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Chapter 11 Plans and Confirmation: What Should a Creditor Know?

*Thursday, March 18, 2021
12:00-1:15 PM Central Time*

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Session Overview

- The Chapter 11 Filing
- Chapter 11 Plan and Disclosure Statement
- Contents of a Disclosure Statement and Chapter 11 Plan
- When to Object to Disclosure Statement and Plan
- Post Confirmation and Discharge Issues

POLLING QUESTION

How often do you encounter dealing with a Chapter 11 filing?

- (a) 0-5 times a year
- (b) 6-20 times a year
- (c) 25 + times a year

THE CHAPTER 11 FILING

- Designation
 - Individual/Business
 - Individual (Debt limits for a Chapter 13)
 - Small Business
 - SubChapter V
- Petition and Schedules
 - What to Look for?
 - What Should be Included?

THE CHAPTER 11 FILING

- First Day Motions
 - Motion to Extend Time to File Schedules/Statements
 - Motion for Order Authorizing Use of Cash Collateral
 - Motion for Joint Administration
 - Critical Vendor Motions
 - Motion for Order Authorizing Post-Petition Financing (DIP)
 - Application to Employ Professionals
 - Motion to Pay Pre-Petition Wages
 - Motion for Order Prohibiting Utilities from Altering, Refusing or Discontinuing Service

THE CHAPTER 11 FILING

- **Automatic Stay**
- Filing a petition "automatically stays" most collection actions against the debtor or the debtor's property. 11 U.S.C. § 362. But filing the petition does not stay certain types of actions listed under 11 U.S.C. § 362(b), and the stay may be effective only for a short time in some situations. The stay arises by operation of law and does not require judicial action. As long as the stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments. The bankruptcy clerk gives notice of the bankruptcy case to all creditors whose names and addresses are provided by the debtor.

THE CHAPTER 11 FILING

- Automatic Stay
 - 11 U.S.C. 362(a)
 - Commence or continue lawsuits against debtor
 - Enforce judgments against debtor or his/her property
 - Obtain or perfect liens against debtor's property
 - Obtain or perfect liens against debtor's property
 - Collect or recover claims against debtor

THE CHAPTER 11 FILING

- Automatic Stay
 - Section 362 also provides for relief from the automatic stay if your debt is secured by collateral that is not adequately protected or if your property will not play a significant role in the debtor's attempts to reorganize
 - You should file a motion for relief from the automatic stay asking the court to terminate, modify, or condition the automatic stay with respect to your property

THE CHAPTER 11 FILING

- Termination of automatic stay by operation of law
 - Absent actions by creditor seeking relief from stay and/or absent a multiple flier situation, automatic stay remains in effect until:
 - Discharge;
 - Dismissal; or
 - Closing of a case, whichever occurs first

THE CHAPTER 11 FILING

- Adequate Protection
 - Is there equity in the collateral?
 - If not, Debtor offering adequate protection payment until confirmation of plan
 - Escrow
 - Principal/interest payment
 - If the Debtor is not offering or paying adequate protection....and
 - If the secured creditor can show that the property is worth less than the amount owing to it, then that creditor has proved a lack of adequate protection and should get relief from stay. Without competent evidence of value, however, a lack of adequate protection cannot be proved.

THE CHAPTER 11 FILING

- **Creditor's Committee**

- The committee has the duty to be “watchdog” for the other Creditors and bring problems to the Court’s attention. It may investigate the Debtor’s acts, conduct, assets and debts. It has the ability to negotiate a Plan with the Debtor. It can file its own Plan where appropriate.
- The committee can force the Debtor to take certain actions (like file avoidance actions, such as preferences and fraudulent conveyances) or take the action itself. The committee is relied upon by the Court for advice as to how the unsecured Creditors see particular issues.
- The fees and expenses of the committee (including the legal fees of the committee) will be an administrative claim, paid by the Debtor as part of the Debtor's Chapter 11 plan.
- A Creditor has the option to file an objection to Plan Confirmation.

