warnings that this Court set forth on the record at the hearing on 3/3/10. The docket still does not reflect any activity. Why not?

(d) Motion for relief from stay (as amended, dkt. 93), debtor supplemental declaration (dkt.129), previously-filed papers (see tentative ruling for 3/3/20, reproduced at calendar no.13, 3/10/20 at 1:00 p.m.)

The parties should be prepared to address whether they have agreed upon procedures for valuing the property and whether further briefing is necessary regarding any issues of debtor's alleged bad faith. *See* dkt.132, 138.

(e) Debtor's motion for order declaring judgment liens void as violations of the automatic stay and for compensatory sanctions (dkt. 122, the "Sanctions Motion"); National Commercial Recovery, Inc.'s ("NCR") opposition (dkt. 142), debtor's reply (dkt. 157)

Deny.

The tentative ruling is that Debtor is correct that the automatic stay in her prior bankruptcy case applied when the abstracts were recorded, so the recording was void. But NCR is also correct:

(i) that there is no evidence Debtor gave it notice of her bankruptcy filing, which would entitle it to seek to retroactively annul the stay (*see In re Fjeldsted,* 293 B.R. 12 (9th Cir. BAP 2003); *and see also In re Williams,* 323 B.R. 691, 697-702 (9th Cir. BAP 2005) (various issues involving annulment, and application of *Fjeldsted*), *aff'd,* 204 Fed.Appx. 582 (9th Cir. 2006), *overruled on other issues, In re Perl,* 811 F.3d 1120 (9th Cir. 2016) (scope of automatic stay)), and

(ii) that, although the better course may have been for NCR to file a motion seeking retroactive annulment, NCR was not taking any affirmative steps (it was not doing things held to violate the automatic stay, like terminating an executory contract - it was doing nothing, which preserved the status quo). That is less than what has been held, in an analogous situation involving preservation of the status quo, not to violate the automatic stay. *See Citizens Bank of MD v. Stumpf*, 116 S.Ct. 286 (1995). Therefore, the tentative ruling is that as a legal matter, NCR did not have any duty to record releases of its liens, and did not violate the automatic stay by declining to do so.

On the equities, to the extent equitable considerations are relevant, why should NCR have to pay to litigate these issues, instead of Debtor? If the lien were truly shown to be an obstacle to anything Debtor needs to accomplish, it is more equitable to place the burden on Debtor to seek affirmative relief than it would be to place the burden on NCR to seek confirmation from this Court that it has no duty to release its liens.

Moreover, the tentative ruling is that Debtor's premise is flawed. Debtor asserts that "if NCR's lien were allowed to remain" that "would prevent refinancing" and "crater the case ...." (dkt. 157, p.2:25-26). How so?

Debtor has not established why she could not obtain financing that primes NCR's junior lien (if that lien is adequately protected) under 11 U.S.C. 364. Alternatively,

Debtor has not explained why a chapter 11 plan could not leave NCR's lien in place and pay it over time. In fact, Debtor allegedly intends to pay all creditors (not just NCR) 100% of their claims over time, so it is not clear that Debtor has to do anything regarding NCR's lien at this point. Is this litigation a good use of the bankruptcy estate's assets?

Proposed orders: If appropriate, the prevailing party is directed to lodge a proposed order on each of the foregoing motions via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. *See* LBR 9021-1(b)(1)(B).

(2) Deadlines/dates. This case was filed on 11/20/19 and converted from chapter 13 on 1/2/20.

(a) Bar date: 5/1/20 (DO NOT SERVE notice yet - *court will prepare an order after the status conference*)
(b) Procedures order: dkt. 50 (timely served, dkt. 58)
(c) Plan/Disclosure Statement*: 4/15/20 (per dkt. 171, 172)
(d) Continued status conference: 5/12/20 at 1:00 p.m.. *Brief* written status report due 4/28/20.
*Warning: special procedures apply (*see* order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

Tentative Ruling for 3/31/20:
Continue to 4/7/20 at 1:00 p.m.,concurrent with other matters. Appearances are not required on 3/31/20.

If you wish to dispute the tentative ruling you must notify opposing counsel of your intent to appear telephonically. Pursuant to Judge Bason's COVID19 Procedures, **ONLY TELEPHONIC APPEARANCES WILL BE PERMITTED until further notice**. Please contact CourtCall at (888) 882-6878 to make arrangements. There is no need to contact the Court for permission. Parties who are not represented by an attorney will be able to use CourtCall for free through 4/30/20. Attorneys will receive a 25% discount (for more information, see www.cacb.uscourts.gov, "Judges," "Bason, N.," "Telephonic Instructions").

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear

telephonically without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

Revised Tentative Ruling for 3/10/20:
Appearances required.

(1) Current issues

(a) Debtor's amendment of bankruptcy petition to elect Subchapter V (dkt. 128)

On 3/2/20, Debtor amended her petition to elect Subchapter V. The parties should be prepared to discuss the effect of that amendment, including any appropriate dates and deadlines for such matters as the appointment of a Subchapter V trustee, the filing of an amended plan, and any other applicable procedures that this Court may need to set at this time.

(b) No discernable progress since last hearing

The docket does not reflect any motion to sell or refiance any property, or other evidence of adequate prosecution of this case. Given the short time since the last hearing, the tentative ruling is that this Court will not take any action based on that lack of discernable progress, but to remind Debtor to be cognizant of the warnings that this Court set forth on the record at the last hearing.

(c) No corrected MOR

Debtor has not corrected the monthly operating report, which was not filed on the required form. *See* tentative ruling for 3/3/20 (reproduced below), item "(1)" "(b)". Why not?

(d) No statement reflecting apparent increase in income?

Despite two reminders, Debtor still has not filed a declaration of current/postpetition income and expenses. *See* Revised Tentative Rulings for 3/10/20 and 2/18/20 (reproduced below). Why not?

(e) Budget Motion (dkt. 85, 90), East West Bank's opposition (dkt. 94), Debtor's reply (dkt. 134), interim order (dkt.113)

Although this Court has concerns about whether Debtor's financial disclosures are accurate and complete (as set forth in various portions of this tentative ruling and prior tentative rulings), the proposed use of funds in the budget motion appears to be appopriate. Accordingly, the tentative ruling is to grant the motion on a final basis, subject to the following.

First, any approval is subject possible reconsideration once Debtor finally files her statement of postpetition income and expenses, and files the other documents directed by this Court (*see* dkt.133), or as other facts may come to light. Second, the budget must be adjusted to accommodate the request of East West Bank for Debtor to increase her proposed monthly mortgage payment to $5,643.86, which Debtor has agreed to do (dkt. 134). Third, any approval is subject to the parties' rights to seek further relief, including approval of any stipulation for adequate protection.

(f) Cash Collateral Motion (dkt. 86, 90)

Grant the motion on a final basis, on the same terms as stated in the order (dkt.114) granting the motion on an interim basis, and subject to the same caveats and conditions as set forth above regarding the budget motion.

(g) Application to employ The Orantes Law Firm (the "Firm") (dkt. 72); statement of disinterestedness (dkt. 73); amended statement of disinterestedness (dkt. 82); Dec re non-opp (dkt. 98); order setting matter for hearing (dkt. 101)

The tentative ruling is to grant the application in part and deny it in part as follows.

Debtor seeks to employ the Firm pursuant to 11 U.S.C. 327, with compensation pursuant to 11 U.S.C. 330 at the following hourly rates for the Firm's attorneys: Giovanni Orantes: $695 and Luis A. Solorzano: $350 (dkt. 72, p.16). In determining the reasonableness of the proposed billing rates, 11 USC 330(a)(3)(B), (E) and (F) require this Court to consider, among other things, proposed counsel's hourly rates, any board certification or other demonstrated skill and experience in the bankruptcy field, and "the customary compensation charged by comparably skilled practitioners ...."

Based on a review of rates charged by other bankruptcy professionals practicing before this Court as well as this Court's familiarity with proposed counsel's skills and performance in pending and past cases before it, the tentative ruling is to approve the Firm's employment, subject to Judge Bason's standard employment terms (available at www.cacb.uscourts.gov), but reduce the hourly rates that the Firm may charge to the following maximum dollar amounts, without in any way limiting the requirement that any rates charged and time spent still must be fully justified: Giovanni Orantes: $475/hour and Luis A. Solorzano: $250/hour.

In addition, the tentative ruling is that any waiver of conflicts of interest is ineffective as against the bankruptcy estate. (A "debtor in possession," acting as a trustee for the benefit of creditors, cannot waive conflicts on behalf of those creditors.)

(h) Motion for relief from stay (as amended, dkt. 93), debtor supplemental declaration (dkt.129), previously-filed papers (see tentative ruling for 3/3/20, reproduced at calendar no.13, 3/10/20 at 1:00 p.m.)

The tentative ruling is to continue this matter again, to be concurrent with the continued status conference (see below), so as to be able to assess (i) whether Debtor has adequately prosecuted this case, including selling or refinancing one or more properties (if that is realistic) or otherwise demonstrating progress that has been sorely lacking to date, and (ii) Debtor's papers regarding her non-debtor husband's finances, which are due 3/18/20. See Order (dkt.133).

Meanwhile, the parties should be prepared to address whether they have agreed upon procedures for valuing the property and whether further briefing is necessary regarding any issues of debtor's alleged bad faith. See dkt.132, 138.

Proposed orders: Debtor is directed to lodge proposed orders on each of the foregoing motions via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. *See* LBR 9021-1(b)(1)(B).

(2) Deadlines/dates. This case was filed on 11/20/19 and converted from chapter 13 on 1/2/20.

(a) Bar date: 5/1/20 (DO NOT SERVE notice yet - *court will prepare an order after the status conference*)

(b) Procedures order: dkt. 50 (timely served, dkt. 58)

(c) Plan/Disclosure Statement*: n/a

(d) Continued status conference: 3/31/20 at 1:00 p.m., concurrent with other matters on calendar. No written status report required.

*Warning: special procedures apply (*see* order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

Tentative Ruling for 3/10/20:
This Court anticipates posting a tentative ruling at a later time.

Tentative Ruling for 3/3/20:
Appearances required.

(1) Current issues

(a) Motion for relief from stay (as amended, dkt. 93)

Grant, as set forth in the tentative ruling for calendar no. 15 (3/3/20 at 1:00 p.m.).

(b) Monthly operating report ("MOR") #1 (for Jan, 2020, dkt.103)

Debtor's MOR is not on the form that is familiar to this Court. Has the Office of the United States Trustee changed its form? Debtor reports $0 income for the month of January. Were rents paid prior to conversion to chapter 11 (*i.e.,* prior to 1/2/20), and if so, how much rental income did Debtor receive for January, and when?

(c) Income and expenses

Debtor still has not filed a declaration of current/postpetition income and expenses. *See* Revised Tentative Ruling for 2/18/20 (reproduced below). Why not?

Debtor's Bankruptcy Schedules I and J provide very little information about Debtor's rental income. They list only gross rents per building instead of, *e.g.,* a rent roll listing each tenant and their rental rate and information about whether those rents are reliable, such as a rental history. Nor does Debtor provide any breakdown of expenses, beyond what appears to be Debtor's rough estimate of $6,000 per month in mortgage payments, which appears to omit any payments to liens that Debtor is disputing. Nothing appears to be allocated for rental property maintenance, repairs, utilities, gardening, etc.

In addition, creditor Tremblay has questioned whether Debtor is omitting community property income of her non-debtor spouse, Mr. Behzad Beroukhai. *See* dkt.119, p.2:17-28. As Tremblay notes, Mr. Beroukhai allegedly pays all expenses

related to certain real property, but Debtor has not disclosed and accounted for such past and ongoing funds. This Court also notes that Mr. Beroukhai is not listed as a codebtor on any debts. *See* Bankruptcy Schedule H (dkt.10 at PDF p.30, line 1). What is the true situation, and are Debtor's disclosures accurate?

The tentative ruling is to set a deadline of 3/6/20 for Debtor to file and serve amended Schedules I and J, an amended SOFA, and any other documents that may be necessary or appropriate to provide much more comprehensive information about her income, expenses, assets, liabilities, and other aspects of her finances.

(2) Deadlines/dates. This case was filed on 11/20/19 and converted from chapter 13 on 1/2/20.

(a) Bar date: 4/3/20 (DO NOT SERVE notice yet - *court will prepare an order after the status conference*)

(b) Procedures order: dkt. 50 (timely served, dkt. 58)

(c) Plan/Disclosure Statement*: n/a

(d) Continued status conference: 3/10/20 at 1:00 p.m., concurrent with other matters in this case. No written status report required.

*Warning: special procedures apply (*see* order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

Revised Tentative Ruling for 2/18/20:

Appearances required by counsel for the debtor but telephonic appearances are encouraged if advance arrangements are made (*see* www.cacb.uscourts.gov, "Judges," "Bason, N.", "Instructions/Procedures").

(1) Current issues

(a) Budget Motion (dkt. 85, 90), East West Bank's opposition (dkt. 94)

The tentative ruling is to grant in part and deny in part the budget motion, on an interim basis, such that Debtor is authorized to make the expenditures in her proposed budget but must provide additional adequate protection payments to East West Bank to bring the total payment from $4,619.32 to $5,140.78, without prejudice to Debtor and East West Bank establishing an evidentiary basis for a lesser or greater dollar amount either (i) for adequate protection payments, (ii) for purposes of any chapter 11 plan, or (iii) for any other reason. The tentative ruling is to set a **deadline of 2/25/20** for East West Bank to file a declaration with a copy of advance notice to Debtor regarding the increased monthly mortgage payments, a **deadline of 3/4/20** for any response by Debtor, and any reply by East West Bank permitted at the continued hearing, to be held contemporaneous with the continued status conference (see below).

Debtor states (dkt.85, Ex.1, at PDF p.7, 1st footnote) that she recently had an increase income. But, as of the preparation of this tentative ruling, Debtor has not filed a declaration of current/postpetition income and expenses. Why not?

(b) Cash Collateral Motion (dkt. 86, 90)

Grant the motion on an interim basis, subject to Judge Bason's standard conditions for use of cash collateral set forth in the tentative ruling for calendar no. 17.20 (2/18/20 at 1:00 p.m.).

Proposed orders: Debtor is directed to lodge proposed orders on each of the foregoing motions via LOU within 7 days after the hearing date and attach a copy of this tentative ruling, thereby adopting it as this Court's final ruling, subject to any changes ordered at the hearing. *See* LBR 9021-1(b)(1)(B).

(2) Deadlines/dates. This case was filed on 11/20/19 and converted from chapter 13 on 1/2/20.

(a) Bar date: 4/3/20 (DO NOT SERVE notice yet - *court will prepare an order after the status conference*)

(b) Procedures order: dkt. 50 (timely served, dkt. 58)

(c) Plan/Disclosure Statement*: n/a

(d) Continued status conference: 3/10/20 at 1:00 p.m., concurrent with other matters in this case. No written status report required.

*Warning: special procedures apply (*see* order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

Tentative Ruling for 2/18/20:

This Court anticipates posting a tentative ruling at a later time.

Tentative Ruling for 1/28/20:

Appearances required by counsel for the debtor and by the debtor(s) themselves.

(1) Current issues

(a) Lack of progress

Debtor has only very belatedly filed a status report (dkt.65) (one week after it was required by this Court's order, dkt. 50). Worse, long after this case was converted to chapter 11 (11/20/19) she has only now filed an application to employ counsel and a budget motion, and she admits (dkt. 65, p.2) that she has not filed her list of 20 largest unsecured creditors. In addition, she admits that she has not filed any cash collateral motion(s) (*id.,* p.3), which apparently means that either she has been using cash without

authority or she has been failing to use cash for ordinary and necessary expenses, both of which are bad.

What remedies should this Court impose on Debtor and/or her counsel for this pervasive failure to comply with her obligations under the Bankruptcy Code? What assurances can they provide this Court that similar problems will not happen in future?

(2) Deadlines/dates. This case was filed on 11/20/19 and converted from chapter 13 on 1/2/20.

(a) Bar date: 4/3/20 (DO NOT SERVE notice yet - *court will prepare an order after the status conference*)

(b) Procedures order: dkt. 50 (timely served, dkt. 58)

(c) Plan/Disclosure Statement*: n/a

(d) Continued status conference: 2/18/20 at 1:00 p.m., concurrent with other matters in this case. No written status report required.

*Warning: special procedures apply (*see* order setting initial status conference).

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

Bankruptcy Code. An Official Form cannot stand as independent authority in opposition to the Bankruptcy Code itself. Thus, to the extent that the form can be interpreted as allowing a deduction using the amount specified under the Ownership Costs category when the debtor has a nonpurchase-money vehicle loan, such interpretation is incompatible with the Bankruptcy Code.

Although courts are divided on the issue of whether a debtor may deduct the amounts specified under the Ownership Costs category when he owns a vehicle encumbered solely by a nonpurchase-money security interest, the majority view is that the deduction is improper. *See In re Traylor*, 595 B.R. 419, 425 (Bankr. D. Utah 2019) ("[N]on-purchase money loans, such as title loans, are not an applicable monthly expense specified under the IRS Local Standards."); *Feagan v. Townson*, 572 B.R. 785, 789 (N.D. Ga. 2016) ("[P]ayments on account of nonpurchase-money security interests do not fall within the category of Ownership Costs."); *In re King*, 497 B.R. 161, 164 (Bankr. N.D. Ga. 2013) ("Since the Ownership expense figure is based on only financing data and not the entire panoply of automobile loans, this IRM instruction, which the Supreme Court identified with approval, appears to indicate that the ownership expense likewise only applies to the costs associated with an automobile's acquisition."); *In re Alexander*, No. 12-40408-JWV13, 2012 WL 3156760, at *3 (Bankr. W.D. Mo. Aug. 1, 2012) ("In sum, the Court holds that the vehicle ownership expense established by the I.R.S. and incorporated into the means test (§ 707(b)(2)) and, by extension, the calculation of disposable income under § 1325(b), refers solely to expenses related to the purchase or lease of a vehicle."); *In re Sires*, 511 B.R. 719, 725 (Bankr. S.D. Ga. 2014) ("[O]wnership cost not associated with the purchase or lease of a vehicle are not appropriate ownership deductions on line 28 of the means test.").

Conclusion

[3] The expense amounts listed in the Ownership Costs category are applicable to a debtor only if he incurs monthly expenses associated with acquiring use of the vehicle, either through a lease or a purchase-money loan. Here, Debtors do not have a lease or a purchase-money loan and therefore do not incur a qualifying expense to properly claim the deduction. As the Supreme Court noted, "a debtor should be required to qualify for a deduction by actually incurring an expense in the relevant category. If a debtor will not have a particular kind of expense during his plan, an allowance to cover that cost is not 'reasonably necessary' within the meaning of the statute." *Ransom*, 562 U.S. at 70–71, 131 S.Ct. 716.

The trustee's objection to the plan is sustained. The plan cannot be confirmed. The court will enter a separate order in accordance with this ruling.

SO ORDERED.

IN RE: HOT'Z POWER WASH, INC., Debtor.

CASE NO: 23-30749

United States Bankruptcy Court, S.D. Texas, Houston Division.

Signed November 7, 2023

Background: Chapter 11 debtor sought confirmation of its proposed fifth amended Subchapter V plan of reorganization. United States Trustee (UST) objected to consensual confirmation.

Holdings: The Bankruptcy Court, Eduardo V. Rodriguez, Chief Judge, held that:

(1) the bankruptcy rule governing the proper form of acceptance or rejection of a Chapter 11 plan applies in Subchapter V proceedings;

(2) debtor's use of notice on face of plan to deem nonvoting creditors as having accepted the plan violated the subject rule;

(3) debtor's treatment of nonvoting impaired creditor class as having implicitly accepted the plan violated the subsection of the Bankruptcy Code providing that a Chapter 11 plan can only be confirmed if, with respect to each class of claims or interests, such class has accepted the plan;

(4) a nonvoting impaired creditor class should not be counted, for purposes of determining acceptance of a Subchapter V plan; and

(5) because both voting impaired classes voted to accept the plan, debtor's proposed plan could be confirmed.

Objections sustained in part and overruled in part; plan confirmed.

1. Bankruptcy ⚿2093.1

Bankruptcy court may only hear a case in which venue is proper. 28 U.S.C.A. § 1408.

2. Bankruptcy ⚿2058.1, 2104

While bankruptcy judges can issue final orders and judgments for core proceedings, absent consent, they can only issue reports and recommendations on non-core matters. 28 U.S.C.A. §§ 157(b)(1), 157(c)(1).

3. Bankruptcy ⚿2058.1

Bankruptcy court has constitutional authority to enter a final order where the parties have consented, impliedly if not explicitly, to adjudication of matter by the court. 28 U.S.C.A. § 157.

4. Bankruptcy ⚿2058.1

Bankruptcy Court had constitutional authority to enter a final order where the parties had engaged in motion practice in front of the Court and had never objected to the Court's constitutional authority to enter a final order or judgment in the case, thereby impliedly consenting to adjudication of the matter by the Court. 28 U.S.C.A. § 157.

5. Bankruptcy ⚿3541.1

Bankruptcy rule governing the proper form of acceptance or rejection of a Chapter 11 plan applies in proceedings under Subchapter V of Chapter 11; the rule is one of general applicability. Fed. R. Bankr. P. 3018(c).

6. Bankruptcy ⚿3543

Use by Subchapter V Chapter 11 debtor of notice on face of its plan to deem nonvoting creditors as having accepted the plan violated the bankruptcy rule governing the proper form of acceptance or rejection of a Chapter 11 plan; under the Bankruptcy Code, impaired class's failure to cast a written vote did not constitute acceptance of the plan. 11 U.S.C.A. § 1126(c); Fed. R. Bankr. P. 3018(c).

7. Bankruptcy ⚿3543

Subchapter V Chapter 11 debtor's treatment of nonvoting impaired creditor class as having implicitly accepted its plan violated the subsection of the Bankruptcy Code providing that a Chapter 11 plan can only be confirmed if, with respect to each impaired class of claims or interests, such class has accepted the plan; under the Code, impaired class's failure to cast a written vote did not constitute acceptance of the plan. 11 U.S.C.A. §§ 1126, 1129(a)(8), 1191(a); Fed. R. Bankr. P. 3018(c).

8. Bankruptcy ⚿3543

Under the Bankruptcy Code, a nonvote by an impaired creditor class cannot be construed as acceptance of a Chapter 11 plan. 11 U.S.C.A. § 1126(c).

9. Bankruptcy ⚿3543

A nonvoting impaired creditor class should not be treated as having implicitly accepted or rejected a Subchapter V Chapter 11 plan for confirmation purposes but, instead, should not be counted; Bankruptcy Code is silent on correct treatment of a nonvoting class, acceptances and rejections must satisfy formality requirements set forth in bankruptcy rule governing proper form of acceptance or rejection of Chapter 11 plans, treating nonvoters as rejecters would defeat policy goals of Subchapter V, and calculation mandated by Code subsection setting forth number and amount of votes necessary for plan to be deemed accepted, which requires number of accepting votes to be divided by total votes cast in class, creates a mathematically undefined result that is absurd when applied to a nonvoting class, thus leaving court with one option, namely, to ignore a nonvoting class, which contravenes neither Code nor rules and is supported by legislative history of subsection. 11 U.S.C.A. §§ 1126, 1126(c), 1129(a)(8), 1191(a); Fed. R. Bankr. P. 3018(c).

10. Bankruptcy ⚿3541.1

To be counted, acceptances and rejections of a proposed Chapter 11 plan must satisfy the formality requirements set forth in the bankruptcy rule governing the proper form of acceptance or rejection of Chapter 11 plans. 11 U.S.C.A. §§ 1126(c), 1129(a)(8); Fed. R. Bankr. P. 3018(c).

