



Central District
Consumer Bankruptcy
Attorney Association

PROGRAM SUMMARY 2-20-21

By: Gary R. Wallace-Program Summary Committee Chair

***cdcbaa* Holds Third Meeting and MCLE Program of 2021: "One Year Into SBRA: Meet the Subchapter V Trustees"**

On February 20, 2021, the CDCBAA held its third members meeting and MCLE program of the year. To help mitigate the spread of COVID-19, the meeting and program were conducted as a live webinar via Zoom video. The program topic was: **"One Year Into SBRA: Meet the Subchapter V Trustees."** The distinguished panel featured trustees Caroline Djang (Riverside), Doug Flahaut (LA), Rob Goe (OC), Greg Jones (LA) and Susan Seflin (SFV). CDCBAA board member Todd Turoci moderated. The program contained a valuable mix of black letter law and real case experience. Some of the specific subtopics discussed were the following:

At the outset, it was noted that the Central District is presently second only to Middle District Court of Florida in subchapter V case filings.

Eligibility. The debtor must be engaged in a commercial or business activity. This probably means that cessation of activity altogether prior to filing may render the debtor ineligible for subchapter V. Single-asset real estate (SAR) cases are not permitted. The \$7.5 million debt limit is measured as of petition date in voluntary cases. Lease rejection damages are probably not included *if* the lease has not yet been rejected. Insider debt and disputed debt are also excluded from the debt limit. But the dispute regarding debt likely must be bona fide.

Deadline for filing a plan. Notwithstanding the complications common in a business reorganization case of any type, the deadline for filing a plan is just 90 days from the petition date. The panel noted that extension requests must be presented to the court, that they are discretionary, and that their experience so far has been that these requests might not be granted as routinely as counsel might expect absent extenuating circumstances. To avoid the need for such extensions, the panel urged debtors' counsel to file the plan, if at all, even before the first status conference.

Subchapter V Trustee's Duties. The specific duties of a subchapter V trustee are set forth in section 1183(b). Unlike in chapter 7 cases, there is no affirmative duty to investigate debtor's assets, although trustee certainly has a right to do so. A new and unique duty imposed by section 1183(b) is that the trustee must facilitate the development of a consensual plan of reorganization. There was an extended discussion about how the trustees intend to fulfill this duty.

Plan length and Disposable Income Obligation. The plan length is 3-5 years. Section 1190 sets forth the plan requirements. The coronavirus pandemic has significantly (but only temporarily) affected the disposable income analysis. So, debtors' counsel should not assume that the courts will be overly sympathetic to short-term issues created by the pandemic, especially as restrictions ease. They will still scrutinize plans that to be sure that multi-year income projections are adequately explained and supported.

Additional Features Unique to Subchapter V. No disclosure statement is required unless the court orders otherwise. A status conference must be held within 60 days from the petition date. There are no committee fees because unsecured creditors' committees are prohibited, absent a court order. Confirmation is intended to be faster than typical Chapter 11 cases. This will usually mean less legal fees. There are no U.S. Trustee quarterly fees required either. The

trustees also opined that their own case fees have been thus far significantly less than in non-subchapter V cases.

The panel also expressed views regarding *Roman Catholic Archdiocese of San Juan Puerto Rico v. Acevedo Feliciano*, 140 S. Ct. 696 (2020) (which prohibits bankruptcy courts from retroactively approving employment of professionals). This is a new and developing story within the bankruptcy bar.

The program closed with a question and answer session, but not before the trustee's offered several "do's and don'ts to debtors' counsel: Know the rules and obey the deadlines. Get employment applications on file immediately. Trustees are very active in these cases, so be responsive to their requests. Think ahead about the finish line before filing such a case. Trustees stand ready and willing to be helpful if debtor's counsel is communicative – as one example: obtaining documents from a creditor that are necessary to a plan can perhaps be obtained more quickly if the debtor's counsel enlists the trustee's support.

A very helpful and extensive handout of over 300 pages, which included articles, statistical reports and copies relevant decisions, was also provided to all participants. The program was once again well-attended and well-received.

The next CDCBAA members meeting and Zoom MCLE program is scheduled for March 20, 2021. The topic will be "Evidence." Our speakers will be the Hon. Barry Russell, U.S. Bankruptcy Court - Central District of Calif, Los Angeles Division, and M. Jonathan Hayes of Resnik Hayes Moradi LLP.

We hope you will join us.



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