CHAPTER 11 DISCLOSURE STATEMENT AND PLANS

- Disclosure Statements
 - 11 U.S.C. 1125
 - Contents of a Disclosure Statement
 - Debtor to provide statement to all creditors and interest holders that provides adequate information with request to the substance of the proposed plan
 - Description of business
 - History of the Debtor
 - Financial information
 - A description of the plan
 - How the plan will be executed
 - Liquidation analysis
 - Projection of operations
 - All pending or contemplated litigation
 - All transactions with insiders
 - All probable tax consequences

CHAPTER 11 DISCLOSURE STATEMENT AND PLANS

- Disclosure Statements
 - Analysis
 - Liquidation
 - Projections
 - Classification of Claims
 - Treatment of Claims
 - 1111(b) Election

CHAPTER 11 DISCLOSURE STATEMENT AND PLANS

- Disclosure Statements
 - When to file an Objection to a Disclosure Statement
 - Main reason - not enough information to make determination
 - Information provided not clear on claims classification/treatments
 - Other reasons
 - Small Business Case Objections (difference)

CHAPTER 11 DISCLOSURE STATEMENT AND PLANS

- Chapter 11 Plan
 - Contents of a Plan
 - Every plan must classify all claims and ownership interests
 - Impaired
 - Unimpaired
 - Adequate means for implementation
 - Sale of assets?
 - Modification of contracts?
 - Merger or consolidation with another company
 - Cramdowns
 - Executory Contracts and Cure Amounts
 - Releases (Third Party)
 - Voting/Ballots
 - Effective Dates/Conditions Precedent

CHAPTER 11 DISCLOSURE STATEMENT AND PLANS

- Chapter 11 Plan
- When to Object to the Plan
 - Treatment of Claims
 - Modification of Contract Terms Unreasonable
 - Terms Unreasonable
 - Plan Not Feasible
 - Third Party Releases Impact Rights
 - Sale of Property Terms

POLLING QUESTION

Which area of a Chapter 11 do you encounter the most issues with?

- (a) filing and petition
- (b) first day motions, including cash collateral
- (c) disclosure statement
- (d) plan
- (e) post confirmation

CONFIRMATION OF THE PLAN

- Chapter 11 is designed to accommodate the confirmation of both consensual plans and non-consensual plans, also known as "cramdown" plans. The consensual plan, that which is accepted by the requisite majority of every impaired class, is the norm. 11 U.S.C. § 1129(a). Junior classes may receive value in the reorganized debtor, even though senior classes are not fully compensated, so long as the senior classes are given value of not less than what they would receive in liquidation. If one or more impaired classes does not consent to the proposed plan, Confirmation must meet the cramdown requirement of section 1129(b).

CONFIRMATION OF THE PLAN

- How Acceptances are Obtained - A class of claims has accepted a plan when holders of a majority in number and two-thirds in amount of the claims in the class approve the plan; only the claims of creditors who actually vote are counted for this purpose 11 U.S.C. § 1126(c). A class of "interest" (usually stockholders) accepts a plan when holders of two-thirds an amount of the interest voted (that is, two-thirds of the shares voted) have accepted it. 11 U.S.C. § 1126(d).
 - Any acceptance or rejection not made in good faith or not obtained in good faith or in compliance with the Bankruptcy Code, may be excluded from the computations. 11 U.S.C. § 1126(e).

CONFIRMATION OF THE PLAN

- Impairment of Claims or Interests - Section 1124 - The Debtor need not solicit acceptance of a plan by an unimpaired class. A class is not impaired if the plan (i) leaves unaltered the legal, equitable and contractual rights of the class of creditors or shareholders, section 1124(1); or (ii) merely cures a default that led to acceleration of debt and restates the obligation, section 1124(2). If the rights of class members are affected by a plan in any other way, even if the change is beneficial, the class is deemed impaired.

POST CONFIRMATION AND DISCHARGE

- Automatic Stay Termination
- Post Confirmation Defaults on Plan
- Compliance or Non-Compliance with Plan
- Final Decree/Discharge
- Closing of the Case

Webinar Wrap-Up

Questions

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Hot Topics

Thursday, March 25, 2021

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New Rule Changes & Where is the CFPB Going Under the New Administration

Tuesday, March 30, 2021

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Chapter 13 Best Practices

Wednesday, April 7, 2021

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Chapter 11 Basics for the Mortgage Lender

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