11. Bankruptcy ⚿3544

Debtor's proposed fifth amended Subchapter V plan of reorganization satisfied the requirement that a Chapter 11 plan can only be confirmed if, with respect to each impaired class of claims or interests, such class has accepted the plan, where the plan contained three impaired classes, two of the impaired classes voted to accept the plan, and one impaired class did not vote; the nonvoting impaired class would not be counted. 11 U.S.C.A. §§ 1129(a)(8), 1191(a).

Reese W. Baker, Nikie Marie Lopez-Pagan, Baker & Associates, Houston, TX, for Debtor.

Christopher Ross Travis, Office of the United States Trustee, Houston, TX, for U.S. Trustee.

MEMORANDUM OPINION

Eduardo V. Rodriguez, Chief United States Bankruptcy Judge

In this subchapter V proceeding, Hot'z Power Wash, Inc. seeks confirmation of its proposed Subchapter V plan pursuant to 11 U.S.C. § 1191(a). Hot'z Power Wash, Inc.'s proposed subchapter V plan contains three impaired classes. Two impaired classes voted to accept the plan and one class did not vote. The United States Trustee raised two objections to consensual confirmation under § 1191(a), to wit: (1) Hot'z Power Wash, Inc.'s attempt to use a notice on the face of the plan to deem nonvoting creditors as having accepted the plan violates Fed. R. Bankr. P. 3018(c) and (2) Hot'z Power Wash, Inc.'s alternative argument that the non-voting impaired class has implicitly accepted the plan contravenes § 1129(a)(8). On October 20, 2023, the Court held a final hearing on confirmation. For the reasons set forth *infra*, the Court finds that (1) the use of a notice on the face of the plan to deem non-voting creditors as having accepted the plan vio-

lates Fed. R. Bankr. P. 3018(c), and (2) while treating a non-voting impaired creditor class as having implicitly accepted the plan does violate § 1129(a)(8), the Court nonetheless holds that non-voting impaired creditor classes will not be counted for purposes of whether § 1129(a)(8) is satisfied. As such, the United States Trustee's objections are sustained in part and overruled in part, and Hot'z Power Wash, Inc.'s plan is confirmed under 11 U.S.C. § 1191(a).

I. Background

1. On March 5, 2023, ("*Petition Date*") Hot'z Power Wash, Inc. ("*Debtor*") filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code [1] initiating the bankruptcy case [2] ("*Bankruptcy case*").
2. On March 7, 2023, Jarrod B. Martin was appointed as the Subchapter V trustee [3] ("*Subchapter V Trustee*").
3. On June 5, 2023, Debtor timely filed its, "Plan of Reorganization for Small Business under Subpart V Chapter 11"[4] ("*Plan*").
4. On July 3, 2023, the Internal Revenue Service ("*IRS*"), objected to confirmation of Debtor's plan.[5]
5. On July 3, 2023, Debtor filed its, "Debtor's First Amended Plan of Reorganization for Small Business Under Subpart V Chapter 11"[6] ("*First Amended Plan*") and "Debtor's Second Amended Plan of Reorganization for Small Business Under Subpart V Chapter 11"[7] ("*Second Amended Plan*").
6. On July 7, 2023, the IRS filed its "Amended Objection to Confirmation of Plan" to Debtor's Second Amended Plan.[8]
7. On August 1, 2023, Debtor filed its, "Debtor's Third Amended Plan of Reorganization for Small Business Under Subpart V Chapter 11"[9] ("*Third Amended Plan*").
8. On September 12, 2023, Debtor filed its, "Debtor's Fourth Amended Plan of Reorganization for Small Business Under Subpart V Chapter 11"[10] ("*Fourth Amended Plan*").
9. On September 18, 2023, IRS filed its, "Objection to Confirmation of Plan"[11] ("*IRS Objection*") to Debtor's Fourth Amended Plan.
10. On October 2, 2023, Debtor filed its, "Fifth Amended Plan of Reorganization for Small Business Under Subpart V Chapter 11"[12] ("*Fifth Amended Plan*").
11. On October 3, 2023, the IRS withdrew its IRS Objection.[13]
12. On October 13, 2023, the United States Trustee ("*UST*") filed its, "United States Trustee's Objec-

1. Any reference to ''Code'' or ''Bankruptcy Code'' is a reference to the United States Bankruptcy Code, 11 U.S.C., or any section (i.e.§) thereof refers to the corresponding section in 11 U.S.C.

2. ECF No. 1.

3. ECF No. 5.

4. ECF No. 56.

5. ECF No. 68.

6. ECF No. 70.

7. ECF No. 71.

8. ECF No. 73.

9. ECF No. 87.

10. ECF No. 92.

11. ECF No. 104.

12. ECF No. 110.

13. ECF No. 111.

tions to Debtor's Plan of Reorganization Dated October 2, 2023"[14] ("*UST's Objection*").

13. On October 19, 2023, Debtor filed its "Debtor's Response to United States Trustee's Objections to Debtor's Plan of Reorganization Dated October 2, 2023."[15]
14. On October 19, 2023, the Subchapter V Trustee filed his, "Statement Regarding Plan Confirmation,"[16] and "Amended Statement Regarding Plan Confirmation."[17]
15. On October 20, 2023, the Court held a hearing ("*Hearing*") on UST's Objections and confirmation of Debtor's Fifth Amended Plan.[18]

II. Jurisdiction, Venue, and Constitutional Authority

This Court holds jurisdiction pursuant to 28 U.S.C. § 1334, which provides "the district courts shall have original and exclusive jurisdiction of all cases under title 11," and exercises its jurisdiction in accordance with Southern District of Texas General Order 2012–6.[19] Section 157 allows a district court to "refer" all bankruptcy and related cases to the bankruptcy court, wherein the latter court will appropriately preside over the matter.[20] This Court determines that pursuant to 28 U.S.C. § 157(b)(2)(A) and (L), this proceeding contains core matters, as it primarily involves proceedings concerning the administration of Debtor's estate and plan confirmation.[21] This proceeding is also core under the general "catch-all" language because a confirmation hearing can only arise in the context of a bankruptcy case.[22]

[1] This Court may only hear a case in which venue is proper.[23] 28 U.S.C. § 1408 provides that "a case under title 11 may be commenced in the district court for the district— in which the domicile, residence, [or] principal place of business . . . have been located for one hundred and eighty days immediately preceding such commencement."[24] Debtor's principal place of business was in Pasadena, Texas within Harris County,[25] 180 days immediately preceding the Petition Date, and therefore, venue of this proceeding is proper.[26]

[2–4] While bankruptcy judges can issue final orders and judgments for core proceedings, absent consent, they can only issue reports and recommendations on non-core matters.[27] Here, the confirmation

14. ECF No. 115.

15. ECF No. 124.

16. ECF No. 125.

17. ECF No. 126.

18. October 20, 2023 Min. Entry.

19. *In re: Order of Reference to Bankruptcy Judges*, Gen. Order 2012–6 (S.D. Tex. May 24, 2012).

20. 28 U.S.C. § 157(a); *see also In re: Order of Reference to Bankruptcy Judges*, Gen. Order 2012-6 (S.D. Tex. May 24, 2012).

21. *See* 11 U.S.C. § 157(b)(2)(A), (L).

22. *See Southmark Corp. v. Coopers & Lybrand (In re Southmark Corp.)*, 163 F.3d 925, 930 (5th Cir. 1999) ("[A] proceeding is core under § 157 if it invokes a substantive right provided by title 11 or if it is a proceeding that, by its nature, could arise only in the context of a bankruptcy case.") (quoting *Wood v. Wood (In re Wood)*, 825 F.2d 90, 97 (5th Cir. 1987)).

23. 28 U.S.C. § 1408.

24. *Id.*

25. ECF No. 1.

26. 28 U.S.C. § 1408.

27. *See* 28 U.S.C. §§ 157(b)(1), (c)(1); *see also Stern v. Marshall*, 564 U.S. 462, 480, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011); *Wellness*

of a plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (L). As such, this Court concludes that the narrow limitation imposed by *Stern* does not prohibit this Court from entering a final order here.[28] Furthermore, this Court has constitutional authority to enter a final order because the parties have consented, impliedly if not explicitly, to adjudication of this matter by this Court.[29] The parties have engaged in motion practice in front of this Court and have never objected to this Court's constitutional authority to enter a final order or judgment in this case. These circumstances constitute implied consent. Thus, this Court wields the constitutional authority to enter a final order here.

III. Analysis

Pending before the Court are two matters: (A) UST's Objection to Debtor's Fifth Amended Plan[30] and (B) confirmation of Debtor's Fifth Amended Plan.[31] Debtor seeks confirmation of its proposed Subchapter V plan pursuant to 11 U.S.C. § 1191(a).[32] Debtor's proposed subchapter V plan contains three impaired classes.[33] Class 1 is a secured claim of SOS Capital, class 2 is a secured claim of the IRS, and class 3 consists of unsecured creditors.[34] Classes 1 and 3 voted to accept the plan, and class two did not vote.[35] The Court will address each matter in turn.

A. UST's Objections to Debtor's Fifth Amended Plan

The UST raises two objections to consensual confirmation of Debtor's Fifth Amended Plan, to wit: (1) Debtor's attempt to use a notice on the face of the plan to deem non-voting creditors as having accepted the plan violates Federal Rule of Bankruptcy Procedure ("*Bankruptcy Rule*") 3018(c) and (2) Debtor's alternative argument that the non-voting impaired class has implicitly accepted the plan contravenes § 1129(a)(8).[36] The UST also objected, in the alternative, that Debtor's Fifth Amended Plan was not fair and equitable pursuant to § 1191(b) were the plan to be confirmed as a nonconsensual plan.[37] However, this objection was withdrawn at

Int'l Network, Ltd. v. Sharif, 575 U.S. 665, 135 S. Ct. 1932, 1938–40, 191 L.Ed.2d 911 (2015).

28. *See, e.g., Badami v. Sears (In re AFY, Inc.)*, 461 B.R. 541, 547-48 (8th Cir. BAP 2012) (''Unless and until the Supreme Court visits other provisions of Section 157(b)(2), we take the Supreme Court at its word and hold that the balance of the authority granted to bankruptcy judges by Congress in 28 U.S.C. § 157(b)(2) is constitutional.''); *see also Tanguy v. West (In re Davis)*, 538 F. App'x 440, 443 (5th Cir. 2013) (''[W]hile it is true that *Stern* invalidated 28 U.S.C. § 157(b)(2)(C) with respect to 'counterclaims by the estate against persons filing claims against the estate,' Stern expressly provides that its limited holding applies only in that 'one isolated respect' . . . . We decline to extend Stern's limited holding herein.'') (citing *Stern*, 564 U.S. at 475, 503, 131 S.Ct. 2594).

29. *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 684, 135 S.Ct. 1932, 191 L.Ed.2d 911 (2015) (''Sharif contends that to the extent litigants may validly consent to adjudication by a bankruptcy court, such consent must be expressed. We disagree. Nothing in the Constitution requires that consent to adjudication by a bankruptcy court be express. Nor does the relevant statute, 28 U.S.C. § 157, mandate express consent . . . .'').

30. ECF No. 115.

31. ECF No. 110.

32. ECF No. 110; ECF No. 124.

33. ECF No. 110 at 5-6.

34. *Id.*

35. ECF No. 110 at 3.

36. ECF No. 115.

37. ECF No. 115.

the Hearing.[38] The Court will consider each of UST's remaining objections in turn.

1. Whether Debtor can use a notice on the face of the Fifth Amended Plan to deem non-voting creditors as having accepted the plan

UST contends that Debtor's use of a bolded disclaimer on the face of the plan to deem non-voting creditors as having accepted the plan contravenes Bankruptcy Rule 3018(c).[39] Debtor contends that Bankruptcy Rule 3018(c) is inapplicable in Subchapter V because in a Subchapter V case only the debtor may file a plan and the language of Bankruptcy Rule 3018(c) contemplates non-debtor entities also filing plans, thus making it only applicable in traditional Chapter 11.[40]

Bankruptcy Rule 3018(c) provides:

> 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. If more than one plan is transmitted pursuant to Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans transmitted and if acceptances are filed for more than one plan, the creditor or equity security holder may indicate a preference or preferences among the plans so accepted.[41]

[5] First, the Court quickly dispenses with Debtor's argument that Bankruptcy Rule 3018(c) is inapplicable to Subchapter V proceedings. Bankruptcy Rule 3018 is a rule of general applicability and Debtor cites no authority for the proposition that it is inapplicable in Subchapter V.[42] Furthermore, the plain language of the rule merely provides that an acceptance or rejection may be filed for each plan transmitted.[43] Multiple plans may be filed in Subchapter V even though only the Debtor may file a plan.[44] Thus, Debtor's argument is without merit.

[6] Next, the Court agrees with the UST that Bankruptcy Rule 3018(c) precludes the use of plan language to deem non-voting creditors as having accepted the plan.[45]

In *In re Bressler*, this Court concluded when analyzing the interplay between Bankruptcy Rule 3018(c) and § 1126(c) that failure to cast a written vote constitutes neither acceptance nor rejection of the plan, and "nonvotes do not satisfy the language of § 1126(c) and thus, do not count toward the numerosity requirements."[46] Debtor's attempt to treat nonvotes as having accepted the plan directly contravenes this holding.[47]

38. October 20, 2023 – Courtroom Hearing (Closing Argument).

39. ECF No. 115 at 2.

40. ECF No. 124 at 3.

41. FED. R. BANKR. P. 3018(c).

42. *See* ECF No. 124 at 3.

43. FED. R. BANKR. P. 3018(c) ("If more than one plan is transmitted pursuant to Rule 3017. . . .").

44. *See* 11 U.S.C. 1193(a) ("The debtor may modify a plan at any time before confirmation. . . .").

45. ECF No. 115 at 2.

46. *Bressler,* 2021 WL 126184, at *3, 2021 Bankr. LEXIS 64 at *7; *In re Dernick,* 624 B.R. 799 (Bankr. S.D. Tex. 2020).

47. *Bressler,* 2021 WL 126184, at *3, 2021 Bankr. LEXIS 64 at *7; *see also* 11 U.S.C. § 1126(c).

Accordingly, the UST's objection that Debtor's attempt to use a notice on the face of the plan to deem non-voting creditors as having accepted the plan violates Bankruptcy Rule 3018(c) is sustained. The following language found on the first page of Debtor's Fifth Amended Plan, "If you do not vote, you will be deemed to have accepted the Plan,"[48] is struck.

The Court will next consider UST's objection that Debtor's alternative argument, that the non-voting impaired class has implicitly accepted the plan, contravenes § 1129(a)(8).

2. Whether treating a non-voting impaired class as having implicitly accepted the plan contravenes § 1129(a)(8)

[7] Next, UST asserts that Debtor's alternative argument, that the non-voting impaired class has implicitly accepted the plan, contravenes § 1129(a)(8).[49] Specifically, UST argues that the plain language of § 1129(a)(8) requires that every impaired class affirmatively vote to accept the plan.[50] Debtor argues that a non-voting class should be deemed an implicit acceptance by that class.[51] Debtor further contends that UST's argument is untenable because it entirely precludes the possibility of consensual confirmation pursuant to § 1191(a) in situations where an impaired creditor class fails to cast a ballot.[52] Debtor further notes that UST's argument is even more inequitable in a situation such as here where Debtor was informed by the IRS that it has an internal policy of not voting on Chapter 11 plans.[53]

Subchapter V plans may only be confirmed pursuant to § 1191(a) if all the requirements of § 1129(a), other than paragraph (15) are met.[54] Section 1129(a)(8) provides, *inter alia*, that a plan can only be confirmed if "[w]ith respect to each class of claims or interests . . . such class has accepted the plan."[55] Section 1126 governs acceptance of a plan by a creditor, providing that the holder of a claim "may accept or reject a plan"[56] and Rule 3018(c) requires such acceptances or rejections to be in writing.[57] Section 1126 also enumerates who may vote on a plan and the numerosity and debt thresholds that must be met for a class to accept a plan for purposes of § 1129(a)(8).[58]

[8] As discussed *supra*, this Court held in *In re Bressler* that failure to cast a written vote constitutes neither acceptance nor rejection of the plan, and "nonvotes do not satisfy the language of § 1126(c) and thus, do not count toward the numerosity requirements."[59] As such, Debtor's attempt to treat a non-voting class as having implicitly accepted the plan similarly also

48. ECF No. 110 at p. 1.

49. ECF No. 115 at 1-2.

50. ECF No. 115 at 1-2.

51. ECF No. 124 at 3.

52. October 20, 2023 – Courtroom Hearing (Closing Argument).

53. October 20, 2023 – Courtroom Hearing (Closing Argument).

54. 11 U.S.C. § 1191(a).

55. 11 U.S.C. § 1129(a)(8).

56. 11 U.S.C. § 1126(a).

57. *In re Bressler*, 2021 WL 126184, at *2–3, 2023 Bankr. LEXIS 64, at *6 (Bankr. S.D. Tex. 2021).

58. *Bressler*, 2021 WL 126184, at *2–3, 2021 Bankr. LEXIS 64 at *6.

59. *Id.* at 2021 WL 126184, 2021 Bankr. LEXIS 64 at *6-7.

contravenes this holding.[60] However, while a nonvote cannot be construed as an acceptance, the Code is also silent on the correct treatment of a nonvoting class and this issue was not directly addressed in this Court's *Bressler* opinion.[61]

[9] The treatment of a non-voting creditor class is an issue of significant disagreement amongst bankruptcy courts, even amongst those in this district.[62] Courts have generally followed one of three approaches when presented with a plan in which there is a non-voting impaired creditor class: (a) a nonvoting class is deemed to have accepted the plan for purposes of § 1129(a)(8);[63] (b) a nonvoting class is deemed to have rejected the plan for purposes § 1129(a)(8);[64] and (c) a nonvoting class is not counted for purposes of § 1129(a)(8).[65] The Court will consider each approach in turn.

a. Whether a nonvoting class should be treated as having accepted the plan

The Tenth Circuit in *In re Ruti-Sweetwater, Inc.* concluded that when no vote is cast in an impaired class that the class should be deemed to have implicitly accepted the plan.[66] Largely looking to congressional history, the court in *Ruti-Sweetwater* noted that the pre-1978 bankruptcy act expressly provided that a failure to vote was deemed a rejection of the plan.[67] This provision was removed when the Code was passed in 1978.[68] Thus, the court in *Ruti-Sweetwater* held that non-voting, non-objecting creditors will be deemed to have implicitly accepted the plan.[69] The court further reasoned that if it were to hold otherwise the debtor would be placed in the position of refuting hypothetical objections and both the debtor and bankruptcy court should not be burdened with hypothetical objections that apathetic or careless creditors do not advance themselves.[70]

In *In re Cypresswood Land Partners*, a Southern District of Texas Bankruptcy Court adopted the Tenth Circuit's reasoning, finding that:

> regarding non-voters as rejecters runs contrary to the Code's fundamental principle, and the language of section 1126(c), that only those actually voting be counted in determining whether a class has met the requirements, in number and amount, for acceptance or rejection of a plan, and subjects those who

60. *Id.*

61. *Id.* at *2–3, 2021 Bankr. LEXIS 64 at *6.

62. *See e.g. In re Cypresswood Land Partners, I*, 409 B.R. 396, 430 (Bankr. S.D. Tex. 2009) (adopting the logic that non-voting creditors had consented to the debtor's plan and that their inaction amounted to a deemed acceptance); *In re Castaneda*, No. 09-50101, 2009 Bankr. LEXIS 3591, 2009 WL 3756569, at *2 (Bankr. S.D. Tex. Nov. 2, 2009) (adopting the logic that non-voting creditors were presumed to reject a debtor's plan).

63. *In re Cypresswood Land Partners, I*, 409 B.R. 396, 430 (Bankr. S.D. Tex. 2009).

64. *In re Castaneda*, No. 09-50101, 2009 Bankr. LEXIS 3591, 2009 WL 3756569, at *2 (Bankr. S.D. Tex. Nov. 2, 2009).

65. *In re Franco's Paving LLC*, 654 B.R. 107, 110 (Bankr. S.D. Tex. 2023).

66. 836 F.2d 1263 (10th Cir. 1988).

67. *Id.* at 1267.

68. *Id.* at 1267; (citing H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 410 (1977)).

69. *Id.*

70. *Heins v. Ruti-Sweetwater (In re Sweetwater)*, 57 B.R. 748, 750 (D. Utah 1985).

care about the case to burdens (or worse) based on the inaction and disinterest of others.[71]

Although some courts have agreed with *Ruti-Sweetwater*, including a court in this district, most agree that a nonvote cannot be construed as an implicit acceptance.[72] As discussed *supra*, and as discussed in greater detail in this Court's *Bressler* opinion, this Court also agrees that a nonvoting creditor class cannot be deemed to have implicitly accepted the plan.[73] Notwithstanding the change in the law when the Code was enacted in 1978 as highlighted by the *Ruti-Sweetwater* court, the interplay between the language of § 1126, Bankruptcy Rule 3018(c), and the applicable congressional history as discussed in *Bressler* clearly prohibits treating a nonvoting class as accepting the plan.[74]

The Court will next consider if a nonvoting class should be treated as having rejected the plan.

b. Whether a nonvoting class should be treated as having rejected the plan

Among the courts that have rejected the holding of *Ruti-Sweetwater* and its progeny, the unanimous conclusion is that a Debtor is then unable to satisfy § 1129(a)(8) and must proceed with a cramdown pursuant to § 1129(b) or § 1191(b) as applicable.[75] The UST agrees with this approach.[76] In reaching this conclusion, courts frequently, without providing critical analysis, assume that a nonvote should be treated as a rejection for purposes of § 1126(c) thus resulting in a rejecting class for purposes of § 1129(a)(8).[77]

[10] This Court disagrees. As discussed *supra*, acceptances *and rejections* must satisfy the formality requirements in Bankruptcy Rule 3018(c) to be counted.[78] Furthermore, as discussed in greater detail *infra*, 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.[79] As such, the Court rejects the

71. 409 B.R. at 430; (quoting *In re Adelphia Comm. Corp.*, 368 B.R. 140, 161-62 (Bankr. S.D.N.Y. 2007)).

72. *See e.g., In re M. Long Arabians*, 103 B.R. 211 (B.A.P. 9th Cir. 1989); *see also In re Vita Corp.*, 358 B.R. 749, 751-52 (Bankr. C.D. Ill. 2007), *aff'd*, 380 B.R. 525, 528 (C.D. Ill. 2008); *In re 7th Street and Beardsley P'ship*, 181 B.R. 426 (Bankr. D. Ariz. 1994); *In re Townco Realty, Inc.*, 18 C.B.C.2d 13, 81 B.R. 707 (Bankr. S.D. Fla. 1987) (section 1126(c) and Bankruptcy Rule 3018 require express acceptance).

73. *In re Bressler*, 2021 WL 126184, at *2–3, 2021 Bankr. LEXIS 64 at *6-7.

74. *See id.*; (citing S. Rep. No. 95-989 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5909).

75. *See e.g. In re M. Long Arabians*, 103 B.R. 211 (B.A.P. 9th Cir. 1989); *In re Higgins Slacks Co.*, 178 B.R. 853, 857 (Bankr. N.D. Ala. 1995); *In re Townco Realty, Inc.*, 18 C.B.C.2d 13, 81 B.R. 707, 708 (Bankr. S.D. Fla. 1987).

76. October 20, 2023 – Courtroom Hearing (Closing Argument).

77. *See e.g., In re Friese*, 103 B.R. 90, 92 (Bankr. S.D.N.Y. 1989); *Bell Road Inv. Co. v. M. Long Arabians (In re M. Long Arabians)*, 103 B.R. 211, 216 (B.A.P. 9th Cir. 1989); *In re Trenton Ridge Investors, LLC*, 461 B.R. 440, 456–58 (Bankr. S.D. Ohio 2011); *In re Vita Corp.*, 380 B.R. 525, 528 (C.D. Ill. 2008); *In re Castaneda*, 2009 WL 3756569, 2009 Bankr. LEXIS 3591 (Bankr. S.D. Tex. Nov. 2, 2009); *In re 7th Street and Beardsley P'ship*, 181 B.R. 426 (Bankr. D. Ariz. 1994); *In re Townco Realty, Inc.*, 18 C.B.C.2d 13, 81 B.R. 707, 708 (Bankr. S.D. Fla. 1987); *see also Castaneda*, 2009 WL 3756569, at *3, 2009 Bankr. LEXIS 3591 at *7 (''an impaired creditor who does not vote is not deemed to have accepted a plan'').

78. FED. R. BANKR. P. 3018(c).

79. *See In re Franco's Paving LLC*, 654 B.R. at 108–09.

argument that a nonvoting class should be deemed to have rejected the plan.

The Court next considers whether a nonvoting class should not be counted for purposes of § 1129(a)(8).

c. Whether a nonvoting class can be ignored for purposes of § 1129(a)(8)

Recently, a Southern District of Texas Bankruptcy Court in *In re Franco's Paving LLC* concluded that a nonvoting class should not be counted for purposes of § 1126 and plan confirmation.[80] Specifically, the court found that a nonvoting class renders the mathematical calculation required by § 1126(c) as impossible to calculate.[81] The court held that the indeterminate result obtained by dividing zero by zero was absurd and could not have been intended by Congress.[82] Analyzing the congressional history, the court concluded that when § 1126 was passed Congress presumed the existence of at least one vote in each class.[83] The UST asserted in closing argument that the computation used in *Franco's Paving* is incorrect and § 1126(c) is determinate when no votes are cast in a class because the second prong of § 1126(c) fails, and therefore a rejection of the class can be inferred.[84]

The Court rejects the equation offered by the UST.[85] The mathematical calculation required by § 1126(c) requires that the number of accepting votes be divided by total votes cast in a class.[86] As discussed, nonvotes are not counted pursuant to Bankruptcy Rule 3018(c).[87] Because nonvotes are not counted, a class of nonvotes results in the mathematical calculation of 0/0, an unsolvable and undefined quotient.[88]

Furthermore, as discussed in *Bressler*, the legislative history of § 1126 provides:

> A class of creditors has accepted a plan if at least two-thirds in amount and more than one-half in number of the allowed claims of the class that are voted are cast in favor of the plan. The two-thirds and one-half requirements are *based on a denominator* that equals the amount or number of claims that have actually been voted for or against the plan, rather than the total number and amount of claims in the class, as under current chapter X.[89]

80. *Id.*

81. *Id.* ("the computation required under § 1126(c) is represented as follows: A/B > 50.00% where A = Number of claims in the class that vote for the plan B = Number of claims in the class that vote and C/D ≥ 66.67% where C = Dollar amount of claims in the class that vote for the plan D = Dollar amount of claims in the class that vote . . . when no creditor votes, both computations become 0/0 = E (where E is simply the quotient) and when applying mathematical principles, E can be any number and is therefore indeterminate or undefined. Thus, the calculation cannot be performed . . . attempting to do what the laws of mathematics prohibit is an absurd proposition and could not have been intended when Congress enacted the current version of § 1126.").

82. *Id.*

83. *Id.* at 110.

84. Specifically, UST compared $0 accepting with 1/2 of 0 + 0 and concluded that 0 accepting is not greater than a total of 0.

85. UST's equation assumes that 0/0 becomes 0, however the result of that computation cannot be completed.

86. *See e.g. In re Dernick*, 624 B.R. 799, 814 (Bankr. S.D. Tex. 2020) (calculating a traditional voting class pursuant to § 1126(c)).

87. *In re Bressler*, 2021 WL 126184, at *3, 2021 Bankr. LEXIS 64 at *7.

88. *See id.*; *In re Franco's Paving LLC*, 654 B.R. at 109 n.2.

The equation utilized in *Franco's Paving* is derived from the same legislative history and supports this Court's prior holding in *Bressler*.[90] The Supreme Court has routinely held that the plain meaning of legislation should be conclusive unless literal application of a statute "is so bizarre that Congress could not have intended it."[91] However, the Fifth Circuit has cautioned that courts must distinguish between "a result that is actually 'absurd'" and one that "is simply personally disagreeable."[92]

This Court concludes, similar to the court in *In re Franco's Paving LLC*, that the result of a § 1126(c) computation for a nonvoting class is absurd, unsolvable, and was not contemplated by Congress.[93] Furthermore, as discussed *supra*, treating a nonvoting class as having implicitly accepted or rejected the plan is prohibited by the Code and applicable rules.[94] Thus, since the application of the mathematical calculation in § 1126(c) is absurd as applied to a nonvoting class, and because the Code is silent on the correct treatment of a nonvoting class, this Court is left with only one option: when an impaired class of creditors fails to cast a ballot, that class will not be counted for purposes of whether § 1129(a)(8) is satisfied.[95]

Furthermore, were this Court to alternatively hold, as the UST suggests, that nonvoting classes of impaired creditors should be treated as having rejected the plan, not only would it contravene Bankruptcy Rule 3018(c) and § 1126(c) as discussed *supra*, it would run contrary to the policy goals behind Subchapter V.[96] Debtors and creditors alike would be forced to shoulder the additional administrative burdens and expenses associated with cramdown merely because a creditor class was negligent or apathetic about asserting their rights.[97] However, Congress clearly

89. 2021 WL 126184, at *3, 2021 Bankr. LEXIS 64 at *7; (citing S. Rep. No. 95-989 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5909 (emphasis added)).

90. 654 B.R. at 109 n.1.

91. *Demarest v. Manspeaker*, 498 U.S. 184, 190, 111 S.Ct. 599, 112 L.Ed.2d 608 (1991) (quoting *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571, 102 S.Ct. 3245, 73 L.Ed.2d 973 (1982)) (citations omitted); *see also United States v. Rodriguez-Rios*, 14 F.3d 1040, 1044 (5th Cir. 1994) (en banc) (''We are authorized to deviate from the literal language of a statute only if the plain language would lead to absurd results, or if such an interpretation would defeat the intent of Congress.'').

92. *Johnson v. Sawyer*, 120 F.3d 1307, 1319 (5th Cir. 1997).

93. 654 B.R. at 110.

94. 11 U.S.C. § 1126(a); Fed. R. Bankr. P. 3018(c).

95. While the Code does allow for a nonconsensual plan to be confirmed if creditor classes reject the plan, the Court cannot presume a rejection any more than it can presume an acceptance by a nonvoting class. Both outcomes directly contradict Bankruptcy Rule 3018(c) and § 1126(a) whereas alternatively, not counting a nonvoting creditor class does not contravene Bankruptcy Rule 3018(c) and is supported by the legislative history of § 1126(c).

96. *In re Free Speech Sys., LLC*, 649 B.R. 729, 734 (Bankr. S.D. Tex. 2023) (''Subchapter V is a streamlined chapter 11 process and a debtor has to work from the outset to try to achieve a consensual plan.'').

97. *In re Adelphia Communs. Corp.*, 368 B.R. 140, 261 (Bankr. S.D.N.Y. 2007) (''Regarding non-voters as rejecters runs contrary to the Code's fundamental principle, and the language of section 1126(c), that only those actually voting be counted in determining whether a class has met the requirements, in number and amount, for acceptance or rejection of a plan and subjects those who care about the case to burdens (or worse) based on the inaction and disinterest of others. A holding to the contrary would mean that a failure to vote isn't relevant in a case where anyone else in

articulated a preference for consensual plans confirmed under § 1191(a).[98] Allowing creditors' silence to force nonconsensual plans, especially as is the case here where a non-voting class is willfully withholding its vote, defeats the overarching policy preferences of Subchapter V.[99]

Accordingly, UST's objection to Debtor's alternative argument that a non-voting impaired class has implicitly accepted the plan contravenes § 1129(a)(8) is sustained, but UST's overarching objection that Debtor's Fifth Amended Plan cannot be confirmed pursuant to § 1191(a) is overruled.

B. Confirmation of Debtor's Fifth Amended Plan

[11] On October 5, 2023, Debtor filed its Fifth Amended Plan and now seeks confirmation from this Court.[100] Under § 1191(a), a debtor must satisfy all of the requirements of § 1129(a) other than paragraph (15) of that section.[101] In accordance with the discussion *supra*, Class 2 did not vote, and as such will not be counted for purposes of § 1129(a)(8).[102] All other impaired classes voted to accept the plan.[103] Therefore § 1129(a)(8) is satisfied.[104] Furthermore, the Court finds that all other requirements pursuant to § 1191(a) have been satisfied.

Accordingly, the Court confirms the Debtor's plan pursuant to § 1191(a).

IV. Conclusion

An order consistent with this Memorandum Opinion will be entered on the docket simultaneously herewith.

that class votes, but is enough to force cramdown if the lack of interest in that class is so extreme that nobody at all chooses to vote, one way or the other . . . a principle upon which the bankruptcy community often relies, as creditor democracy could otherwise be frozen as a consequence of the disinterest of others.'').

98. *See* 11 U.S.C. § 1183(b)(7) (''facilitate the development of a consensual plan''); *In re Ozcelebi*, 639 B.R. 365, 381 (Bankr. S.D. Tex. 2022) (this duty is ''unique'' to a subchapter V trustee).

99. *See* 8 Collier on Bankruptcy P 1180.01 (''Small business enterprises historically have had difficulty reorganizing in chapter 11 for a number of reasons, including chapter 11's exorbitant administrative costs, hard to achieve confirmation requirements, and excessive creditor influence over the confirmation process. The Small Business Reorganization Act of 2019 enacted subchapter V of chapter 11 to govern reorganizations of eligible smaller businesses that elect its application to eliminate those obstacles . . . . [s]everal subchapter V provisions encourage consensual plans of reorganization.''); *but see* § 1129(a)(10) (The Code contemplates at least one impaired vote must accept under § 1129(a)(10). If no class voted, § 1129(a)(10) could not be satisfied).

100. ECF No. 110.

101. 11 U.S.C. § 1191(a).

102. *See e.g., In re Franco's Paving LLC*, 654 B.R. at 110.

103. ECF No. 120.

104. *In re Franco's Paving LLC*, 654 B.R. at 110.

left the bankruptcy estate by exercise of creditor remedies after stay relief.

[34] Finally, with respect to automatic removal from property of the estate by operation of a statutory provision, § 365(p)(1) provides that "[i]f a lease of personal property is rejected or not timely assumed by the trustee ... the leased property is no longer property of the estate[.]" Section 365(p)(1) does not apply in this instance because it only covers leases of personal property, whereas the REC, if governed by § 365, (1) is an executory contract not a lease and (2) regards residential real property not personal property. There is no provision in the Bankruptcy Code that rejection or deemed rejection of an executory contract regarding residential real property removes the subject property from the estate. Therefore, the McCunes' interest in the Property has not left the bankruptcy estate by automatic removal.

The Court is unaware of any other mechanism by which the McCunes' interest in the Property could have left the bankruptcy estate, and thus concludes that such interest is still part of the bankruptcy estate.

4. *Conclusion* [43]

For the reasons set forth above, the Court concludes that, regardless of whether the REC is governed by § 365, the REC is still in effect and the estate's interest in the McCunes' interest in the Property is property of the estate. The Court will enter a separate order reflecting this ruling.

IN RE: M.V.J. AUTO WORLD, INC., Debtor.

Case No.: 23-16612-LMI

United States Bankruptcy Court, S.D. Florida, Miami Division.

Signed June 21, 2024

Filed June 24, 2024

Background: Debtor sought confirmation of Subchapter V Chapter 11 plan. No party objected to the plan, however, United States Trustee (UST), trustee, and secured creditor argued at confirmation hearing that the plan could not be confirmed because less than all impaired classes affirmatively accepted the plan.

Holdings: The Bankruptcy Court, Laurel M. Isicoff, J., held that:

(1) proposed Subchapter V Chapter 11 plan could not be consensually confirmed, since impaired class of creditors did not accept the plan, but

(2) plan could be confirmed as nonconsensual plan because the only other impaired class did vote to accept the plan.

Plan confirmed as nonconsensual plan

1. Statutes ⚿1110

When statute is unambiguous, court must interpret statute according to its terms.

2. Statutes ⚿1079

Court begins its construction of a statutory provision where courts should always begin the process of legislative interpretation, and where they often should end it as well, which is with the words of the statutory provision.

3. Statutes ⚿1111, 1242

When the import of words Congress has used in a statute is clear, court need

43. All additional arguments have been considered and rejected.

not resort to legislative history, and certainly should not do so to undermine the plain meaning of the statutory language.

4. Statutes ⚿1108

When the words of a statute are unambiguous, then judicial inquiry is complete.

5. Bankruptcy ⚿3541.1

Debtor's proposed Subchapter V Chapter 11 plan could not be consensually confirmed, since impaired class of creditors did not accept the plan. 11 U.S.C.A. §§ 1129(a)(8), 1191(a).

6. Bankruptcy ⚿3563.1

Even though impaired class of creditors did not affirmatively accept debtor's proposed Subchapter V Chapter 11 plan, plan could be confirmed as nonconsensual plan because the only other impaired class did vote to accept the plan. 11 U.S.C.A. §§ 1129(a)(8), 1191(a, b).

Timothy S. Kingcade, Esq., Christian Somodevilla, Miami, FL, Zach B. Shelomith, Ft Lauderdale, FL, for Debtor.

Dan L. Gold, Office of the US Trustee, Miami, FL, for U.S. Trustee.

Subchapter V

MEMORANDUM OPINION ON ORDER CONFIRMING NON-CONSENSUAL SUBCHAPTER V PLAN OF REORGANIZATION UNDER 11 U.S.C. § 1191(b)

Laurel M. Isicoff, Judge

This matter came before the Court on May 1, 2024 at 1:30 p.m. (the "Confirmation Hearing"), to consider confirmation of the *First Amended Plan of Reorganization of M.V.J. Auto World, Inc.* (ECF #79) (the "Plan") filed on February 20, 2024 by the Debtor, M.V.J. Auto World, Inc. (the "Debtor"). The issue before the Court is 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. For the reasons stated on the record and outlined below, the Court holds that when an impaired class of creditors fails to accept a subchapter V plan, that plan cannot be consensually confirmed under section 1191(a).[1]

FACTUAL BACKGROUND

On August 21, 2023, the Debtor filed a voluntary petition for relief under subchapter V of chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") (ECF #1). On February 20, 2024, the Debtor filed the Plan, which was set for Confirmation Hearing on May 1, 2024.

The Debtor's Plan contains two impaired classes: class 2 is a secured claim of Ocean Bank and class 3 is a secured claim of the U.S. Small Business Administration ("SBA"). Class 2 voted to accept the plan, but class 3 did not vote.

The Debtor seeks confirmation of the Plan pursuant to section 1191(a). No party filed an objection to the Plan. However, at the Confirmation Hearing, the United States Trustee, Subchapter V Trustee, and secured creditor Ocean Bank all argued that the Plan cannot be confirmed under section 1191(a) because less than all impaired classes affirmatively accepted the Plan under 11 U.S.C. § 1129(a)(8), and,

1. This Memorandum Opinion reduces the Court's oral ruling at the Confirmation Hearing to writing.

therefore under a strict reading of the relevant Bankruptcy Code sections, the Plan can only be confirmed under 11 U.S.C. § 1191(b).

ANALYSIS

Confirmation of a plan under subchapter V of chapter 11 is governed by 11 U.S.C. § 1191. Section 1191(a) provides:

> [t]he court **shall** confirm a plan under this subchapter **only if all** of the requirements of section 1129(a), other than paragraph (15) of that section, of this title are met.

11 U.S.C. § 1191(a) (emphasis added). Confirmation of a plan under this section is referred to as a "consensual" plan. However, a debtor may also obtain a "non-consensual" cramdown of a plan pursuant to section 1191(b). Section 1191(b) provides:

> if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1191(b).

Section 1129(a)(8) provides: "[w]ith respect to **each class** of claims or interests—(A) such class has **accepted** the plan; **or** (B) such class is **not impaired** under the plan." 11 U.S.C. § 1129(a)(8) (emphasis added). Because each class of impaired claims did not accept the Debtor's Plan, section 1129(a)(8) was not met.

The Debtor argues that, in a subchapter V case, when an impaired class of creditors fails to cast a ballot at all, that class should not be counted at all for purposes of section 1129(a)(8), citing two cases from the Southern District of Texas - *In re Franco's Paving LLC*, 654 B.R. 107 (Bankr. S.D. Tex. 2023) and *In re Hot'z Power Wash, Inc.*, 655 B.R. 107 (Bankr. S.D. Tex. 2023). The Debtor argues that because the non-voting class 3 (SBA) doesn't count, and because the only other impaired class (class 2) did vote to accept the Plan, section 1129(a)(8) is satisfied and the Plan can be consensually confirmed under section 1191(a).

Both courts in the *Franco's Paving* case and the *Hot'z Power Wash* case held that a non-voting class can be ignored for purposes of whether section 1129(a)(8) is satisfied. To support these conclusions, both courts looked to the policy goals and Congressional intent behind subchapter V, which each court concludes was to create a streamlined chapter 11 process for small business debtors. Both courts reasoned that by creating subchapter V, it was Congress' clear articulation of a preference for consensual plans confirmed under section 1191(a).

In order to get to Congressional intent, each court held that when the Bankruptcy Code was enacted, and the voting requirements for confirmation modified, Congress clearly never contemplated that there would be a class of impaired creditors where no creditor voted. Thus, according to these courts, there is essentially a void in the statute. The *Franco's Paving* court created a mathematical equation to demonstrate that to have a non-voting impaired class creates a mathematical absurdity when attempting to apply the dictates of 11 U.S.C. § 1126(c). Section 1126(c) states "[a] class of claims has accepted a plan if such plan has been accepted by creditors . . . that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by credi-

tors ... that have accepted or rejected such plan." Noting, and rejecting the analysis of other courts that deem a non-vote as either a deemed acceptance or rejection of a plan [2], the *Franco's Paving* court stated that neither Fed. R. Bankr. P. 3018 nor section 1129(a)(8) can be read to allow such interpretation, and so the only remedy is to disregard the existence of the class for confirmation purposes. *Franco's Paving,* 654 B.R. at 109-10.

Adopting and expanding on the *Franco's Paving* reasoning, the *Hot'z Power Wash* court concluded:

> the application of the mathematical calculation in § 1126(c) is absurd as applied to nonvoting class, and because the Code is silent on the correct treatment of a nonvoting class, this Court is left with only one option: when an impaired class of creditor fails to cast a ballot, that class will not be counted for purposes of whether § 1129(a)(8) is satisfied.

655 B.R. at 118.

[1–4] The Court disagrees with the reasoning of the courts in *Hot'z Power Wash* and *Franco's Paving* as the Bankruptcy Code on this point is neither silent nor absurd, but, rather, unambiguous and consistent with the purposes of the Bankruptcy Code. When a statute is unambiguous the court must the interpret statute "according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.,* 530 U.S. 1, 6, 120 S.Ct. 1942, 147 L.Ed.2d 1 (2000). "We begin our construction of a statutory provision where courts should always begin the process of legislative interpretation, and where they often should end it as well, which is with the words of the statutory provision." *See CBS Inc. v. PrimeTime 24 Joint Venture*, 245 F.3d 1217, 1222 (11th Cir. 2001). "When the import of words Congress has used is clear ... we need not resort to legislative history, and we certainly should not do so to undermine the plain meaning of the statutory language." *Harris v. Garner,* 216 F.3d 970, 976 (11th Cir. 2000) (en banc). So, "[w]hen the words of a statute are unambiguous, then, this first canon [of statutory construction] is also the last: judicial inquiry is complete." *Id.* at 973. Moreover, "[t]he Supreme Court and this Court have warned on countless occasions against judges 'improving' plain statutory language in order to better carry out what they perceive to be the legislative purposes." *Bracewell v. Kelley (In re Bracewell),* 454 F.3d 1234, 1240 (11th Cir. 2006).

The *Franco's Paving* and *Hot'z Power Wash* courts reasoned that, when enacting section 1126, Congress did not contemplate that a class of creditors might not vote for a plan; that is incorrect. First, section 1126(a) states that the holder of a claim *may* accept or reject a plan, not *shall* accept or reject a plan. Second, section 1126(c) itself recognizes that some creditors may not vote on a plan; that is why, in determining acceptance, the mathematical formula that the *Franco's Paving* court takes such pains to construct, does not include creditors who have not voted.

That reasoning is strained at best. The analysis in this case is quite simple. In order to be consensually confirmed under section 1191(a), the Plan must satisfy section 1129(a)(8). Section 1129(a)(8) requires that each impaired class accept the plan. Section 1126(c) provides that acceptance is calculated based on how many holders of allowed claims in the class have voted to accept the plan, not, as was required pre-Bankruptcy Code, based on the number of

2. *Compare In re Ruti-Sweetwater, Inc.,* 836 F.2d 1263 (10th Cir. 1988) (no vote is deemed acceptance), *with In re Townco Realty, Inc.,* 81 B.R. 707 (Bankr. S.D. Fla. 1987) (failure to vote is not acceptance).

allowed claims.[3] It is not absurd that no creditors in a class voting on a plan should be treated any differently than a situation where there is not a sufficient number of creditors voting in favor of a plan to satisfy section 1129(a)(8). Moreover, section 1129(a)(8) does not compel acceptance or rejection; section 1129(a)(8) looks to whether a class has accepted a plan, not whether a class has rejected a plan or stood silent.

[5] In this case, section 1129(a)(8) is not satisfied because class 3, an impaired class, did not accept the Plan. Therefore the Plan cannot be consensually confirmed under section 1191(a).

[6] Notwithstanding, because the Plan satisfies all of the other applicable provisions of section 1129(a), the Plan is confirmed as a non-consensual plan under section 1191(b).[4]

ORDERED in the Southern District of Florida on June 21, 2024.

3. "[W]hereas the former Bankruptcy Act (*see* H.R.Rep. No. 95–595, 95th Cong. 1st Sess. 410 (1977)) provided that a failure to vote was considered a rejection of the plan, the present Bankruptcy Act does not indicate whether a failure to vote, such as here, is deemed to be an acceptance or rejection of the plan." *Ruti-Sweetwater,* 836 F.2d at 1267.

4. *See Order Confirming Non-Consensual Subchapter V Plan of Reorganization Under 11 U.S.C. § 1191(b)* (ECF #121).

2022 WL 1216270
United States Bankruptcy Court, D. Puerto Rico.

IN RE: GUI-MER-FE, INC. Debtor.

CASE NO. 21-01659 (ESL)
|
Signed 04/25/2022

Attorneys and Law Firms

Madeline Soto Pacheco, Lube & Soto Law Offices, PSC, Ponce, Puerto Rico, for Debtor.

Diana Torres Cancel, CPA Diana Torres Cancel Office, Trujillo Alto, PR, Trustee, Pro Se.

OPINION AND ORDER

Enrique S. Lamoutte, United States Bankruptcy Judge

***1** This case came before the court upon the Debtor's *Report of Payments under the Plan and Request for Final Decree Pursuant to F.R.B.P 3022* by which the Debtor requested that a final decree be entered given "that the Plan is effective and that the estate has been fully administered", thus administratively closing the case. (Docket No. 65). The court entered an Order stating that the Debtor's request for an administrative closing of the case may contradict the dispositions in the confirmation minutes. The court ordered the Debtor, the Subchapter V trustee, the U.S. Trustee, and any party in interest who so wishes, to further clarify within twenty-one days why a final decree may be entered at this juncture. (Docket No. 74).

The Debtor filed a *Motion in Compliance of Order and in Request of Administrative Closing of the Case* withdrawing its request for entry of final decree and clarifying that its request is for the "administrative closing of the case" as it is customarily done in chapter 11 cases and, thus, will result to the benefit of the estate because it would save the Debtor from having to incur additional expenses for post-confirmation professional services. Debtor's position is that the administrative closing of the case does not contradict the dispositions of the confirmation minutes. (Docket No. 76).

The United States Trustee for Region 21 (hereinafter referred to as "U.S. Trustee") filed a *Motion in Compliance with Court's Order at Docket No. 74* opposing the entry of an order closing the case at this time because there is no distinction between an order entering a final decree and an order directing the "administrative closing of the case." The U.S. Trustee argues that the entry of an order closing the case is premature, given that the subchapter V trustee has not been discharged from her duties. Moreover, pursuant to the Court's Confirmation Order, the trustee will not be discharged until after the Debtor completes all plan payments, and thus entry of an order closing the case before said time is proscribed by section 350(a). (Docket No. 77). For the reasons stated herein, the Court denies the Debtor's *Motion in Compliance of Order and in Request of Administrative Closing of the Case.*

Jurisdiction

The Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(b) and 157(a). This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A). Venue of this proceeding is proper under 28 U.S.C. §§ 1408 and 1409.

Facts and Procedural Background

The Debtor filed a bankruptcy petition under Subchapter V of Chapter 11 of the Bankruptcy Code on May 27, 2021 (Docket No. 1). On May 28, 2021, Diana Torres Cancel was appointed as subchapter V trustee (Docket No. 6). The 341 creditors' meeting was scheduled and held on July 2, 2021 (Docket Nos. 6 & 35). On July 13, 2021, a status conference was held in conformity with 11 U.S.C. § 1188(a). (Docket No. 36). On August 25, 2021, the Debtor filed the Plan of Reorganization (Docket No. 44). On September 25, 2021, the Debtor filed its *Statement Pursuant to 11 U.S.C. § 1129(a) Requirements* as modified by 11 U.S.C. §§ 1181 and 1191 which shows that the Plan of Reorganization dated August 24, 2021, complies with the plan confirmation requirements of the above referenced sections and thus, requests the Court enter an Order confirming the plan. (Docket No. 54). On September 28, 2021, the confirmation hearing was held in which the chapter 11 subchapter V plan dated August 24, 2021, was confirmed pursuant to 11 U.S.C. § 1191(b). (Docket No. 55). An order confirming the subchapter V plan was entered on the same date (Docket No. 56).

***2** On November 04, 2021, The Debtor filed its *Report of Payments under the Plan and Request for Final Decree*

Pursuant to F.R.B.P. 3022 (Docket No. 65). On December 12, 2021, the Court's Order stated in pertinent part as follows:

> "The minutes of the confirmation hearing held on September 28, 2021 (dkt. #55) state the following:
>
> 'The Debtor and the Subchapter V Trustee shall move the court within 30 days after the last payment date informing the completion of all payments under the confirmed plan and that an individual discharge (Official Form 3180 VR2) or Corporation Discharge (Official Form 3180VR3), may be entered pursuant to 11 U.S.C. § 1192.
>
> When a plan is confirmed on a nonconsensual basis pursuant to § 1191(b), the Subchapter V trustee will collect the plan payments and distribute them to creditors, unless otherwise provided for in the plan or the confirmation order. 11 U.S.C. § 1194(b). The Subchapter V trustee will remain in place for the life of the plan. Upon completion of all the payments under the confirmed plan, the Subchapter V trustee shall submit the final report and account of the administration of the estate. 11 U.S.C. § 1183(b)(1) and § 704(a)(9). The debtor shall move the court and request the entry of a final decree closing the case pursuant to § 350(a) and Fed. R. Bankr. P. 3022 within fourteen (14) days after the Subchapter V trustee files the final report.'
>
> The debtor specifically stated in the request for final decree that it 'is aware of the need to reopen the case once all payments under the confirmed plan are completed, in order to file the final report of payments and request the entry of discharge and final closing of the case.' Thus, it appears that the debtor is requesting an interim administrative closing of the case. Such a request may contradict the dispositions in the confirmation minutes.
>
> In view of the foregoing, the court orders the debtor, the Subchapter V trustee, the U.S. Trustee, and any party in interest who so wishes, to further clarify within 21 days why a final decree may be entered at this juncture." (Docket No. 74).

Consequently, on January 7, 2022, the Debtor filed a *Motion in Compliance of Order and in Request of Administrative Closing of the Case* (Docket No. 76). On January 12, 2022, the U.S. Trustee filed a *Motion in Compliance with Court's Order at Docket No. 74*. (Docket No. 77)

Position of the Parties

Debtor

The Debtor withdrew its request for entry of a final decree and clarified that its request is for the "administrative closing" of the case as is customarily done in chapter 11 cases. The Debtor argues that the costs of administration of the case will be reduced by minimizing the need for post confirmation services to be rendered by the professionals of the case, including the Trustee, debtor's attorney and the accountant, reducing the amount of fees to be paid for those services, thus increasing the availability of funds to assure payments to creditors under the terms of the confirmed plan. Article X of the confirmed plan of reorganization provides that the Debtor will make direct payments to its creditors pursuant to 11 U.S.C. § 1194(b). Direct payments to creditors by Debtor will allow for a more expeditious and economical form of administration of the case than making payments through the subchapter V Trustee. After all the payments are completed throughout the life of the confirmed plan, the Debtor will request the Trustee to file the Final Report. After the Final Report has been filed, then the Debtor will file its request for Final Decree and request for entry of order of corporate discharge pursuant to § 1192 and § 350(a) and for the final closing of the case in compliance with this Court's order included in the minutes of confirmation. Debtor contends that the administrative closing does not contradict the dispositions of the confirmation minutes, therefore resulting in a benefit to the estate.

U.S. Trustee

***3** The U.S. Trustee opposes the "administrative closing" of the case based upon the following arguments: (i) it is not aware of any distinction between an order entering a final decree, and an order directing the "administrative closing of the case." Usually after a chapter 11 case is confirmed, the Court signals the administrative closing of the case through the approval of the final decree pursuant to 11 U.S.C. § 350(a) and Fed. R. Bankr. P. 3022 or the Court may enter an order dismissing or converting the case; (ii) section 350(a) provides that, "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." 11 U.S.C. § 350(a). In the instant case, the entry of an order closing the case is premature, as the subchapter V trustee has not been discharged under § 1191(b); (iii) Debtor's plan was confirmed under § 1191(b), thus the service of the subchapter V trustee was not terminated upon the substantial

consummation of the Plan, as provided by § 1183(c)(1). The subchapter V trustee continues in place, not just to make payments to creditors under the Plan, but also to appear at any hearing requesting the modification of the plan after confirmation in conformity with 11 U.S.C. § 1183(b)(3)(C). The Trustee has the duty of monitoring the plan payments made by the Debtor if, as in this case, the Plan provides for Debtor to make such payments under 11 U.S.C. § 1183(b)(4). Only after the subchapter V trustee files the final report and accounting may the Debtor be entitled to request the entry of a final decree. Thus, under the Court's Confirmation Order, the trustee will not be discharged until after the Debtor completes all plan payments. Therefore, entry of an order closing the case before said time is proscribed by 11 U.S.C. § 350(a).

The issue before the Court is whether a Debtor whose plan was confirmed under 11 U.S.C. § 1191(b) may request the "administrative closing" of the case without having a final decree entered prior to the closing of the case.

Applicable Law & Analysis

Section 350 provides, "(a) [a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case. (b) a case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350. The court notes that a fully administered estate under section 350(a) is different from substantial consummation pursuant to 11 U.S.C. § 1101(2).

Fed. R. Bankr. P. 3022 implements section 350 and provides that, "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case." P.R. LBR 3022-1 provides in pertinent part:

> "(a) Filing of Application for Final Decree. A plan proponent in a chapter 11 case has the continuing post-confirmation duty of preparing and prosecuting the application for a final decree closing the case.
>
> (b) Deadline for Filing Final Report and Application for Entry of Final Decree. Unless otherwise provided in the confirmation order, the proponent of the plan shall file a Final Report and Motion for Entry of Final Decree not later than 90 days after the order confirming the plan becomes final. If the application is not filed within the afore-specified time period, the plan proponent must comply with LBR 2015-2(b)." P.R. LBR 3022-1(a), (b).

This Court in In re Swiss Chalet, Inc., 485 B.R. 47 (Bankr. D.P.R. 2012) discussed the factors for the entry of a final decree and the legal basis pertaining to the same and held that:

> "Section 350(a) of the Bankruptcy Code directs the court to close a case "[a]fter an estate is fully administered, and the Court has discharged the trustee." Likewise, Fed. R. Bankr. P. 3022 instructs the court to issue a final decree closing a case on its own motion or on motion of a party in interest once the case has been fully administered. The phrase "fully administered" is not defined in the Bankruptcy Code or Rules. Nevertheless, the 1991 Advisory Committee Notes to Fed. R. Bankr. P. 3022 provide various factors to consider if an estate has been "fully administered":
>
> Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved. *Id.* (emphasis added).

***4** Also see Alan N. Resnick & Henry J. Sommer, 3 Collier on Bankruptcy ¶ 350.02 (16th ed. 2012) (citing the factors listed in the 1991 Advisory Committee Notes). These factors are not exhaustive, nor must a party demonstrate all of them for the court to consider that a case to be fully administered. *See* In re Union Home & Industrial, Inc., 375 B.R. 912, 917 (10th Cir. BAP 2007).

In Shotkoski v. Fokkena (In re Shotkoski), 420 B.R. 479, 483 (8th Cir. BAP 2009), the Bankruptcy Appellate Panel for the Eighth Circuit reasoned that:

> we believe that the decision as to whether an estate is "fully administered" is one that falls within the discretion of the bankruptcy judge. To be clear, by affirming the bankruptcy court in this case, we are not holding that every individual Chapter 11 case must remain open until such time as all long-term plan payments have been completed and a discharge is entered. In fact, since the Bankruptcy

> Code expressly contemplates the reopening of cases and the exercise of continuing jurisdiction by the bankruptcy court (see 11 U.S.C. § 350(b)), we do not disagree with those courts choosing, for purposes of convenience and efficiency, to close individual Chapter 11 cases prior to completion of payments and entry of discharge. Again, we believe it is a case-by-case analysis best left to the discretion of the bankruptcy judge. *Id.* at 483 (emphasis added).
>
> Also see In re Mendez, 464 B.R. 63, 65 (Bankr.D.Mass.2011), quoting and adopting that reasoning from In re Shotkoski, 420 B.R. at 483; Nesselrode v. Provident Fin., Inc. (In re Provident Fin., Inc.), 2010 Bankr. LEXIS 5047 at *26, 2010 WL 6259973 at *9 (9th Cir. BAP 2010) ("bankruptcy courts have flexibility in determining whether an estate is fully administered by considering the factors set forth in [Fed. R. Bankr. P.] 3022, along with any other relevant factors.") After all, "many of the factors relevant to determining if a case has been 'fully administered' may be known only to the bankruptcy court, based on its experience and oversight of the case." In re Union Home & Industrial, Inc., 375 B.R. at 917.
>
> '[A]n estate cannot be fully administered while there are outstanding motions, contested matters, or adversary proceedings pending before the court.' In re Kliegl Brothers Universal Electrical Stage Lighting Company, Inc., 238 B.R. 531, 546 (Bankr.E.D.N.Y.1999)."

In re Swiss Chalet, Inc., 485 B.R. 47, 51-52; In re Perez, 2020 Bankr. LEXIS 1146, at *3-6 (Bankr. D.P.R. 2020).

As to the closing of individual chapter 11 cases, Collier's analysis is the following:

> "[s]ince the amendments to the Bankruptcy Code in 2005, individual chapter 11 debtors have been required to make payments to creditors for as long as five years before receiving a discharge. Some courts have interpreted Bankruptcy Rule 3022 to require an individual chapter 11 debtor case to remain open for the entire five-year period because the case is not fully administered until the time of discharge. Other courts have allowed a final decree to be entered prior to completion of payments, subject to reopening of the case for discharge and any other necessary actions. If the case is closed, no quarterly fee payments must be paid to the United States trustee or bankruptcy administrator. One problem with closing a case before the discharge is entered, however, is that the automatic stay terminates, with no discharge injunction to replace it.
>
> ***5** Rule 3022 provides that the court on its own motion or a party in interest may seek a final decree. Ordinarily that party will be the trustee or the debtor. The United States trustee also may move for a final decree.
>
> A final decree is required in every chapter 11 case. Until entry of a final decree, a case is an active case. If a final decree has been entered, the case may be reopened."

Richard Levin & Henry J. Sommer, 9 Collier on Bankruptcy ¶ 3022.01(16th ed. 2022).

It is important to consider that, "[t]he full administration of the estate by the trustee is also a precondition to the discharge of the trustee and should be accomplished as expeditiously as possible. Typically, the closing of a case is triggered by the filing of the trustee's final report. A chapter 11 case of an individual debtor may be closed before the completion of payments under the plan or the debtor's discharge." Richard Levin & Henry J. Sommer, 3 Collier on Bankruptcy ¶ 350.02(16th ed. 2022).

Chapter 11 debtors have generally requested the entry of a final decree which in turn leads to the closing of the case because they did not want to continue paying the U.S. Trustee's quarterly fees which must be paid in a chapter 11 case until the case is "converted or dismissed," or until the case is closed pursuant to 28 U.S.C. § 1930(a)(6)(A), (B). However, the Small Business Reorganization Act, specifically exempted subchapter V debtors from having to pay these quarterly fees to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6)(A) & (B).

Section 1187(b) provides: "[a] debtor, in addition to the duties provided in this title and as otherwise required by law, shall comply with the requirements of section 308 and paragraphs (2), (3), (4), (5), (6), and (7) of section 1116 of this title.

Section 308 provides:

> "(a) [f]or purposes of this section, the term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

> (b) a debtor in a small business case shall file periodic financial and other reports containing information including—
>
> (1) the debtor's profitability;
>
> (2) reasonable approximations of the debtor's projected cash receipts and disbursements over a reasonable period;
>
> (3) comparisons of actual cash receipts and disbursements with projections in prior reports;
>
> (4) whether the debtor is – (A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and (B) timely filing tax returns and other required government filings and paying taxes and other administrative expenses when due;
>
> (5) if the debtor is not in compliance with the requirements referred to in paragraph 4(A) or filing tax returns and other required government filings and making the payments referred to in paragraph 4(B), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and
>
> (6) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title." 11 U.S.C. § 308.

Fed. R. Bankr. P. 2015(6) implements section 308 by establishing the time for filing the reports required under this section.

***6** "A chapter 11 small business debtor must file and transmit to the United States trustee the reports required under section 308 each calendar month from the date an order for relief is entered until the effective date of the debtor's plan, or conversion or dismissal of the case. Each report must be filed no later than 21 days after the last day of the calendar month following the month covered by the report." Richard Levin & Henry J. Sommer, 9 Collier on Bankruptcy ¶ 2015.10 (16th ed. 2022).

Therefore, the obligation to file monthly operating reports under Fed. R. Bankr. P. 2015(6) terminates on the effective date of the plan, conversion or dismissal of the case. Thus, the debtor's duty to file monthly operating reports ceases on the effective date of the plan.

Section 1183(b)(3)(C) provides that part of the subchapter V Trustee's duties include: "modification of the plan after confirmation." 11 U.S.C. § 1183(b)(3)(C). Moreover section 1183(c) which is titled, "Termination of Trustee Service" provides the following:

> "(1) In general. – If the plan of the debtor is confirmed under section 1191(a) of this title, the service of the trustee in the case shall terminate when the plan has been substantially consummated, except that the United States trustee may reappoint a trustee as needed for performance of duties under subsection (b)(3)(C) of this section and section 1185(a) of this title.
>
> (2). Service of notice of substantial consummation. – Not later than 14 days after the plan of the debtor is substantially consummated, the debtor shall file with the court and serve on the trustee, the United States trustee, and all parties in interest notice of such substantial consummation." 11 U.S.C. § 1183(c).

In In re Garcia, the Court explained the meaning of the term "administrative closing" and the purpose of the same in the context of individual chapter 11 cases in the following manner:

> "[t]he term "administrative closing" is not found anywhere in the Bankruptcy Code or Rules. It has been used in reported bankruptcy court decisions in various contexts without acquiring a clearly defined meaning. *See, e.g.,* In re Danny's Markets, Inc., 239 B.R. 342, 349 (Bankr. E.D. Mich. 1999) (discussing the accrual of quarterly USTP fees, and using the term to denote the court's closing of a case as part of its administrative function, while also referring to it as technical closing), *rev'd*, 266 F. 3d 523 (6th Cir. 2001); In re Coomes, 20 B.R. 290, 291 (Bankr. W.D. Ky. 1982) (dealing with reopening cases to avoid liens and using the term to denote when a case is closed by the court as part of its administrative function); In re Williams, 17 B.R. 204, 205-206 (Bankr. W.D. Ky. 1982) (same). In the context of individual debtor chapter 11 cases, the concept of administrative closing appears to be a legal construct intended to represent something qualitatively less final than statutory closing. The term appears in our court's Official

> Local Form 19, which is a form of plan confirmation order in individual chapter 11 cases. [1] "

***7** In re Garcia, 2018 Bankr. Lexis 2135, *8 (Bankr. D. Mass. 2018).

Also, in In re Garcia, the Court explained that the purpose of the "administrative closing" in individual chapter 11 cases and the waiver of the reopening fee in individual chapter 11 cases for the entry of discharge once the payments had been completed is aligned with the objective to increase the likelihood of successful reorganization by increasing the distribution to creditors which results from the cost savings of the U.S. Trustee quarterly fees. In re Garcia, 2018 Bankr. Lexis 2135, *9-10 [2]. See also; In re Mendez, 464 B.R. 63, 66 (Bankr. D. Mass. 2011) (invoking 11 U.S.C. § 105(a) to close individual chapter 11 case administratively and ordering the automatic stay under 11 U.S.C. § 362(a) to continue and instructing the clerk of courts not to issue notice under Fed. R. Bankr. P. 4006) [3]. However, not all courts agree with In re Garcia's stance as to the administrative closing of individual chapter 11 cases and the judicial discretionary waiver of the reopening of the fee. See In re Krihak, 2022 Bankr. Lexis 660, *5-6 (Bankr. N.D. Ill. 2022) ("Garcia does hold that a bankruptcy court can waive the reopening fee for individual chapter 11 debtors who have completed their plans and want a discharge. 2018 Bankr. LEXIS 2135, [WL] at *2-5. But the decision bases its holding on the Fee Schedule's "grant of discretion and its express mandate to waive reopening fees when matters of discharge are involved" as well as the "difference ... between administrative and statutory closing." 2018 Bankr. LEXIS 2135, [WL] at *5. What Garcia fails to mention is the Fee Schedule's critical declaration that the reopening fee "must" be charged if a case is closed without a discharge. As for the alleged distinction between "administrative" and "statutory" case closings, even Garcia acknowledges that "administrative closing" appears nowhere in the Code or Rules and is no more than an expedient judicial construct. Garcia is unconvincing.").

***8** The U.S. Trustee program's policy changed in the year 2010 for individual chapter 11 cases in which it would not "object to an individual chapter 11 debtor's request to close the case before discharge, subject to reopening for entry of a discharge upon completion of plan payments, if the estate is fully administered and the trustee has been discharged. The USTP's analysis begins with the language of § 350(a) of the Code: 'After an estate is fully administered and the court has discharged the trustee, the court shall close the case.' Since very few chapter 11 cases have trustees, the issue boils down to whether the estate has been fully administered." Walter W. Theus, Jr., Individual Chapter 11 Cases: Case Closing Reconsidered, XXIX ABI Journal 1, 62-63 (Feb. 2010). Moreover, the article also explains that the United States Trustee program's "decision not to object to an individual chapter 11 debtors' request to temporarily close the case after the estate has been fully administered comports with both the Bankruptcy Code and bankruptcy policy. Rights of debtors and other parties in interest are protected, and funds that debtors would otherwise use to pay quarterly fees become available to increase payments to creditors." Id.

The Court finds that the Debtor's argument for requesting the "administrative closing" of the Chapter 11 subchapter V case which is based on reducing the costs of the administration of the case are unfounded. As discussed herein, subchapter V debtors are specifically exempted under 28 U.S.C. § 1930(a)(6)(A) & (B) from having to pay quarterly fees to the U.S. Trustee. In addition, subchapter V debtors' obligation to file monthly operating reports terminated on the effective date of the plan pursuant to Fed. R. Bankr. P. 2015(6). Notwithstanding, plan confirmation under 11 U.S.C. § 1191(b) does not terminate the subchapter V trustee's services pursuant to 11 U.S.C. § 1183(b) and (c)(2). For example, if the confirmed plan needs to be modified in the future under 11 U.S.C. § 1193(c), the services of the debtor's attorney and the subchapter V trustee's will be required and a motion to reopen will have to be filed and the corresponding fees under the Bankruptcy Court Miscellaneous Fee Schedule or if a motion to dismiss or convert the case needs to be filed. Moreover, Article XIV, titled Closing of the Case, of the Debtor's confirmed plan provides:

> "At such time as the case has been substantially consummated, this case shall be closed. In order for the case to be closed, the Debtor shall file an application for final decree showing that the case has been fully administered and that the Plan has been substantially consummated. The Court shall conduct a hearing upon application thereon and after notice to all creditors and parties in interest. Thereafter, an order approving Debtor's report for final decree and closing of the case shall be entered." (Docket No. 44, pg. 22).

Unlike, individual chapter 11 cases, in which a final decree is entered, and thereafter the case is administratively closed and subsequently reopened, in chapter 11 subchapter V cases that

are confirmed under 11 U.S.C. § 1191(b), the services of the subchapter V trustee do not terminate until the completion of plan payments and the subchapter V trustee files his/her final report and the debtor then requests the entry of final decree and discharge. Thus, the fact that the subchapter V trustee is not discharged until he or she has filed the final report contravenes the language in 11 U.S.C. § 350(a) which provides that, "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." This is similar to chapter 13 and chapter 12 cases which have trustees and must remain open until the trustee is discharged.

The court is aware that in some jurisdictions for regular chapter 11 cases, after the debtor or trustee certifies that the estate has been fully administered and a final report and request for final decree have been filed, the closing of these chapter 11 cases are allowed. Moreover, the Committee on the Administration of the Bankruptcy System has recommended as a matter of policy that all Chapter 11 cases should be closed for statistical reporting purposes, given that there is no statutory time limit on plan payments. Bankruptcy Clerk's Manual, Topic 6: Case Events; Subtopic 5: Case Closing. https://jnet.ao.dcn./policy-guidance/bankruptcy-clerks-manual/topic-6-caseevents/subtopic-5-case-closing. "It is for the bench to decide of course when a plan is 'fully administered.' There is some disagreement about whether a Chapter 11 case can be statistically closed when 'substantially administered.' This type of administrative/statistical closing should not be confused with the closing of the case by the court which can only be done when the case is fully administered. Closing a case statistically does not affect the court's continuing jurisdiction for post confirmation matters or its ability to enforce or interpret its own orders." Id. However, in a subchapter v plan that has been confirmed pursuant to 11 U.S.C. § 1191(b) the duration of the plan in the same manner as chapter 13 cases [4] and chapter 12 cases [5] may not exceed five years. See 11 U.S.C. §§ 1191(c)(2) & 1192.

Conclusion

***9** In view of the foregoing, the Court denies the *Debtor's Motion in Compliance of Order and in Request of Administrative Closing of the Case*.

IT IS SO ORDERED.

All Citations

Not Reported in B.R. Rptr., 2022 WL 1216270, 71 Bankr.Ct.Dec. 135

Footnotes

1 It must be noted that the United States Bankruptcy Court for the District of Massachusetts through Standing Order 2020-6 established interim amendments to its local rules to conform to the interim amendments to the federal rules of bankruptcy procedure related to subchapter v of chapter 11. Rule 3022-1 was amended for subchapter v cases. Rule 3022-1(a) Definitions. "For purposes of this Rule, 11 U.S.C. § 350 and Fed. R. Bankr. P. 3022, a chapter 11 case is "fully administered" unless, sixty (60) days following the entry of a final order confirming a plan of reorganization, (a) a matter is pending or (b) a trustee appointed under 11 U.S.C. § 1104(a) or 11 U.S.C. § 1183, continues to serve."

2 "Finally, [ ] relieving individual chapter 11 debtors seeking a discharge from paying a reopening fee is consistent with the goal of administrative closure—to encourage maximum payments to creditors. See In re Necaise, *443 B.R. at 493* (providing that administrative closure "promotes the goals of increasing the likelihood of a successful reorganization by potentially increasing distribution to creditors of the bankruptcy estate resulting from the reduction of such costs"); In re Johnson, 402 B.R. at 854 ("The reason for [administrative closure] is to minimize the debtor's expenses by eliminating the ongoing quarterly fees ... and ... make a corresponding increase in the distribution to creditors."). Freeing debtors from the burden of

paying a reopening fee upon successful completion of plan payments helps further that goal. *See* In re Johnson*, 402 B.R. at 857* (in response to an argument by the U.S. trustee that early closure would saddle parties with the added expense of paying a fee if the case needed to be reopened, noting that court may waive reopening fees to relieve parties of the burden). Allowing the waiver of reopening fees in administratively closed individual debtor chapter 11 cases will increase the likelihood of successful reorganization by removing yet another obstacle standing between a debtor and her discharge. *See* Necaise*, 443 B.R. at 493* (noting that administrative closure to alleviate a debtor of trustee fees increases the likelihood of successful reorganization)." In re Garcia, 2018 Bankr. Lexis, 2135, *9-10.

3 It must be noted that for subchapter v cases, 11 U.S.C. 1186 provides that if a plan is confirmed under 1191(b), then property of the estate includes, in addition to the property already specified in section 541, property acquired and earnings from services acquired post-petition which would imply that the automatic stay does not end at confirmation under 11 U.S.C. § 362(c)(1), given that all property under 541 and post-petition assets and earnings are property of the bankruptcy estate. Section 1186 conflicts with the vesting provisions of 11 U.S.C. § 1141(b). However, this issue is not before the court.

4 11 U.S.C. § 1325(b)(4).

5 11 U.S.C. § 1222(c).

End of Document

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Only the Westlaw citation is currently available.
United States Bankruptcy Court,
N.D. Texas, Dallas Division.

IN RE: James Bradley LAGER and JBL Hose Service, LLC d/b/a Texas Hose Pro, Debtors.

Case No. 22-30072-MVL11 (Jointly Administered)
|
Signed August 22, 2024
|
Filed August 23, 2024

Attorneys and Law Firms

James Sanford Brouner, Melissa S. Hayward, Hayward PLLC, Dallas, TX, for Debtor.

Katharine B. Clark, Thompson Coburn LLP, Dallas, TX, for Trustee.

ORDER ADMINISTRATIVELY CLOSING CASES

I. INTRODUCTION.

***1** The Small Business Reorganization Act (the "**SBRA**") went into effect on February 19, 2020, and amendments to the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") related thereto went into effect on December 1, 2022. The SBRA created a new subchapter of Chapter 11, allowing small business debtors seeking to reorganize the option to proceed under a set of alternative procedures that were designed to be more efficient and cost-effective than a traditional Chapter 11 case.

One of the most significant aspects of Subchapter V is that a debtor's election of these procedures requires the appointment of an individual to serve as a trustee that performs many of the same duties that are required of trustees in cases administered under Chapters 12 or 13. Among other things, a Subchapter V trustee has a specific duty to monitor and facilitate a debtor's progress toward confirmation of a plan of reorganization. Once that duty is fulfilled, the Subchapter V trustee is required to ensure that the debtor commences making timely payments pursuant to the reorganization plan.

There are two ways to confirm a plan of reorganization under Subchapter V—consensually, under 11 U.S.C. § 1191(a), or non-consensually, under 11 U.S.C. § 1191(b). To meet the requirements for confirmation of a consensual plan under subsection (a), a debtor must show that all the requirements of section 1129(a), other than subsection (a)(15), are met. Upon confirmation of a consensual plan, the debtor receives a discharge under section 1141(d), and the Subchapter V trustee's services are terminated pursuant to section 1183(c) upon a showing that the plan has been substantially consummated. [1]

If a plan of reorganization cannot be confirmed consensually, the debtor may seek what is referred to as "cramdown" or non-consensual confirmation under section 1191(b). In Subchapter V, a bankruptcy court may only confirm a plan of reorganization over the objections of creditors when the plan does not discriminate unfairly and has been found to be fair and equitable with respect to each class of claims or interests that is impaired and has not accepted the plan. [2] In cases confirmed non-consensually pursuant to section 1191(b), the debtor only receives a discharge "after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix." [3]

2** Although the Bankruptcy Code provides for the termination of the Subchapter V trustee's service upon substantial consummation in consensually confirmed cases, the Code is silent regarding termination of the Subchapter V trustee's service in a non-consensual case. [4] This omission is logical. 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. [5] However, as part of confirmation, the bankruptcy court has discretion to order otherwise. Such is the case here.

Before the Court is the *Motion for Final Decree Pursuant to Section 350 of the Bankruptcy Code and Rule 3022 of the Federal Rules of Bankruptcy Procedure* (the "**Motion**") filed by the Reorganized Debtors, James Bradley Lager ("**Mr. Lager**") and JBL Hose Service, LLC d/b/a Texas Hose Pro ("**JBL**," together with Mr. Lager, the "**Reorganized Debtors**") at ECF No. 256 on April 16, 2024. [6] By the Motion, the Reorganized Debtors seek entry of a Final Decree in the above-captioned bankruptcy case, ordering that (1) the cases be closed and (2) that this Court maintain jurisdiction to enforce the *Order Confirming Amended Subchapter V Plan*

of Reorganization (the "**Confirmation Order**"), docketed at ECF No. 236. In considering whether to grant the Motion, the Court is required to answer two questions: (1) whether a case administered under Subchapter V may be closed prior to the completion of the plan payments where a case has been confirmed non-consensually pursuant to section 1191(b) of the Bankruptcy Code and the debtor has yet to receive a discharge; and (2) whether a Subchapter V trustee has ongoing duties which prevent her from being discharged prior to the completion of the plan payments in non-consensually confirmed cases.

For the reasons espoused below, the Court finds that a case administered under Subchapter V of Chapter 11 may be ripe for administrative closure prior to the completion of plan payments despite being confirmed non-consensually pursuant to section 1191(b) where a debtor has yet to receive a discharge. Separately, the Court concludes that the determination of whether to discharge a Subchapter V trustee is a matter of discretion and should be determined based upon the particular facts and circumstances of each case.

II. JURISDICTION.

The Court has jurisdiction pursuant to 28 U.S.C. §§ 1334(b) and 157(a). This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (b)(2)(A). Venue of this proceeding is proper under 28 U.S.C. §§ 1408 and 1409.

III. BACKGROUND.

These cases did not commence in a traditional fashion. On January 17, 2022, Mr. Lager filed his voluntary petition for relief under Chapter 11 of the Bankruptcy Code. *See* ECF No. 1. On January 25, 2022, Katharine Battaia Clark (hereinafter, "**Ms. Clark**" or the "**Trustee**") was appointed to be the Subchapter V trustee of Mr. Lager's bankruptcy estate. ECF No. 16. On March 10, 2022, JBL filed its voluntary petition for bankruptcy relief under Chapter 11. [7] A few months later, on March 11, 2022, Behrooz P. Vida ("**Mr. Vida**") was appointed the Subchapter V trustee of the JBL bankruptcy estate. [8] On March 14, 2022, this Court issued an *Order Authorizing Joint Administration* of both cases. [9] ECF No. 54. A little over a year and a half later, after substantial litigation unrelated to the Motion, Mr. Lager filed his *Amended Subchapter V Plan of Reorganization* (the "**Plan**"). ECF No. 216. On January 18, 2024, the Court entered the Confirmation Order and the next day, the Court issued its standard *Chapter 11 Post-Confirmation Order* (the "**Post-Confirmation Order**"). *See* ECF Nos. 236 and 238.

***3** On February 7, 2024, the Reorganized Debtors filed the *Notice of (A) Entry of an Order Confirming Amended Subchapter V Plan of Reorganization of James Bradley Lager and JBL Hose Service LLC D/B/A Texas Hose Pro; and (B) Occurrence of the Effective Date*. ECF No. 241. Two days later, the Trustee filed her *First and Final Application for Compensation and Reimbursement of Expenses*. ECF No. 242. On February 13, 2024, Mr. Vida similarly filed his *Subchapter V Trustee's Application for Compensation and Reimbursement of Expenses*. ECF No. 244. In early March of 2024, each Subchapter V trustee filed a certificate representing that no objections had been filed with respect to their respective fee applications. *See* ECF Nos. 245 and 247. On March 5, 2024, the Court entered an *Order Approving Trustee's First and Final Application for Compensation and Expenses* at ECF No. 246, which provided that Mr. Lager was to pay Ms. Clark's fees and expenses, plus 8% interest per annum, over 48 months in accordance with the Plan. Separately, the Court entered an *Order Granting Subchapter V Trustee's Application for Compensation and Reimbursement of Expenses* at ECF No. 248, which provided that Mr. Vida was to draw down on his allowed fees and expenses from the Fee Deposit and refund the remaining sum to JBL. In other words, Mr. Vida was paid in full, while any balance due to Ms. Clark was to be paid over the course of years under the terms of the Plan. [10]

On April 16, 2024, the Reorganized Debtors filed the instant Motion stating that the Plan has been substantially consummated and seeking entry of a final decree. *See* ECF No. 256, p. 4, ¶ 9. On April 25, 2024, Mr. Vida filed a *Chapter 11 Subchapter V Trustee's Report of No Distribution* in Bankruptcy Case No. 22-30439-MVL11 (the "**JBL Case**"), stating that: (1) no payments were due to Mr. Vida under the Plan; (2) according to JBL, the Plan was substantially consummated; and (3) certifying that *his* administration of the JBL bankruptcy estate had been completed. [11] The next day, at the request of Mr. Vida, the Court entered an *Order Discharging Trustee*, relieving Mr. Vida of his duties in the JBL Case. ECF No. 56. On May 7, 2024, Ms. Clark filed the *Trustee's Response (Opposed) to Motion For Final Decree Pursuant to Section 350 of the Bankruptcy Code and Rule 3022 of the Federal Rules of Bankruptcy Procedure* (as amended by ECF No. 259, the "**Response**"). The Reorganized Debtors filed their brief in reply (the "**Reply**") on May 21,

2024. *See* ECF No. 260. This Court conducted a hearing on the Motion on May 29, 2024 (the "**Hearing**"), after which the Court took the matter under advisement.

IV. LEGAL STANDARD.

Section 350 of the Bankruptcy Code provides, "(a) [a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case. (b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350. Bankruptcy Rule 3022 implements section 350 and provides that, "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case." FED. R. BANKR. P. 3022. The Advisory Committee Note provides:

> Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed. Factors that the court should consider in determining whether the estate has been fully administered include (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

***4** FED. R. BANKR. P. 3022, Advisory Committee Note (1991). The Fifth Circuit has stated that these factors "merely serve as a guide, ... each need not be present before the entry of a final decree." *In re Clayton*, 101 F.3d 697 (5th Cir. 1996).

Separately, a case administered under Chapter 11 can be said to have been "substantially consummated" when the following conditions have been met:

> "(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan."

11 U.S.C. § 1101(2). The Bankruptcy Code's definition of substantial consummation is "written in conjunctive terms, thus requiring all three elements to be met in order to find that there has been substantial consummation." *In re JCP Properties, Ltd.*, 540 B.R. 596, 605 (Bankr. S.D. Tex. 2015). It is clear, based upon a plain reading of the definition of substantial consummation in conjunction with the Advisory Committee Note to Bankruptcy Rule 3022, that whether a Chapter 11 debtor has substantially consummated its plan has significant bearing on whether a final decree is appropriate. [12]

Before the enactment of the SBRA, a body of case law developed regarding the closure of individual Chapter 11 cases like that of Mr. Lager. Individual Chapter 11 debtors do not receive a discharge upon confirmation of a plan of reorganization. Rather, under 11 U.S.C. § 1141(d)(5)(A), "unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge ***on completion of all payments under the plan***." (emphasis added). Court decisions vary widely on whether to grant early discharge and when to close individual Chapter 11 cases. [13]

***5** For certain debtors, the SBRA discharge provision is akin to that of an individual Chapter 11 debtor under section 1141(d)(5) in that a small business debtor who confirms a plan non-consensually under section 1191(b) is not entitled to discharge until the completion of plan payments. *Compare* 11 U.S.C. § 1192 ("as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix...") *with* 11 U.S.C. § 1141(d)(5) ("confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan..."). Thus, commensurate with individual Chapter 11 cases, in cases where a small business debtor confirms its plan of reorganization pursuant to section 1191(b), bankruptcy

courts must decide whether and when to close the case prior to discharge, based upon both the traditional analysis of whether the case has been fully administered under the Bankruptcy Rule 3022 factors as well as the newer analysis of whether a case should be "administratively closed", *inter alia*, in order to reduce costs. [14]

V. ANALYSIS.

Once again, "[t]he Court finds itself in a similar situation to Goldilocks and the three bears' porridge." [15] One choice is too hot, forcing all bankruptcy cases confirmed pursuant to section 1191(b) to remain open for at least three years after confirmation and exposing the reorganized small business debtor to potentially significant administrative expenses where there is no explicit statutory requirement for same. Another choice is too cold, entry of a final decree where the debtor has yet to receive a discharge, prior to the completion of plan payments, and where a Subchapter V trustee may still have duties to perform post-confirmation. But one choice is just right, that of "administrative closure" upon a finding by the bankruptcy court that the plan has been substantially consummated, subject to reopening for the purpose of entry of discharge or modification of the plan. For the following reasons, the Court finds that administrative closure of the instant case is proper and consistent with the purpose of the Bankruptcy Code and the SBRA.

In pursuing the Motion, the Reorganized Debtors ask this Court to issue a final decree, thereby closing the above-captioned bankruptcy cases, arguing the Plan has been substantially consummated and the case should be considered fully administered. The Reorganized Debtors assert (1) that they have commenced making payments under the Plan, (2) that all assets of the bankruptcy estates have been revested in the Reorganized Debtors and (3) that all motions, contested matters, and adversary proceedings have been resolved. The Trustee opposes entry of a Final Decree in this case because the Plan was confirmed on a non-consensual basis and argues the Bankruptcy Code requires different treatment of non-consensual cases than either traditional Chapter 11 cases or those Subchapter V cases which are confirmed consensually pursuant to section 1191(a). The Trustee believes that such a case ***cannot*** be closed until the plan term has run because the Trustee is not permitted to be discharged until after she files a final report. Further, the Trustee points out that the United States Trustee (the "**UST**") has requested that Mr. Lager file post-confirmation reports detailing the progress of the Plan payments, which would be impossible unless the case remains open.

***6** The Trustee raises an interesting point: the Bankruptcy Code, as amended by the SBRA in 2019, seems to at least contemplate a different set of goalposts specifically for Subchapter V cases that are confirmed non-consensually pursuant to section 1191(b). Having reviewed the relevant statutory authority and admittedly scant case law addressing this issue, the Court has determined that this is an issue of first impression within this district. Therefore, the Court will endeavor not simply to address the matter at hand in the instant case, but to address the larger questions of whether and how a non-consensually confirmed Subchapter V case should be closed pending completion of the plan payments.

A. The Trustee's Objection

The Trustee's main argument against closing these cases is based primarily on the fact that the Bankruptcy Code contemplates different roles for Subchapter V trustees in cases confirmed pursuant to subsection (b) of 1191, rather than subsection (a). Ms. Clark argues that in a situation like the instant case, where the plan has been confirmed non-consensually, the Trustee is ***not permitted*** to be discharged until the plan term runs, due in part to the fact that she believes she is unable to file her final report until all payments have been made.

Specifically, the Trustee argues that section 1183(c)(1) of the Bankruptcy Code only allows a Subchapter V trustee to be terminated upon substantial consummation in cases where the debtor's plan was confirmed consensually pursuant to 1191(a). Challenging that assertion, the Reorganized Debtors point out that although 1183(c)(1) certainly provides that a Subchapter V Trustee's services terminate upon substantial consummation of a consensual plan pursuant to section 1191(a), the Bankruptcy Code contains no affirmative ***requirement*** that the Subchapter V trustee remain in place in cases confirmed pursuant to section 1191(b). As such, the Reorganized Debtors argue that the Trustee is making a negative inference that is not supported by any statutory requirement in the Bankruptcy Code.

The Trustee attempts to bolster her position by pointing out that, by statute, a Subchapter V trustee must "ensure that the debtor commences making timely payments required

by a plan confirmed under this subchapter," and must file a final report, irrespective of whether the trustee is the distribution agent under the plan. *See, e.g.,* 11 U.S.C. §§ 1183(b)(1), (4). The Trustee also finds support in guidance provided in the Subchapter V Trustee's Handbook (the "**UST Handbook**"), which is created and disseminated by the UST and provides that in cases where a plan is confirmed non-consensually pursuant to section 1191(b), "[i]nstead of being terminated, the trustee will remain in place for the life of the plan, regardless of whether the trustee or the debtor make the plan payments." [16]

The Reorganized Debtors disagree with the Trustee's interpretation of her statutory duties, pointing out that payments have already "commenced" under the Plan terms and that the Trustee's concern over the timing of her final report is illusory because she is not the distribution agent under the Plan and she has no further statutorily required duties in this case. The Reorganized Debtors further note that, by its own terms, the UST Handbook is not legally determinative:

> This Handbook represents a statement of operational policy and is intended as a working manual for trustees appointed under Subchapter V of chapter 11 of the Bankruptcy Code and supervised by the United States Trustee. This Handbook is not intended to represent a complete statement of the law. It should not be used as a substitute for legal research and analysis. [17]

***7** Finally, the Reorganized Debtors argue that the UST Handbook is not entitled to any deference in "the interpretation or construction of the Bankruptcy Code." *See Bolen v. Dengel (In re Dengel)*, 340 F.3d 300, 310 (5th Cir. 2003); *Goodman v. Doll (In re Doll)*, 57 F.4th 1129, 1145 – 46 (10th Cir. 2023); *In re Hecker*, 2022 U.S. App. LEXIS 19847, at *3, 2022 WL 2816799 (3rd Cir. July 19, 2022).

The Trustee separately notes that there is a lack of transparency in the case following confirmation considering the Reorganized Debtors' role as Plan distribution agent. For instance, although the UST has requested that the Reorganized Debtors file post-confirmation reports, none have yet been filed and as such, without same, the Trustee asserts that she cannot independently ascertain the status of the case. Therefore, the Trustee posits that if the Court were to grant the relief requested in the Motion, she will have no indication of when this case would be ripe for her to enter her final report. Finally, the Trustee argues that because Subchapter V cases do not require payment of quarterly fees to the UST, there would be no benefit gained in closing the instant case prior to completion of the Plan payments.

The Reorganized Debtors' view of the Trustee's role and statutory duties is quite different. They argue that one of the main tenets of Subchapter V is the flexibility that it affords small business debtors in fostering reorganization. They point out that allowing the Trustee to remain in place for the life of the Plan term would likely result in additional administrative expenses for the estate. Instead, they suggest that entering a final decree in this case is the proper solution, insisting that if the Trustee's services were to become necessary at some point within the Plan term, then the Trustee could be reappointed pursuant to 11 U.S.C. § 1183(c)(1).

B. The Statutory Framework

A central question resulting from this dispute is how the enactment of the SBRA has affected a court's consideration of whether, when, and how to close a bankruptcy case. In answering this question, a deeper analysis of the statutory framework surrounding non-consensual confirmation in Subchapter V cases is merited.

As noted above, one of the key changes that Congress made in enacting the SBRA was allowing a court to confirm a plan of reorganization in a Subchapter V case even if all classes of creditors reject the plan. [18] The Code contemplates different "default" roles for the Subchapter V trustee in cases that are confirmed consensually than in those confirmed non-consensually. Despite this, the Court concludes that the Bankruptcy Code appears to leave some room for interpretation with respect to what role, if any, a Subchapter V trustee must play after cramdown confirmation. There are three recent bankruptcy court decisions meriting discussion.

First, in *In re Gui-Mer-Fe, Inc.*, No. 21-01659 (ESL), 2022 WL 1216270, at *8 (Bankr. D.P.R. Apr. 25, 2022), the

Bankruptcy Court for the District of Puerto Rico held that in Subchapter V cases confirmed under 11 U.S.C. § 1191(b), the services of the Subchapter V trustee do not terminate until the completion of plan payments and the Subchapter V trustee files his final report. According to the explicit terms of the confirmation order at issue, the case was ripe for closure after it was determined to be fully administered. The *Gui-Mer-Fe* court clarified that the case would not be "fully administered" until after the full plan term was completed, based in part the difference between a traditional Chapter 11 case, where there is no statutory time limit on plan payments, and Subchapter V, where a case must be completed within three to five years. *Id.*

***8** The *Gui-Mer-Fe* court also denied the debtor's request for administrative closure of the case because it found that there were no administrative costs to be saved by the administrative closure of the case because Subchapter V debtors are exempt from having to pay quarterly fees and they have no post-confirmation reporting requirements pursuant to Bankruptcy Rule 2015. *Id.* As such, the court concluded that a Subchapter V case remaining open until such time as the case was "fully administered" would not generate any excess administrative fees.

Next, in *In re DynoTec*, No. 21-30803, 2024 WL 2003065, at *3 (Bankr. D. Minn. April 5, 2024), the Bankruptcy Court for the District of Minnesota concluded that the Bankruptcy Code allows a debtor to "opt out" of the "default" role contemplated for the Subchapter V trustee in a case confirmed non-consensually. The *DynoTec* court held that this inherent flexibility was no accident but rather intended by Congress when drafting the SBRA. *Id.* The court pointed out that a frugal debtor could request a confirmation order that terminated the trustee's appointment upon substantial consummation of a non-consensual plan, thereby eliminating administrative expenses entirely. *Id.* On the other hand, a more contentious case might justify ongoing administrative expenses in exchange for maintaining the trustee's appointment, but the court specifically held that the scope of a trustee's role should be "right sized" to suit the needs of each case. *Id.*

The *DynoTec* court further noted that section 1183(c) of the Bankruptcy Code permits reappointment of a Subchapter V trustee if necessary to perform the trustee's duties under §§ 1183(b)(3)(C) or 1185(a). *See* 2024 WL 2003065, at *3. Thus, the *DynoTec* court explained, if a trustee were to be discharged in a case confirmed non-consensually and a post-confirmation modification of the plan were to become necessary, the trustee could easily be reappointed at that time. *Id.* After reviewing the potential outcomes, the *DynoTec* court concluded that the Bankruptcy Code provides sufficient flexibility to allow for the discharge of a Subchapter V trustee prior to completion of the plan payments, even where such a case was confirmed non-consensually. *Id.* The court extrapolated that where the confirmation order "expressly relieved the Trustee of any responsibility for the Debtor's plan payments ... the trustee's post-confirmation duties were limited to ***express statutory duties*** under § 1183 only." *Id.* at *2 (emphasis added).

Finally, in a recently published opinion from the Bankruptcy Court for the Northern District of Georgia, *In re Florist Atlanta*, No. 24-51980-pwb, 2024 WL 3714512 at *2–*3 (Bankr. N.D. Ga. Aug. 7, 2024), the Hon. Paul W. Bonapfel reasoned that in a case confirmed non-consensually, where no one has objected to the reorganized debtor serving as plan distribution agent, and post-confirmation reports are either unnecessary or not required by court order, a Subchapter V trustee "will have nothing to do after filing the final report, subject to the possible occurrence of future events that would require trustee services." *Id.* at *3. Thus, the court concluded that "[i]n these circumstances, it is appropriate for the Court to order the termination of the services of the Subchapter V Trustee upon substantial consummation of the plan." *Id.* [19]

The Court finds the *DynoTec* and *Florist Atlanta* reasoning most persuasive. Flexibility and discretion are critical to the purpose of the SBRA – to simplify Chapter 11 reorganizations for small businesses and reduce the administrative costs thereof. *In re Clearly Packaging*, 36 F.4th 509, 517 (4th Cir. 2022). The Bankruptcy Code specifically allows a debtor to elect a different role for its Subchapter V trustee than that which is contemplated as the "default" role in a case confirmed pursuant to section 1191(b). The scope of a Subchapter V trustee's post-confirmation services should be thoughtfully tailored to suit the needs of a case, especially where a reorganized debtor will serve as the plan distribution agent and the Subchapter V trustee's post-confirmation role is therefore minimal. The breadth of the Subchapter V trustee's post-confirmation role determines the contours of whether and how to close the case. Accordingly, considering the statutory framework and myriad factual and legal circumstances resulting in a non-consensually confirmed plan, the Court concludes that the Bankruptcy Code gives bankruptcy courts discretion to determine, based upon the specific facts of each case, whether, when, and how

a non-consensual Subchapter V case should be closed prior to entry of discharge.

C. What Form of Relief is Proper in the Instant Case?

***9** The Court must consider whether entry of a final decree is proper in these cases, given that the Reorganized Debtors will not be discharged for another three years, similar to an individual Chapter 11 case. In answering this question, the Court must also consider whether the Trustee may be discharged prior to entry of her final report. Alternatively, in the event the Court finds that entry of a final decree is improper at this time, the Court will consider whether these cases should be administratively closed and allow for a reopening of the cases for entry of discharge or for modification.

1. Bankruptcy Rule 3022 Factors Analysis

The Court will start with the traditional analysis of whether this case is ripe for entry of a final decree. As the Court noted above, there are six factors courts consider in determining whether a case has been fully administered and thus whether entry of a final decree is warranted. The factors provide a poignant place from which to begin the analysis of whether and when a final decree is proper:

> (1) Whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

FED. R. BANKR. P. 3022, Advisory Committee Note (1991). Factor (1) is fulfilled because this Court signed the Confirmation Order on January 18, 2024. *See* ECF No. 238. Factor (2) is inapplicable because no deposits were required by the plan. Factor (6) is satisfied because there are no pending adversary proceedings or contested matters. Factors (3)-(5) relate directly to whether the Plan has been substantially consummated, which as this Court noted above, is a significant factor in deciding whether to enter a final decree.

The first required element of substantial consummation is whether there has been a "transfer of all or substantially all of the property proposed by the plan to be transferred." 11 U.S.C. § 1101(2)(A). The Plan, at Article IX, section 4, contemplates the transfer and vesting of all assets of Mr. Lager and JBL into each of the Reorganized Debtors, respectively. *See* ECF No. 216, p. 31, ¶ 9.4. The Confirmation Order provides the same. *See* ECF No. 236, p. 20, ¶ 5. The Plan became effective on February 2, 2024. *See* ECF No. 241, p. 2; *see also* ECF No. 256, p. 2, ¶ 3. Therefore, the first element of substantial consummation is fulfilled here.

The second required element for substantial consummation is whether there has been an "assumption by the debtor or by the successor to the debtor under the plan or the business or of the management of all or substantially all of the property dealt with by the plan." 11 U.S.C. § 1101(2)(B). In the Motion, the Reorganized Debtors state that they "have assumed the business and management of the property dealt with by the Plan." *See* ECF No. 256, p. 4, ¶ 9. The Trustee has not contested this point. Therefore, the Court concludes that the second element of substantial consummation is fulfilled.

The final element required for substantial consummation is whether there has been a "commencement of distributions under the plan." 11 U.S.C. § 1101(2)(C). The Reorganized Debtors assert that they have been making payments under the Plan. *See* ECF No. 256, p. 4, ¶ 9. The Trustee argues that there is no transparency into whether and what extent the Reorganized Debtors are making their required plan payments, but that is not what section 1101(2)(C) requires. The question is whether they have ***commenced*** payments. The Plan went effective on February 7, 2024. *See* ECF No. 241. Under the Plan, the Reorganized Debtors were required to begin making their first distributions to creditors on "the [first] day of the [first] full month following the Effective Date of the Plan." *See* ECF No. 216, pp. 18–29. Article XIV of the Plan states that "[f]or purposes of this Plan, substantial consummation shall occur upon

the commencement of distributions under the Plan." ECF No. 216, p. 38. Furthermore, section 1183(c)(2) of the Bankruptcy Code requires a Subchapter V debtor to file notice of substantial consummation "not later than 14 days after the plan of the debtor is substantially consummated." 11 U.S.C. § 1183(c)(2). On April 16, 2024, the Reorganized Debtors filed this notice, subsumed within the instant Motion. *See* ECF No. 256, p. 3, ¶ 4 ("The Plan has been substantially consummated[.]"). Additionally, Mr. Vida and Ms. Clark have each been paid in full, and no other creditors have complained of a default. Payments have undoubtedly commenced. Therefore, the Court concludes that the third element of substantial consummation is fulfilled.

***10** All in all, five of the six factors are present, the only exception being inapplicable to the instant case. While this six-factor test is often used in determining whether a case has been fully administered, it should be noted that courts have consistently held that "[t]hese factors merely serve as a guide."[20] The only party opposed to the entry of a final decree in this case is the Trustee, and her objection is not based on a traditional analysis of whether entry of a final decree is warranted. Therefore, the Court concludes that under the traditional analysis, this case can be considered fully administered.

2. The Role of the Subchapter V Trustee

Next, the Court must consider whether, based upon the fact that a final decree is warranted under the traditional analysis, the Subchapter V trustee may be discharged prior to the completion of her statutory duties in the case. The Trustee's main argument against the relief requested is that she still has duties to fulfill under the Bankruptcy Code, primarily being her duty to file a final report in compliance with section 1183(b)(1), which incorporates section 704(a)(9). However, in cases such as this one, the Court determines that it is appropriate to order the termination of the services of the Subchapter V trustee after substantial consummation of the plan for two reasons.

First, if the need for a Subchapter V trustee's service arises, the case can be reopened at that time and the Trustee reappointed in order for her to fulfill her duties in compliance with section 1183(b)(1).[21] Both the *DynoTec* and *Florist Atlanta* courts each expressly sanctioned such a result.[22] Indeed, the Advisory Committee Note to Bankruptcy Rule 3022 expressly states that "[e]ntry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed."[23]

The second reason is the nature of the Trustee's report itself and the facts of this case. Section 704(a)(9) provides that the "trustee shall ... make a final report and file a final account of the administration of the estate with the court and with the United States [T]rustee." 11 U.S.C. § 704(a)(9). The purpose of the final report requirement is to ensure that bankruptcy trustees disclose and are held accountable for their handling of the estate. *See* *Lopez-Stubbe v. Rodriguez-Estrada (In re San Juan Hotel Corp.)*, 847 F.2d 931, 939 (1st Cir. 1988). As part of the report, trustees are required to provide a record of the trustee's receipts and expenditures in the handling of estate assets.

***11** In the instant case, as is the case in most Subchapter V cases, the Trustee did not administer assets on behalf of the estate, as both Mr. Lager and JBL each served as debtors-in-possession throughout the pendency of these cases. The Court finds it significant that Mr. Vida already filed a final report in the JBL Case and received his discharge in due course.[24] Another important factual distinction is that the Trustee is not the distribution agent under the Plan, despite non-consensual confirmation. There was no objection to the Debtors' request to act as the Plan distribution agent. The Confirmation Order provides:

> [t]he Reorganized Debtors, not the Subchapter V Trustee, shall disburse payments as provided by the Plan.

See ECF No. 236, p. 25, ¶ 21.

Under similar circumstances, the *Florist Atlanta* court concluded that it was appropriate for a court to order termination of the services of the Subchapter V trustee' and thus ordered the trustee in that case to file a final report pursuant to 11 U.S.C. § 1183(b)(1) "within 14 days after the filing of the Debtor's report of substantial consummation." 2024 WL 3714512 at *3. Notably, this language mirrors the function of section 1183(c), which provides for termination of the service of the Subchapter V trustee upon substantial consummation in a consensually confirmed case. In such cases, the Subchapter V trustee is not exempted from their

duty to file a final report. *See* 11 U.S.C. §§ 1183(c)(1) – (2). As such, the Court concludes that the Trustee's statutory duty to file a final report in this case is not sufficient cause to keep these cases open, and it is thus appropriate to order the termination of the services of the Subchapter V Trustee.

3. Administrative Closure

In the instant case, the Reorganized Debtors sought, in part, to close the case prior to completion of the payments contemplated by the Plan in order to forestall the accrual of administrative expenses. Although quarterly fees are not required for Subchapter V debtor, the UST has requested post-confirmation reports be filed in this case, despite there being no explicit statutory requirement for such post-confirmation reporting in a Subchapter V case. This would lead to some administrative costs for the Reorganized Debtors, both in terms of drafting such reports and because the Trustee would need to review them. [25]

Moreover, the provisions of the Court's prior orders are important. The Confirmation Order provides as follows:

> 21. Closing of the Bankruptcy Case. The Reorganized Debtors, not the Subchapter V Trustee, shall disburse payments as provided by the Plan. Upon (i) the adjudication by the Bankruptcy Court of all applications by professionals for final allowances of compensation for services and reimbursement of expenses and the issuance of a Final Order for each application and the payment of all amounts payable thereunder and (ii) the completion of all other matters in the Bankruptcy Cases, the Reorganized Debtors shall seek authority from the Bankruptcy Court to close the Bankruptcy Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

See ECF No. 236, p. 25, ¶ 21. Accordingly, closure was contemplated ***at confirmation***. [26] Furthermore, the Post-Confirmation Order required the Debtor to "file an application for final decree" after substantial consummation as defined under 11 U.S.C. § 1101(2). *See* ECF No. 238. The instant Motion was filed in compliance with such Order. Thus, the Reorganized Debtors have fulfilled both the predicate statutory requirements under the Bankruptcy Code and this Court's specific requirements under the Confirmation and Post-Confirmation Orders for issuance of a final decree.

***12** Nevertheless, the Court concludes that entry of a final decree in the instant case would be inappropriate, based upon the Reorganized Debtors' own stated intention to reopen the case in three years' time to allow for entry of discharge, especially in light of a logical alternative. The Court finds that the best approach is for the case to be "administratively closed" subject to reopening when the case is ripe for entry of discharge. [27]

VI. CONCLUSION.

Based on its review of the pleadings, oral argument, and applicable law, the Court concludes that the Debtor has established sufficient criteria for the Court to find that the case has been fully administered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022 and administratively closed. The Court will require the Subchapter V Trustee to file her final report pursuant to 11 U.S.C. §§ 1183(b)(1) and 704(a)(9) within fourteen days of the entry of this Order; however, the Court will also require the Reorganized Debtors to provide payment in full for any outstanding fees the Trustee has accrued since confirmation prior to the entry of an order discharging the Trustee.

IT IS, THEREFORE, ORDERED that within 14 days after the entry of this Order, the Subchapter V Trustee shall file the final report that 11 U.S.C. § 1183(b)(1) (incorporating 11 U.S.C. § 704(a)(9)) requires; it is further

ORDERED that the above-captioned bankruptcy cases shall be administratively closed after the Trustee is paid in full for her post-confirmation services; it is further

ORDERED that, if agreement cannot be reached regarding the amount of reasonable fees due to the Trustee for post-confirmation services, the parties shall seek a hearing for determination of such fees; and it is further

ORDERED that this case is subject to being re-opened after the completion of the plan payments, upon proper notice and a

hearing, in order for the Reorganized Debtors to request entry of a final decree, a discharge order and for the Trustee to file her final report.

All Citations

Slip Copy, 2024 WL 3928157

Footnotes

1 *See* 11 U.S.C. § 1141(d) ("Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan discharges the debtor from any debt that arose before the date of such confirmation..."); *see also* 11 U.S.C. § 1183(c) ("If the plan of the debtor is confirmed under section 1191(a) of this title, the service of the trustee in the case shall terminate when the plan has been substantially consummated...").

2 *See* 11 U.S.C. §§ 1191(b) ("Notwithstanding section 510(a) of this title, if all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan...").

3 11 U.S.C. § 1192.

4 *See* 11 U.S.C. § 1183(c) ("If the plan of the debtor is confirmed under section 1191(a), the service of the trustee in the case shall terminate...").

5 *See* 11 U.S.C. § 1194(b) ("If a plan is confirmed under section 1191(b) of this title, except as otherwise provided in the plan or in the order confirming the plan, the trustee shall make payments to creditors under the plan.").

6 All ECF No. references are made in reference to the docket maintained by the Bankruptcy Clerk in Bankruptcy Proceeding No. 22-30072-mvl11 (Bankr. N.D. Tex. 2022), unless otherwise indicated.

7 ECF No. 1 in Bankruptcy Proceeding No. 22-30439-mvl11 (Bankr. N.D. Tex. 2022).

8 ECF No. 12 in Bankruptcy Proceeding No. 22-30439-mvl11 (Bankr. N.D. Tex. 2022).

9 The Court will note that between the filing of these two cases, the Northern District of Texas changed its Subchapter V procedures, enacting a requirement that debtors electing treatment under Subchapter V of Chapter 11 must make interim payments to their Subchapter V trustees on a monthly basis in order to ensure payment of the Subchapter V trustees' professional fees upon confirmation or dismissal. As such, although Mr. Lager was not required to make any interim payments for professional services rendered by the Trustee in the earlier filed Lager bankruptcy case, JBL paid $18,000.00 (the "**Fee Deposit**") to Mr. Vida over the life of its bankruptcy case.

10 By the time of the hearing on the Motion, the Court notes that Ms. Clark was in fact paid in full.

11 *See* ECF No. 55 in Case No. 22-30439-mvl11 (Bankr. N.D. Tex. 2024).

12 *Compare* 11 U.S.C. § 1101(2)(A) – (C), *with* FED. R. BANKR. P. 3022, Advisory Committee Note (1991) (incorporating factors (3) – (5), which are substantially similar to the elements of substantial consummation); *see also* *JCP Properties*, 540 B.R. at 605 (discussing same).

13 *See, e.g.,* *Shotkoski v. Fokkena (In re Shotkoski)*, 420 B.R. 479 (B.A.P. 8th Cir. 2009) (panel affirmed bankruptcy court's decision to keep the case open, while acknowledging that the decision was within a bankruptcy court's discretion); *In re Mendez*, 464 B.R. 63 (Bankr. D. Mass. 2011) (bankruptcy case need not remain open after confirmation where a discharge has not been entered and plan payments are not completed because bankruptcy court could utilize power to enter "necessary or appropriate" orders in order to close the case for administrative purposes only, without discontinuing the automatic stay); *In re Necaise*, 443 B.R. 483, 493 (Bankr. S.D. Miss. 2010) (where the weight of the factors established that the case had been fully administered, it was proper to close the case despite the fact that a discharge had not yet been entered subject to its reopening at a later time for entry of such a discharge upon completion of plan payments); *In re Belcher*, 410 B.R. 206, 218–19 (Bankr. W.D. Va. 2009) (individual Chapter 11 case was not fully administered until all plan payments have been made).

14 *See, e.g., In re Gui-Mer-Fe*, No. 21-01659 (ESL), 2022 WL 1216270, at *7–*8 (Bankr. D.P.R. Apr. 15, 2022) (denying non-consensually confirmed Subchapter V debtor's request for administrative closure of bankruptcy case after substantial consummation, because there was no post-confirmation reporting requirement, plan payments were required to be completed within five years by statute, and the language of the confirmed plan required the Subchapter V trustee to remain in place for the life of the plan).

15 *In re Poole*, No. 21-32224, 2022 WL 5224087, at *3 (Bankr. N.D. Tex. Sep. 30, 2022).

16 *See* 11 U.S.C. § 1183(c)(1); U.S. Dep't of Justice: U.S. Trustee Program, *Post-Confirmation Case Administration: Defining the Trustee's Post-Confirmation Role*, HANDBOOK FOR SMALL BUSINESS CHAPTER 11 SUBCHAPTER V TRUSTEES, *available at* https://www.justice.gov/ust/file/subchapterv_trustee_handbook.pdf/dl.

17 UST Handbook, pp. 1-1, 1-2.

18 Hon. Paul W. Bonapfel, *A Guide to the Small Business Reorganization Act of 2019*, p. 8 (revised June 2022).

19 The *Florist Atlanta* court cited favorably to *DynoTec*, concurring with the reasoning provided by that court.

20 *Clayton*, 1996 WL 661099, at *1, 101 F.3d 697 (citing *In re Mold Makers, Inc.*, 124 B.R. 766, 768 (Bankr. W.D. Ill. 1990)); *see also, e.g.,* *In re Necaise*, 443 B.R. 483, 488 n. 10 (Bankr. S.D. Miss. 2010) (gathering cases that discuss the Advisory Committee Note to Bankruptcy Rule 3022, concluding same).

21 *See, e.g., Florist Atlanta*, 2024 WL 3714512 at *3 (concluding that the court order discharging the trustee's services would be without prejudice to the reappointment of the Subchapter V trustee, or appointment of another trustee, if appropriate, were any need to arise).

22 *See, e.g.,* 2024 WL 2003065, at *3 ("a trustee who is terminated after substantial consummation of a non-consensual plan can also be reappointed, or the U.S. Trustee can serve as trustee, 'as necessary,' per § 1183(a)."); *see also, e.g.* 2024 WL 3714512 at *3 ("[t]he termination of the trustee's services, therefore, will be without prejudice to the reappointment of the Subchapter V Trustee (or another subchapter V trustee, if appropriate) if any of these potential events occurs.").

23 FED. R. BANKR. P. 3022, Advisory Committee Note (1991).

24 ECF No. 55 in Bankruptcy Proceeding No. 22-30439-mvl11 (Bankr. N.D. Tex. 2024).

25 The Court has no doubt that any costs associated with reviewing such reports would be minimal, and eminently reasonable, as reflected by the reasonableness of the fees requested by the Trustee thus far in this case.

26 The Court encourages parties in future cases to raise any issues with respect to the discharge of the Subchapter V trustee and closure of the cases ***at*** confirmation. The Court finds the fact that (1) there was no objection to the Debtor acting as the post-confirmation disbursing agent and (2) the Confirmation Order contained a provision for closure after substantial consummation significant to its analysis hereunder.

27 *See* *In re Necaise*, 443 B.R. 483 (Bankr. S.D. Miss. 2010); *In re Johnson*, 402 B.R. 851 (Bankr. N.D. Ind. 2009); *In re Hilburger*, Nos. 07–3958 K, 08–10866 K, 2009 WL 1515125 (Bankr. W.D.N.Y. May 29, 2009).

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

Patricia A. Redmond
Stearns Weaver Miller Weissler Alhadeff & Sitterson, PA; Miami

Ashley D. Champion
Polsinelli PC; Atlanta

Patricia Redmond is a bankruptcy and creditors' rights shareholder with Stearns Weaver Miller Weissler Alhadeff & Sitterson, PA in Miami, and a past ABI President. Ashley Champion is an associate with Polsinelli PC in Atlanta, and her practice includes financial restructuring, bankruptcy and commercial transactions.

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.

continued on page 55

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

from page 21

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).

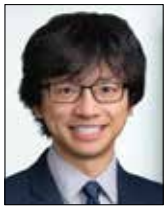
21 *Id.* at 207.
22 *Id.* at 206.
23 *Id.*

Legislative Update

By Hon. Christopher G. Bradley and An Nguyen

If It Ain't Broke, Should the Court "Fix" It? Payment Periods in Nonconsensual Sub V Plans

Hon. Christopher G. Bradley
U.S. Bankruptcy Court (W.D. Tex.); Austin



An Nguyen
U.S. Bankruptcy Court (W.D. Tex.); Austin

Hon. Christopher Bradley is a U.S. Bankruptcy Judge for the Western District of Texas. An Nguyen is a law clerk for Judge Bradley.

To confirm a nonconsensual subchapter V plan, a debtor must agree to devote its projected disposable income (or property of equivalent value) to plan payments for a period of at least three years — and up to five years "as the court may fix."[1] Debtors usually prefer three years, while unsecured creditors prefer the maximum five years. When should the bankruptcy court depart from the debtor's preference and "fix" a longer plan payment period?

Faced with this question in *In re Trinity Family Practice & Urgent Care PLLC*,[2] Hon. **Shad M. Robinson** of the U.S. Bankruptcy Court for the Western District of Texas addressed the deference that a bankruptcy court should give to a debtor's proposed plan payment period and set forth a list of nonexclusive factors to consider in determining whether a plan payment period is "fair and equitable" and whether to "fix" a longer period of up to five years.[3] This is one of the numerous areas of subchapter V that remains largely unexplored, and *Trinity Family Practice* breaks new ground.[4]

The factors provide helpful guidance in the exercise of the broad discretion left by Congress to the bankruptcy courts to determine the applicable plan payment period in subchapter V cases.[5] We provide this article so that courts and practitioners will be able to take advantage of Judge Robinson's work to guide their consideration of this issue.

Background

In *Trinity Family Practice*, the debtor sought confirmation of a subchapter V plan that provided for payments of projected disposable income over a three-year period.[6] A creditor holding both an unsecured claim and the sole secured claim voted to reject the plan and objected to confirmation, arguing that because the debtor could pay more to unsecured creditors if the plan payment period was extended to five years, the plan was (1) not "proposed in good faith," as required by § 1129(a)(3), and (2) not "fair and equitable" to nonaccepting classes, as required to confirm a nonconsensual plan under § 1191(b).[7]

The court overruled the good-faith objection[8] but — guided by a novel analysis of various instructive factors formulated by the court — found that the debtor failed to satisfy its burden of demonstrating that the proposed three-year plan payment period was "fair and equitable."[9] It then found that there was insufficient evidence to determine whether it should exercise its discretion to "fix" a longer plan payment period that would be "fair and equitable,"[10] and instead denied confirmation and granted the debtor leave to file an amended plan.

Determining Whether a Proposed Payment Period Is "Fair and Equitable"

If an impaired class does not accept a subchapter V plan, the resulting "nonconsensual" (or "cramdown") plan cannot be confirmed unless it satisfies the requirements in § 1191(b), including that the plan is "fair and equitable" with respect to nonaccepting classes.[11] Several requirements for satisfying the "fair and equitable" condition are listed in § 1191(c), including that the plan either applies all of the debtor's projected disposable income during "the three-year period, or such longer period not to exceed five years as the court may fix, beginning on the date that the first payment is due under the plan,"[12] or distributes property with a value not less than the projected disposable income during such period.[13]

In evaluating whether the proposed plan payment period in *Trinity Family Practice* was "fair

1 11 U.S.C. § 1191(c)(2).
2 No. 23-70068, 2024 WL 2704056 (Bankr. W.D. Tex. May 24, 2024).
3 ABI Editor-at-Large **Bill Rochelle** has summarized some of the other topics analyzed in *Trinity Family Practice*. "Three Years Is the 'Default' Duration for a Subchapter V Plan, Judge Robinson Says," *Rochelle's Daily Wire* (June 7, 2024), *available at* abi.org/newsroom/daily-wire (unless otherwise specified, all links in this article were last visited on Aug. 21, 2024).
4 As discussed in this article and in Judge Robinson's opinion, Hon. **Beth E. Hanan** of the U.S. Bankruptcy Court for the Eastern District of Wisconsin also contributed significantly to this area of law. *In re Urgent Care Physicians Ltd.*, No. 21-24000, 2021 WL 6090985 (Bankr. E.D. Wis. Dec. 20, 2021).
5 *Trinity Family Practice*, 2024 WL 2704056, at *15.
6 *Id.* at *1.
7 *Id.*
8 *Id.* at *10-12.
9 *Id.* at *17-22.
10 *Id.* at *18-22.
11 11 U.S.C. § 1191(b).
12 11 U.S.C. § 1191(c)(2)(A).
13 11 U.S.C. § 1191(c)(2)(B).

and equitable" under § 1191(c),[14] the court concluded that "the bankruptcy court should give appropriate deference to the debtor's business judgment and proposed period of payments." Section 1189 provides that only the debtor may file a subchapter V plan.[15]

In addition, Judge Robinson extensively analyzed the bankruptcy court's opinion in *In re Urgent Care Physicians Ltd*.[16] and ultimately agreed with that court that a three-year plan term is the "baseline" or "default" under subchapter V.[17] He noted that because a three-year baseline plan payment period "is consistent with the intent of Congress to create a quick, efficient reorganization process that would allow the debtor to obtain a discharge as soon as possible ... while properly balancing the competing interests of debtors and creditors," if "there is no objection to the proposed period of plan payments, it would likely be uncommon for the bankruptcy court to *sua sponte* raise the issue of the proposed period of plan payments."[18]

If an objection to a proposed plan payment period is filed, "the debtor's proposed period of plan payments is no longer given the same deference and the bankruptcy court is tasked with fixing the applicable period of plan payments in a subchapter V case."[19] Departing from the *Urgent Care Physicians* opinion, Judge Robinson held that "unusual circumstances" are not required to shift the three-year default and impose a longer plan term.[20] The debtor must carry the burden of establishing that the term is fair and equitable, and the bankruptcy court has the sole authority — and the broad discretion — to "fix" a subchapter V plan payment period longer than the baseline three-year period set by § 1191(c)(2).[21]

Having entrusted bankruptcy courts with this discretion, Congress did not ordain any particular factors for how to exercise it.[22] Provisions governing plan length under other Bankruptcy Code chapters are not sufficiently analogous to subchapter V to be instructive.[23] Courts must engage in a fact-sensitive, case-by-case analysis of the totality of the circumstances to "fix" the plan term.

Judge Robinson stepped into the breach to give some shape to this potentially frustrating and amorphous analysis. He formulated a list of nonexclusive factors to instruct his determination of whether the debtor has satisfied its burden of demonstrating that its proposed plan payment period is "fair and equitable" and, if necessary, where in the three-to-five-year range would be "fair and equitable" to nonaccepting classes.

> **We are still learning about subchapter V — what its provisions mean, how they can and should work together, and how it differs from other chapters.**

The *Trinity Family Practice* Factors

Capital Reserves or Capital Expenditures During the Plan Payment Period

Where a debtor's plan projections include reservations for capital expenditures during the plan payment period to support potential future growth of the debtor's business, creditors "may reasonably argue that the disposable income they must receive should not be depleted when the debtor will gain the benefit of the investment of income in the business."[24] The "competing interests of debtors and creditors" should be weighed by considering evidence of (1) the basis for such reserve and how it was calculated; (2) whether the debtor historically had a capital reserve; (3) any planned future purchases; (4) any cyclical nature of the debtor's revenue; (5) future debt financing; or (6) specific costs and expenses in the debtor's business operations that are not accounted for in the plan projections but may arise during the plan payment period.[25] Extra scrutiny might be warranted where the amount of projected capital reserves is close to the total projected distribution to unsecured creditors.[26]

Reasonableness of Income and Expenses Set Forth in the Plan Projections During the Plan Payment Period

The court should evaluate the reasonableness of projected income and expenses during the plan payment period, especially as compared to the debtor's historical operations.[27] Any differences between the projections and the debtor's actual historical financials — including as set forth in a debtor's schedules and monthly operating reports — should be supported with additional evidence or testimony, including regarding the basis and methodology for calculating the projections and how increased expenses benefit the debtor and its creditors.[28]

Salary and/or Other Payments to Insiders During the Plan Payment Period

Increases in payments and distributions to insiders during the plan payment period could warrant the court "fixing" a longer period unless supported by either historical evidence of such payments or evidence to establish why such payments are necessary, reasonable and appropri-

14 Although *Trinity Family Practice* addresses only subchapter V plans where payments of projected disposable income are made under § 1191(c)(2)(A), the same analyses are applicable to plans that instead distribute property under § 1191(c)(2)(B), as the two approaches differ only in the timing of plan distributions. *See generally In re Packet Constr. LLC*, No. 23-10860, 2024 WL 1926345, at *4 (Bankr. W.D. Tex. April 30, 2024) (observing that primary difference between two alternative approaches in § 1191(c)(2)(A) and (B) is that "approach contained in section 1191(c)(2)(B) ... essentially gives flexibility on the timing of payment"); *see also Legal Serv. Bureau Inc. v. Orange Cty. Bail Bonds Inc. (In re Orange County Bail Bonds Inc.)*, 638 B.R. 137, 146-47 (B.A.P. 9th Cir. 2022) (holding that plan using liquidated-asset proceeds to make payments in excess of present value of projected disposable income over applicable plan period satisfies § 1191(c)(2)(B))).

15 *Trinity Family Practice*, 2024 WL 2704056, at *17.

16 2021 WL 6090985.

17 *Trinity Family Practice*, 2024 WL 2704056, at *17.

18 *Id.*

19 *Id.* (citing *Orange Cnty. Bail Bonds Inc.*, 638 B.R. at 146).

20 *Id.* at *14.

21 *Id.* at *15-16.

22 *Id.* at *16.

23 *Id.* (discussing §§ 1222(c) (imposing "for cause" standard for plan payment periods longer than three years in chapter 12 plans); and 1325(b)(4) (giving court no discretion in establishing "applicable commitment period"); and traditional chapter 11 cases, where plan terms (rather than bankruptcy court) determine plan payment period).

24 Hon. Paul W. Bonapfel, *A Guide to the Small Business Reorganization Act of 2019 and Subchapter V Update* at 146 (June 2022), *available at* www.ganb.uscourts.gov/?sites/default/files/sbra_guide_pwb.pdf.

25 *Trinity Family Practice*, 2024 WL 2704056, at *18.

26 *Id.*

27 *Id.* at *19.

28 *Id.*

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ate.[29] Conversely, evidence of "belt-tightening" behavior by the debtor — such as the below-market salaries and other salary reductions for insiders during the plan payment period in *Urgent Care Physicians*[30] — could support a finding that a proposed plan payment period is "fair and equitable."

Risks and Consequences of a Longer Plan Payment Period

Recognizing that "extending a plan will almost always result in a potentially larger distribution to unsecured creditors," the court should evaluate how a longer plan payment period will affect the debtor and its employees, customers and creditors.[31] Foremost in this consideration is Congress's intent that subchapter V make reorganization easier for small businesses.[32]

An objection that a proposed plan payment period is not "fair and equitable" should include consideration of the potential risks and consequences to the debtor. For example, in *Urgent Care Physicians*, where the debtor's insiders were voluntarily taking pay cuts during the proposed three-year plan payment period, the court found that based on the evidence presented, "fixing" a longer pay period was too risky and would disproportionately favor creditors at the debtor's expense.[33]

Any Other Unique or Extraordinary Facts Specific to the Case

The final factor is "a catch-all factor to address any unique or extraordinary facts or circumstances specific to a particular case that are not considered under one of the other factors."[34] It allows the court to weigh any evidence offered in support of the proposed plan period or some longer period "as the court may fix."

29 *Id.*
30 *Urgent Care Physicians*, 2021 WL 6090985, at *4-5.
31 *Trinity Family Practice*, 2024 WL 2704056, at *20.
32 *Id.* (citing *In re Lost Cajun Enters. LLC*, 634 B.R. 1063, 1066 (Bankr. D. Colo. 2021)).
33 *Urgent Care Physicians*, 2021 WL 6090985, at *11.
34 *Id.* at *22.

Conclusion

Judge Robinson was at pains to emphasize that the discussed *Trinity Family Practice* factors are not exclusive, nor did he intend any one of them to be dispositive. However, these factors provide much-needed guidance for navigating the payment period in a nonconsensual subchapter V plan.

A debtor seeking confirmation of a nonconsensual plan should be prepared with evidence and testimony to support its proposed payment period, especially if the plan projections provide for any increases in payments or expenses that would otherwise be applied to distributions to unsecured creditors. Similarly, while the burden is always on the debtor, a creditor requesting that the court "fix" a longer plan payment period should nevertheless present evidence to demonstrate why the burden on the debtor of a longer period is outweighed by the benefit to creditors. Finally, the bankruptcy court should weigh any evidence presented in consideration of the factors in determining whether a proposed plan payment period is "fair and equitable" or, if necessary, whether to "fix" a different period.

We are still learning about subchapter V — what its provisions mean, how they can and should work together, and how it differs from other chapters. The indispensable treatise by Hon. **Paul W. Bonapfel** of the U.S. Bankruptcy Court for the Northern District of Georgia,[35] the work of ABI's Subchapter V Task Force,[36] numerous excellent opinions and other sources provide much illumination, but there are still many areas in which work remains to be done. In elaborating how to approach the important and novel provisions on plan length in subchapter V cases, Judge Robinson in *Trinity Family Practice* — and Judge Hanan in *Urgent Care Physicians* before him — have done great service to the bankruptcy community. abi

35 *See* Hon. Paul W. Bonapfel, *SBRA: A Guide to Subchapter V of the U.S. Bankruptcy Code* (ABI 2024), *available at* store.abi.org.
36 Read the task force's Final Report and recommendations at subvtaskforce.abi.org.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re Premier Glass Services, LLC,	)	Chapter 11
	)	
Debtor.	)	Case No. 24-05367
	)	
	)	Judge Deborah L. Thorne

MEMORANDUM OPINION

The debtor, Premier Glass, L.L.C. (Premier Glass) seeks an order from this court confirming its Subchapter V plan of reorganization. Christopher Glass & Aluminum, Inc. (CGI), the largest creditor, objected to the plan and confirmation. As a result, to successfully confirm the plan, which is deemed nonconsensual, the court must find that the debtor has met its burden of proof to propose a "fair and equitable" plan. As discussed below, the debtor has not met its burden of proof to propose a plan that is fair and equitable, and confirmation is denied without prejudice to the filing of an amended plan.[1]

I. Background

There is no love lost between Premier Glass and CGI. The parties have been litigating for years. CGI has accused Premier Glass and its principal, Romeo de la Cruz, of stealing CGI's customers and book of business. Prior to the petition date, the parties arbitrated the dispute, resulting in an award in favor of CGI—and against both Premier Glass and de la Cruz—for, among other things, tortious interference with CGI's business. The arbitration award is now before the

[1] Premier Glass may, if it chooses, submit a new plan within 45 days, along with a redlined version comparing the new plan to the Amended Plan at ECF No. 88. Throughout this opinion, citations to "Tr. Ex. __" refer to debtor's trial exhibits, which were admitted into evidence by the Court at the contested confirmation hearing on October 7, 2024. Unless otherwise indicated, all docket references are to the docket in this bankruptcy case, Case No. 24-05367. References to the Bankruptcy Code, Title 11 of the United States Code, have been abbreviated.

Circuit Court of Cook County for confirmation of the judgment. Premier Glass and de la Cruz have objected to confirmation and the Circuit Court has yet to rule.[2]

Shortly after the entry of the arbitration award, Premier Glass filed a Subchapter V chapter 11 petition in the Bankruptcy Court for the District of Delaware. On the motion of CGI, the case was removed to this court. The court takes the facts discussed in this opinion from witness testimony and admitted evidence, as well as the dockets in the bankruptcy and adversary cases (of which the court takes judicial notice). *Inskeep v. Grosso (In re Fin. Partners)*, 116 B.R. 629, 635 (Bankr. N.D. Ill. 1989).

A. **The Plan**

Premier filed an Amended Plan on July 17, 2024. The plan placed claims of all general unsecured creditors into Class 1 and placed CGI and Premier Glass's prepetition lawyers' claims into Class 2. Within this class, CGI's claim is valued at $2,081,676.45; the prepetition lawyers' claim is valued at $325,925.28. Premier Glass reserved the right to object to claims for 180 days after confirmation of the plan but has not objected at this time to CGI's claim. Any funds to be paid on account of the claims of CGI and the prepetition lawyers are to be held in escrow by a third party until the claims are finally liquidated. (Tr. Ex. 7, also available as First Am. Plan, ECF No. 88.) CGI objects to the plan and specifically to three line items in the projected budget: (1) legal fees, (2) depreciation expenses, and (3) taxes.

B. **Testimony**

Matthew Brash, the Sub. V trustee, was the only witness to testify during the confirmation hearing. He testified that he prepared the projections with assistance of his firm, and that the projections were based upon documents he was provided by the debtor's CPA. Although de la

[2] This court abstained from hearing the claim for tortious interference and remanded the claim back to the Circuit Court. Adversary Case No. 24-00096, ECF No. 25.

Cruz, the president of the debtor, was present throughout the hearing and listed as a potential witness, he did not testify. CGI violated the court's pre-trial procedures and was barred from presenting its own witnesses, but it did cross-examine Premier Glass's witness. (Order Sust. Obj. to List of Witnesses, ECF No. 137.)

Mr. Brash's projections were based on historical data that was not furnished to the court and for which he had little knowledge. He was unable to explain much about calculations used to form the projections and often testified that he plugged in numbers to find a middle ground between "too conservative" and "pie in the sky." He was unable to answer any questions about the information that made up the projections or their reliability.

II. Legal Standard

The parties' dispute centers on the Code's requirement that a nonconsensual Sub. V plan be "fair and equitable." § 1191(b). To meet this requirement, the debtor must satisfy the court "that the Plan adequately commits all disposable income to making payments for the life of the plan." *In re Channel Clarity Holdings, LLC*, No. 21-07972, 2022 WL 3710602, at *15 (Bankr. N.D. Ill. July 19, 2022). The Code defines disposable income for purposes of the "fair and equitable" test, in relevant part, as "the income that is received by the debtor and that is not reasonably necessary to be expended . . . for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor." § 1191(d).

Few courts have weighed in on the precise issue before the court. There is little authority, binding or otherwise, because Sub. V is still quite new compared to the rest of the Code. Created by the Small Business Reorganization Act, Sub. V became effective less than five years ago, in

February 2020.[3] The court considers persuasive some well-reasoned Sub. V cases from other bankruptcy courts, as well as case law decided under very similar chapter 12 provisions.

A. The Debtor Bears the Burdens of Proof and Persuasion to Show that Its Plan Meets the Statutory Requirements

A debtor bears the burden of showing the court that the plan's treatment of disposable income is "fair and equitable."[4] Once a debtor meets its burden, "the court *shall* confirm" its plan, even if a creditor objects. § 1191(b) (emphasis added). A debtor must provide projections demonstrating the debtor's ability to make payments under the proposed plan and explain how the debtor is calculating its projected disposable income. § 1190(1)(C). Such projections are critical because, once a nonconsensual plan is confirmed, only a debtor may modify it. § 1193(c). If the debtor's actual income is lower than projected, the debtor must nonetheless pay the full amount as projected in the plan (but it can ask the court to approve a modification). If it turns out the debtor's actual income is higher than projected, those gains inure only to the debtor's benefit: a creditor cannot ask for the debtor's payments to increase. 8 COLLIER ON BANKRUPTCY ¶ 1191.05. Creditors thus bear the risk that a debtor will underestimate its projected disposable income at confirmation.

The debtor must satisfy the court that the projections are credible, and thus the plan is fair and equitable, before the court can confirm the plan. It is true that a small business debtor's projections deserve some deference, since looking into the financial future "is not an exact science." *Channel Clarity,* No. 21-07972, 2022 WL 3710602, at *6 (*quoting In re Lost Cajun Enters., LLC*, 634 B.R. 1063, 1073 (Bankr. D. Colo. 2021)). But an objection may be warranted, and the court must consider whether the estimate of projected disposable income is reliable and

[3] Small Business Reorganization Act of 2019, Pub. L. No. 116-54, Aug. 23, 2019, 133 Stat. 1079.

[4] At the hearing on October 7, Premier Glass sought to show that it had provided CGI with the bases for its projections. But at a confirmation hearing, the debtor must satisfy the *court*, not an objecting creditor. Indeed, in the context of a nonconsensual plan, it would be an exercise in futility to try to satisfy an objecting creditor—for upon satisfaction, the creditor would no longer object.

accurate based on the evidence presented.[5] Moreover, once an interested party brings an objection, the debtor must show the court why the objection is unfounded; the burden does not shift to the objector to prove that a plan is *not* "fair and equitable." *In re Trinity Family Prac. & Urgent Care, PLLC,* 661 B.R. 793, 808-809 (Bankr. W.D. Tex. 2024). When a creditor raises questions as to the reasonableness of expenses the debtor includes on a projected budget, the debtor at minimum must be able to explain to the court's satisfaction how those costs have been calculated. *See In re Trimax Med. Mgmt., Inc.*, 659 B.R. 398, 403 (Bankr. M.D. Ga. 2024).

These requirements are statutory minimums, but because confirmation is within a judge's discretion and this list is non-exhaustive, "a court may consider other relevant factors as well" when determining whether a plan is fair and equitable under 1191(c). *Hamilton v. Curiel (In re Curiel)*, 651 B.R. 548, 561 n.7 (9th Cir. B.A.P. 2023).

B. Under the "Best Efforts" Test, A Debtor Must Commit All Projected Disposable Income

So, the debtor must prove its own case for confirmation. What exactly must it prove? In short: the disposable income test requires that the debtor will make its "best efforts" (will commit its entire projected disposable income) to pay its creditors for the full duration of the commitment period. *In re Pearl Res.*, 622 B.R. 236, 265-66 (S.D. Tex. Bankr. 2020). The period of commitment may not be less than three years, but it may be as long as five years if the court believes that is necessary for the plan to be considered fair and equitable. § 1191(c)(2)(A).

The projected disposable income test is also called the "best efforts" test, which highlights why the Sub. V approach has been so successful.[6] *Pearl Res.,* 622 B.R. at 267-68. One of the

[5] Paul W. Bonapfel, *A Guide to the Small Business Reorganization Act of 2019*, p. 149 (rev. June 2022), https://www.flsb.uscourts.gov/sites/flsb/files/documents/Guide_to_the_Small_Business_Act_of_2019_%28Hon._Paul_Bonapfel_rev._06-2022%29.pdf, *archived at* https://perma.cc/UQ3N-KMQV.

[6] The ABI's task force on Subchapter V concluded that the best efforts test is an "effective substitute for the protections of the absolute priority rule . . . and as a practical matter is more beneficial to unsecured creditors." ABI

biggest innovations of Sub. V was that Congress removed the absolute priority rule and replaced it with a projected disposable income test. Under Sub. V's innovative approach, a debtor "can retain ownership interests . . . at the expense of and over the objection of its creditors," but Congress maintained balance by adding other limitations. *Cantwell-Cleary Co. v. Cleary Packaging, LLC (In re Cleary Packaging, LLC),* 36 F.4th 509, 517 (4th Cir. 2022). The dissenting unsecured creditors receive value similar to what they would receive in chapter 12 and 13 cases: as much as the debtor can pay. *Id.*; *see also In re Who Dat?*, *Inc.*, No. 21-10292, 2024 WL 1337453, at *9 (Bankr. E.D. La. Mar. 27, 2024) (quoting *In re EAS Graceland LLC*, No. 20-24484, 2021 WL 10395821 at *9 n.7 (Bankr. W.D. Tenn. July 20, 2021)). By statute, creditors also must receive more than they would in a hypothetical chapter 7 liquidation, because confirmation under § 1191(b) requires compliance with § 1129(a)(7) and all other § 1129(a) paragraphs except (8), (10), and (15).

The "best efforts" approach to disposable income has its roots in Chapter 12, through which family farmers with regular income can reorganize their debts in a manner similar to chapter 13 debtors. Before the enactment of chapter 12, family farmers struggled to get plans confirmed for the same reasons as many small businesses prior to Sub. V: the absolute priority rule. 8 COLLIER ON BANKRUPTCY ¶ 1200.01 (16th ed. 2024). As multiple courts and commentators have noted, chapter 12 and the Sub. V business provisions on disposable income have the exact same wording. § 1991(d); § 1225(b)(2); *see, e.g., In re Hyde*, No. 20-11525, 2022 Bankr. LEXIS 1571, at *26 (Bankr. E.D. La. June 6, 2022) (*citing Pearl Res*., 622 B.R. at 265)). Congress appears to have intended the same compromise for both Sub. V and chapter 12 debtors, and chapter 12 precedents

Subchapter V Task Force, *Final Report of the ABI Institute Subchapter V Task Force*, p. 13 (2024) https://abi-org.s3.amazonaws.com/SubV/SBRA_Final_Report.pdf, *archived at* **https://perma.cc/C4T7-VA5C**. When a small business debtor's plan is confirmed and succeeds, both the debtor and the unsecured creditors tend to receive more on balance than they would have in a regular Sub V case. *Id.*

therefore provide persuasive authority on the disposable income (and the fair and equitable) requirements of Sub. V.

Under Seventh Circuit precedents, the best efforts test allows chapter 12 farmer-debtors to retain sufficient but not extravagant levels of income. On the one hand, "disposable income represents 'left overs,'" the amount remaining after what it costs to run a business. *Matter of Fortney,* 36 F.3d 701, 705 (7th Cir. 1994). There may be a case where a farmer has no disposable income (due to payments to secured creditors). That hypothetical case may be confirmable, notwithstanding there are no "leftovers" for unsecured creditors. On the other hand, "[a] debtor whose income greatly exceeds expenses may provide unsecured creditors with a substantial amount of disposable income." *Id.* The disposable income provision exists "to prevent large expenditures by debtors for non-essential items which ultimately reduce the sum available to pay holders of unsecured claims." *Id.* at 704 (*quoting In re Hedges*, 68 B.R. 18, 20-21 (Bankr. E.D. Va. 1986)). Analyzing the best efforts test in the context of good faith—because there was no comparable "fair and equitable" provision in chapter 12—the Court concluded that the question "reduces to whether the [debtor's] plan represents a sincere effort at repayment of their obligations, or is instead an effort to thwart repayment." *Fortney,* 36 F.3d at 707 (*quoting In re Schaitz*, 913 F.2d 452, 453-54 (7th Cir. 1990) (cleaned up)).

Extrapolating to the issue in this case, the court concludes that a debtor seeking to confirm a nonconsensual plan under Sub. V. bears the burden of showing that its plan is fair and equitable. To do that, it must show a "sincere effort" regarding two things: first, it must show that there is a reasoned basis for its projections, and second, it must show that line items deducted from disposable income are indeed "necessary for the continuation, preservation, and operation of the debtor's business" and therefore fair and equitable to the unsecured creditors. § 1191(c) and (d).

III. Analysis

A. Jurisdiction

The confirmation of a plan is a core proceeding under 11 U.S.C. § 157(b)(1) and (2)(L). The court has subject matter jurisdiction pursuant to 11 U.S.C. § 1334 and the District's internal operating procedure, which refers such matters to bankruptcy courts. Internal Operating Procedure § 15(a). Venue is proper under 28 U.S.C. § 1409(a).

B. The Projections and the Plan are Effectively for Four Years, Not Five

CGI did not vote in favor of the plan, so Premier Glass must confirm it as a nonconsensual plan, which requires, among other things, that the debtor commit its projected disposable income toward payments to unsecured creditors. The minimum length of commitment for a nonconsensual plan is three years, but "the court may fix" a longer commitment period under § 1191(c)(2)(A) and (B). The date of the first payment under the plan is the beginning of the commitment period. 8 COLLIER ON BANKRUPTCY ¶ 1191.04. Projections should show anticipated earnings and expenses, calculate projected disposable income, and illustrate the debtor's ability to make payments under the plan. For that reason, the projections should reflect the commitment period.

Premier Glass provided projections for the years 2024-2028, but it proposed to make its first payment in 2025. The plan states: "The payments to Holders of Allowed Class 2 Claims . . . shall commence on January 1, 2025 and continue quarterly through January 1, 2029." (Tr. Ex. 7, also at First Am. Plan, ECF No. 88, at ¶ 10.04.) In effect, the debtor has provided projections and a payment scheduled for a four-year plan (or just over), not a five-year plan.

C. The Debtor's Projections and Testimony Did Not Establish that the Tax and Depreciation Projections had a Reasoned Basis

CGI objected to Premier Glass's line-item deductions for depreciation expenses, taxes, and legal fees. Based on testimony from the Sub. V Trustee, the line items for taxes and depreciation expenses may indeed be necessary for the continuation, preservation, and operation of the debtor's business. (The court addresses the legal fees in the next section.) But to meet its burden of proof, Premier Glass also needed to show, at a minimum, that there was a reasoned calculation behind the projected numbers. Without showing the latter, the court can't determine the former. Although this burden is not high, Premier Glass failed to carry it.

Premier Glass did not meet its burden of explaining how it had calculated the line item for taxes deducted from disposable income. The court found credible the testimony that it may indeed be necessary for a debtor to calculate its income on an after-tax basis, since it is a pass-through entity for income tax purposes.[7] But the Sub. V Trustee could not explain the basis for the calculations on the projections—in large part because the Sub. V Trustee made these tax projections based only on information provided by Premier Glass.

The Sub. V Trustee testified that the projections were based on historical data, on "what's fair to project going forward," and on information received from other professionals (i.e., the debtor's CPA).[8] Mr. Brash referred to the debtor's Operating Agreement, which was admitted as an exhibit. (Tr. Ex. 14.) It was not clear, however, from his testimony whether Premier Glass was required to make tax reimbursements to its members only when it had sufficient disposable income, if such reimbursements were always necessary, and how this determination was made in

[7] *See* Bonapfel, *supra* note 5, at 147 ("When the generation of income by a business gives rise to taxation, it seems appropriate to determine disposable income on an after-tax basis.").

[8] The court takes judicial notice of the fact that the Debtor's first plan of reorganization, proposed March 18, 2024, did not provide a deduction for taxes in its projections. ECF No. 26, Ex. E.

the past. He testified that the tax numbers were obtained from the CPA, but testimony about any conversation with the CPA was excluded after a hearsay objection was sustained. Premier Glass might have called for testimony from another party with personal knowledge of its business or accounting practices, but it chose not to.

As a result of this deficiency, Premier Glass could not explain to the court where the numbers on the spreadsheet came from, how they related to the business's income, or on what basis the debtor had historically made tax reimbursements to principals. For instance, the Sub V. Trustee was unable to explain why taxes were projected to be roughly the same in 2024 as they had been in 2023, even though the company operated at a loss in 2023. Without testimony or evidence to show that there was a relationship between the projected numbers and what Premier Glass expected to have in income, the court could infer only that the numbers were placeholders intended to create a reserve for reimbursements to equity holders. Faced with seemingly arbitrary numbers, the court had no way of knowing whether the projection had any reasoned basis, whether the deduction was necessary, and whether Premier Glass really was committing all of its projected disposable income.

Similarly, Premier Glass did not meet its burden as to depreciation expenses. Taking Premier Glass at its word, based on the testimony of the Sub. V Trustee, the court understands that the line item called "depreciation expenses" is really meant to be a "placeholder" for "replacement costs" and "capital expenses." The line item for depreciation expenses thus appears to be in the nature of cash reserves set aside for anticipated expenses, rather than a reflection of mere "paper losses."[9] Judge Paul W. Bonapfel notes that, as in this case, "[q]uestions may arise when the debtor

[9] It is clear from the Sub. V Trustee's testimony that the line item was not meant to reflect "depreciation" strictly and thus did not stand in for mere "paper losses." *In re Linden*, 174 B.R. 769, 772 (Bankr. C.D. Ill. 1994). The court acknowledges that the line item was inaptly named but declines to hold the Debtor to a specialist's definition.

wants to establish a reserve [because] creditors may reasonably argue that the disposable income they must receive should not be depleted when the debtor will gain the benefit of the investment of income in the business."[10]

In cases where courts have allowed debtors to deduct reserves for replacement costs or capital expenditures from their projected disposable income, they did so because they received evidence that such reserves were necessary to the business as a going concern, which meant that creditors received more even though the reserve primarily benefited the debtor.[11] In the Sub. V business context, one court found acceptable a debtor's proposed operational reserve of $20,000 because the debtor was an urgent care medical center whose cash flows were affected by factors outside its control, such as the amount of time it took insurance to pay claims. *In re Urgent Care Physicians*, No. 21-24000-beh, 2021 Bankr. LEXIS 3466, at *27-28 (Bankr. E.D. Wisc. Dec. 20, 2021). Though the operating reserve was a kind of slush fund, the court found that the debtor had compellingly explained its necessity.

The court found credible the Sub. V Trustee's testimony that a business like Premier Glass, which provides specialized installation services, cannot serve its customers if it does not replace broken or outdated equipment, meaning expenditures for replacement equipment may plausibly be necessary under § 1191(d). The court is also willing to analogize the Debtor's proposed reserve for replacement costs to the operating reserve in *Urgent Care*. But without knowing what, if any, equipment will need to be replaced, or what other capital expenditures might be funded with the reserve, there is no way for the court to know if the reserve is necessary to the continuation, preservation, and operation of the business. Someone familiar with Premier Glass's business—say, the company's president, who was on Premier Glass's witness list and present for the

[10] Bonapfel, *supra* note 5, at 146.
[11] *Id.*, at 146 n.392 (collecting cases).

proceedings—might have provided this information. But Premier Glass relied only on the testimony of the Sub. V Trustee and provided no evidence at all to explain how historical costs had arisen or if it already anticipated certain equipment needing to be replaced.

It is unlikely that, in the absence of an objection, a bankruptcy court would raise *sua sponte* the issue of whether the values provided in a debtor's projections had a basis in fact. *See In re Trinity Family Prac. & Urgent Care PLLC*, 661 B.R. 793 (Bankr. W.D. Tex 2024) (acknowledging that it is uncommon for a court to raise *sua sponte* the issue of the debtor's period of commitment) (*citing In re Orange Cnty. Bail Bonds, Inc.,* 638 B.R. 137, 146 (B.A.P. 9th Cir. 2022)). But there *was* such an objection in this case, and the bankruptcy court has an obligation to ensure that the debtor's plan meets the requirements of the Code. Because Premier Glass did not meet its burden of showing that its projections for taxes and depreciation were credible, the court had no basis to conclude that the plan was fair and equitable, and it cannot be confirmed.

D. Premier Glass Has Not Shown That Its Projected Litigation Expenses Are "Reasonably Necessary"

Premier Glass also failed to carry its burden regarding what appears to be a novel legal issue, the legal fees. The debtor did not show that the line item for legal fees was based on a reasoned projection, and it did not show that paying the legal fees was necessary for the continuation, preservation, or operation of the business of the debtor. In a more general sense, the court was unconvinced that, based on the evidence before it, the line item for legal fees was fair and equitable.

The legal fees are primarily related to litigation over the arbitrator's award for tortious interference, which resulted in Premier Glass owing over $2 million to CGI. It is understandable why Premier Glass wants to continue to challenge the award; without that debt, the company would not be in bankruptcy at all. When Premier Glass initially filed bankruptcy in Delaware, it

apparently thought its litigation with CGI was over: it only scheduled legal fees of $25,000 per year in its first projections, dated March 18, 2024. (Ch. 11 Plan, ECF No. 26, Ex. E.) Now, however, Premier Glass anticipates it will spend more than $100,000 per year on litigation. The court infers that Premier Glass changed its mind when CGI initiated an adversary proceeding three weeks after those projections, asking the court to determine its claim was not dischargeable.

From Premier Glass's perspective, the litigation war chest is necessary to fund its appeals, because if it wins its appeal, then CGI will no longer have a claim against Premier Glass. This concern is especially pressing because CGI's claim may be found to be nondischargeable. (Memorandum Opinion, Adv. Case No. 24-00096, ECF No. 17.) From CGI's perspective, these fees reduce the disposable income they are entitled to, in the service of challenging its claim. Class 2 (CGI and the counsel who represented Premier Glass pre-petition) are the only non-insider, unsecured creditors who will not be paid in full. If CGI ultimately prevails, the deduction for legal fees will be a total loss, and will be, in effect, a transfer from Class 2 to the Premier Glass's counsel. It appears, therefore, that the legal fees provide considerable benefit to the business's equity holders at the expense of the unsecured creditors: Because de la Cruz is a joint tortfeasor with Premier Glass, he gains a benefit from Premier Glass's continuing litigation of the arbitration award. (Based on testimony at the confirmation hearing, the court understands that Premier Glass and de la Cruz have separate counsel. It is undeniable, however, that de la Cruz will reap what Premier Glass sows.)

The court finds persuasive the analyses conducted by other courts in comparable cases, as well as Judge Shad M. Robinson's analysis in *In re Trinity Family Practice & Urgent Care, PLLC*, 661 B.R. 793 (Bankr. W.D. Tex. 2024). In that case, a creditor who had voted against the plan objected that a debtor's three-year period of plan payments was not fair and equitable under §§

1191(b) and (c). The creditor argued that the plan provided for only minimal plan payments to unsecured creditors, and the Court should fix a longer period for repayment. Acknowledging the relative novelty of the issue, the court proposed a non-exclusive list of factors to consider as "instructive in [a court's] analysis of the totality of the circumstances":

i. Capital reserves or capital expenditures during the period of plan payments;
ii. Reasonableness of income and expenses set forth in the plan projections during the period of plan payments as compared to historical operations and operations during the post-petition, pre-confirmation time period;
iii. Salary and/or other payments to insiders during the period of plan payments;
iv. Risks and consequences of a longer period of plan payments; and
v. Any other unique or extraordinary facts specific to the case.

Id. at 822-23. Judge Robinson explained, "The burden is on the Debtor to prove that each of these factors support the period of plan payments set forth in the proposed Plan [and] no factor alone is dispositive or controlling." *Id.* Ultimately, these factors help a court weigh whether plan provisions unreasonably benefit a debtor at the expense of the unsecured creditor class—and most of these weigh against finding this plan to be fair and equitable.

The plan essentially creates three capital reserve line items for Premier Glass, line items that, in combination, add up to more than the debtor's projected net income:

	2023 Actual[12]	2024 Projected	2025 Projected	2026 Projected	2027 Projected	2028 Projected	Total 5-Year Projected Amount
Legal Fees	462,577	277,546	111,355	113,582	115,854	118,171	736,509
Depreciation Expenses	37,686	38,440	39,209	39,993	40,793	41,609	200,043
Taxes	43,810	43,812	104,824	106,920	109,059	111,240	475,855
Net Income	(54,908)	148,814	264,299	269,585	274,976	280,476	1,238,150

As discussed, based on testimony these line items appear to have little basis in fact or reasoned projection. But no provision in the plan increased payments to CGI in the event that they proved

[12] The numbers in this chart come from Tr. Ex. 8, also available on the docket as Am. Ex. E (Sub-V 5-Year Projections), ECF No. 99.

inaccurate: if tax reimbursements or replacement costs were lower than guessed, or if the parties settled their litigation early. In other words, there is no "true-up" provision. While courts disagree about whether a bankruptcy judge can *require* a true-up, there is no binding precedent to prevent a court from confirming a plan where a debtor has included such a provision.[13] A true-up may be especially appropriate where, as here, a debtor sets aside large reserves for projected capital expenditures that benefit its insiders at the expense of its creditors.

A true-up seems especially appropriate for the legal fees deduction, because it does not appear there is any real relationship between past legal expenses and projections. The Sub. V Trustee stated the numbers were based on historical information, his conversations with the firm handling the post-petition litigation, and his impression of the intent of the parties. But in testimony, it became clear to the court that numbers on the projections were reflections of the Sub. V Trustee's belief that Premier Glass would litigate "forever," to "the end of time," to the "ends of the earth." He stated that he believed:

> [I]t's reasonable to try to settle the case, and it would have been in the best interest for everybody to have done it already. I can't make a comment based on what the parties want. It's an unstoppable force crashing into an immovable object . . . In my opinion, there should be no legal fees moving forward.

There was no evidence as to how the estimated numbers were valued, why a negative 40% growth rate was appropriate for the legal fees, or why the numbers should be largely consistent year-to-year in light of an unpredictable appeals process.

[13] Courts are split as to whether a court can require payments based on actual results. Paul W. Bonapfel, *Subchapter V Update*, pp. 11-13 (March 2024) https://www.ganb.uscourts.gov/sites/default/files/sub_v_update_march_2024_331-24.pdf, *archived at* https://perma.cc/73AH-JVZ4– (*citing Legal Service Bureau, Inc., v. Orange County Bail Bonds, Inc. (In re Orange County Bail Bonds, Inc.)*, 638 B.R. 137 (B.A.P. 9th Cir. 2022); *In Staples v. Wood-Staples (In re Staples)*, No. 2:22-cv-157-JES, 2023 U.S. Dist. LEXIS 2684 (M.D. Fla. Jan. 6, 2023)). *See also In re Packet Construction, LLC,* No. 23-10860, 2024 Bankr. LEXIS 1053 (Bankr. W.D. Tex. Apr. 30, 2024) (collecting cases and concluding that both statutory language and policy militate against requiring true-ups as a general rule, but conceding that there may be a circumstance in which a true-up provision would be necessary to confirm a fair and equitable nonconsensual plan).

The lack of a true-up provision also seems problematic because Premier Glass may run out of road for litigation before the commitment period ends. Although he acknowledged the rancor between the parties, the Sub. V Trustee stated, with no more support than his other statements, that "[w]e hope that there will be settlement so they [the fees] can be cut significantly." Yet, if the litigation does finalize before the commitment period ends, the final amount that Premier Glass pays will not change; it is based on the projections at confirmation.[14] Ultimately, Premier Glass has everything to gain from this litigation, which it is asking CGI to fund. CGI, on the other hand, can only lose, both coming and going. The Trustee's testimony did not help assuage these concerns, since his comments were inconsistent, if not paradoxical, and did not show that the capital reserve for legal fees was fair and equitable to CGI.

With regard to the third factor, the salary de la Cruz shall receive as a guaranteed payment, the Debtor did not provide any evidence of "belt tightening" that could weigh in its favor. *Trinity Family,* 661 B.R. at 825 (*citing In re Buntin*, 161 B.R. 466, 468 (Bankr. W.D. Mo. 1993)). In *Urgent Care,* a case in which a principal's salary weighed in favor of fairness and equity, the court approved of the debtor's deduction for an operating reserve because the debtor's principal and his family took steps to reduce expenses, including accepting salaries below market rate. The debtor also deferred scheduling the wages of the principal and others as administrative expenses, thus deferring some payments in order to make up for the deduction. *In re Urgent Care Physicians*, No. 21-24000-beh, 2021 Bankr. LEXIS 3466, at *27-28 (Bankr. E.D. Wisc. Dec. 21, 2021). Under the totality of the circumstances—even though the operating account reduced payments to unsecured creditors and was largely within the debtor's discretion—the belt tightening proved the debtor was sincerely trying to pay its creditors.

[14] If the claim is found to be nondischargeable, then Premier Glass will, of course, end up having to pay more than the amount projected in the plan.

In this case, by contrast, the debtor's principal is receiving a salary on par with historicals and, as a joint tortfeasor, he is also reaping the benefits of the litigation war chest. Evidence of belt tightening might have helped persuade the court that the plan is fair and equitable in its treatment of insiders. The Sub. V Trustee testified that the salary figure for de la Cruz (the "guaranteed payment") was calculated based on the historical salary de la Cruz had received, plus a modest year-over-year increase. He opined that the amount (approximately $170,000 per year) was not "exorbitant" or "necessarily outrageous." But the debtor presented no evidence as to the market or industry rate. Instead, the Sub. V Trustee testified that the company "has to have" de la Cruz. If the company will fail without de la Cruz, then the salary may indeed be necessary. But there was no evidence that the projected value had been reached through any kind of analysis, let alone analysis of fairness to unsecured creditors. And if the litigation war chest is likened to an expenditure on behalf of an insider (a benefit to the principal on top of his salary), then this factor weighs firmly against the debtor.

The court must consider as a final factor that this case is in essence a two-party dispute, and the history between the parties suggests that Premier Glass has every incentive to continue to challenge the underlying claim—though it has not (yet) objected to it in the manner provided by the Bankruptcy Code. A plan whose primary focus is to evade paying a creditor rather than commit the debtor's total projected disposable income is not fair and equitable. *See Who Dat?*, No. 21-10292, 2024 WL 1337453, at *10 ("This Plan served only as a vehicle for the personal interests of WDI's principals and an attempt by those principals to manipulate the bankruptcy process to the detriment of the estate's sole non-insider prepetition creditor."). The plan gives Premier Glass sole discretion over how to spend the litigation fund, and the Code, as Congress has written it, gives Premier Glass sole discretion over whether to modify the plan. In the absence of the legal fees,

the projected disposable income that would go to Class 2 in 2025 would surge from $264,299 to $375,654, increasing almost by half. (Tr. Ex. 8, also at Am. Ex. E, ECF No. 99.) This is not an insignificant line item. The court cannot ignore these unique circumstances. Given the rancor between the parties, the lack of evidence showing how the projections were calculated, and the fact that nearly every dollar spent on the litigation is a dollar that could otherwise go to CGI, this factor weighs against finding the plan fair and equitable.

IV. Conclusion

The debtor has not met its burden of showing that the plan is fair and equitable pursuant to 11 U.S.C. § 1191(c) and (d), and confirmation is denied without prejudice.

Dated: November 8, 2024

Honorable Deborah L. Thorne
United States Bankruptcy Judge

Faculty

H. David Cox is the founding member of Cox Law Group PLLC in Lynchburg, Va., and practices bankruptcy law throughout the Western District of Virginia. Prior to entering private practice, he clerked for the late Hon. William E. Anderson. He co-edits the treatise *Bankruptcy Practice in Virginia*, co-authored the fourth edition of ABI's *Consumer Bankruptcy: Fundamentals of Chapter 7 and Chapter 13 of the U.S. Bankruptcy Code*, was published in the *Norton Annual Survey of Bankruptcy Law* (2019 edition), and has lectured at numerous regional and national CLE programs. Mr. Cox is a member of the National Bankruptcy Conference, a Fellow of the American College of Bankruptcy, chair of the Bankruptcy Law Section of the Virginia Bar Association and a faculty member of the mandatory Virginia State Bar Harry L. Carrico Professionalism Course, and he serves on ABI's Board of Directors. He received his B.A. in 1992 from Virginia Tech and his J.D. in 1995 from the University of Richmond - TC Williams School of Law.

Caroline R. Djang is a member of Buchalter PC's Insolvency and Financial Law practice group in the firm's Orange County office in Irvine, Calif. She practices in the areas of insolvency, bankruptcy, and litigation, and she has experience representing various creditors, trustees, debtors and committees in bankruptcy cases and adversary proceedings. Ms. Djang is a chapter 11 subchapter V trustee for the Central District of California and a frequent speaker on the Small Business Reorganization Act. She also is a certified mediator and is serving by appointment to the Bankruptcy Mediation Program Panel for the U.S. Central District of California Bankruptcy Court. Ms. Djang is president of the Orange County Women Lawyers Association and is on the board of directors of the Orange County Bar Association. Prior to entering into private practice, she was a judicial law clerk at the U.S. Bankruptcy Court for seven years, clerking for U.S. Bankruptcy Judges Ellen Carroll, Vincent P. Zurzolo, Sheri Bluebond and Richard M. Neiter. She is admitted to practice in all of the U.S. District Courts in California and is listed in *California Super Lawyers*. She also received tge "Top Champion" for DEI Award in 2024 from the Orange County Coalition for Diversity in the Law. Ms. Djang received her B.A. in English and history from the University of Pennsylvania and her J.D. from Loyola Law School.

Richard H. Drew III is an Assistant U.S. Trustee with the Office of the U.S. Trustee in Shreveport, La. He began practicing with the Corporate and Financial Litigation Section of the U.S. Department of Justice's Civil Division, where he represented the U.S.'s interests in chapter 11 bankruptcies and in other commercial litigation. In 2015, Mr. Drew joined the U.S. Trustee Program in his home state of Louisiana, then in 2019 joined the Shreveport field office. In 2021, he has also served as the Acting Assistant U.S. Trustee for the San Antonio field office. Mr. Drew received his J.D. from the Louisiana State University Law Center.

Hon. Robert A. Mark is a U.S. Bankruptcy Judge for the Southern District of Florida in Miami, appointed in 1990, and he served as Chief Judge from 1999-2006. Prior to his appointment to the bench, Judge Mark was head of the bankruptcy department of the Miami firm of Stearns, Weaver, Miller, Weissler, Alhadeff & Sitterson, PA. He is a frequent speaker at international programs sponsored by INSOL, III, IWIRC and ABI, and he has served for several years as the co-judicial chair of the ABI's

Caribbean Insolvency Symposium. Judge Mark is a Fellow of the American College of Bankruptcy and an author for *Collier on Bankruptcy*. His community activities include participation in a program that offers internships to minority law students, and participation in financial education programs for high school students through the Bankruptcy Bar Association's CARE program, which teaches students about the dangers of credit card abuse. Judge Mark is a graduate of Boalt Hall School of Law, University of California at Berkeley.