The Nuts & Bolts of a Chapter 11 Plan

THE NUTS & BOLTS OF CHAPTER 11 (SERIES I)

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*** These slides were produced in connection with a video webinar that premiered on 1/15/2026. Take note, we make the PDF available for free download because the real benefit of a Financial Poise webinar is the conversation that the faculty has around the slide deck. You can access the webinar on-demand at Cerfi's LegalEdge (f/k/a West Legal Ed Center) (for attorneys or accountants seeking CLE or CPE) or Financial Poise (for everyone else).

Meet the Faculty

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About This Webinar

The Nuts & Bolts of a Chapter 11 Plan

- A Chapter 11 plan, if you believe what law schools teach and what most written literature states, is the ultimate goal of every Chapter 11 case. While this is not necessarily true anymore, as many Chapter 11 cases achieve important results without a plan ever being confirmed (or even being proposed), confirming a Chapter 11 plan (whether a plan of reorganization or a plan of liquidation) does remain a goal that nearly every Chapter 11 debtor (and many other parties in interest in a case) wants to achieve if possible under the circumstances.
- Understanding the nuts and bolts of a Chapter 11 plan is essential to understanding Chapter 11 as a whole. Concepts that permeate any Chapter 11 bankruptcy case (to name just a few: the Bankruptcy Code's priority scheme, proofs of claim, the concepts of claim allowance, and claim reconciliation) cannot be fully understood without reference to the crucible that is a Chapter 11 plan.
- This webinar takes the audience through the basic elements of a Chapter 11 plan, how a plan proponent (usually but not always the debtor) seeks to confirm a plan, and how objectors can try to defeat confirmation.

About This Series

The Nuts & Bolts Of Bankruptcy Law

- During the past few years, companies across a broad spectrum of industries have faced challenges stemming from the COVID-19 pandemic, supply chain interruptions, labor shortages, and inflation, among other things.
- Many businesses have been crippled by decreased revenues, increased debt, uncertain prospects, and vaporized equity.
- Sometimes companies in distress cannot heal on their own and are forced to check into the hospital of chapter 11 . . . or arrive at the door of the emergency room before negotiating a cure.
- If you need to understand chapter 11 – whether to avoid it or learn how to harness its power – this program is for you.
- Designed for the corporate attorney, litigator, business consultant, executive, and others not already experienced in chapter 11, each episode in this Financial Poise webinar series takes a deep dive into one aspect of a chapter 11 bankruptcy case at a level that can be understood by the non-expert.

Episodes In This Series

1. The Nuts & Bolts of a Chapter 11 Plan
   Premiere date: 1/15/26
2. The Nuts & Bolts of a Lift Stay Motion
   Premiere date: 2/05/26
3. The Nuts and Bolts of DIP Financing
   Premiere date: 3/05/26
4. The Nuts & Bolts of a First Day Hearing
   Premiere date: 3/26/26

Episode #1

The Nuts & Bolts of a Chapter 11 Plan

Each Financial Poise Webinar is delivered in Plain English, understandable to investors, business owners, & executives without much background in these areas, yet is of primary value to attorneys, accountants, & other seasoned professionals. Each episode brings you into engaging, sometimes humorous, conversations designed to entertain as it teaches. Each episode in the series is designed to be viewed independently of the other episodes so that participants will enhance their knowledge of this area whether they attend one, some, or all episodes.

Key Requirements for Court to Approve Plan

As you review the statutory provisions & comments that follow, keep in mind these key requirements for the bankruptcy court to confirm (approve) a chapter 11 plan:

- At least one impaired class of creditors must have accepted the plan
- Each class must accept the plan or be subject to "cramdown"
  - Statutory standards for treatment of the class that permit confirmation even if class has voted to reject
- Priority claims must be paid in full
- If anyone objects to the plan, the plan must provide the objector not less than the objector would receive if the debtor were liquidated under Chapter 7
- The plan must be feasible

11 U.S. Code § 1122 – Classification Of Claims Or Interests

11 US Code § 1122 (1978)

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

11 U.S. Code § 1123(a) – Required Contents Of Plan

11 US Code § 1123 (1978)

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—

(1) designate, subject to section 1122 of this title, classes of claims, other than claims of a kind specified in section 507 (a)(2), 507 (a)(3), or 507 (a)(8) of this title, and classes of interests;

(2) specify any class of claims or interests that is not impaired under the plan;

(3) specify the treatment of any class of claims or interests that is impaired under the plan;

(4) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest;

11 U.S. Code § 1123(a) – Required Contents Of Plan *(cont'd)*

(5) provide adequate means for the plan's implementation, such as—

- (A) retention by the debtor of all or any part of the property of the estate;
- (B) transfer of all or any part of the property of the estate to one or more entities, whether organized before or after the confirmation of such plan;
- (C) merger or consolidation of the debtor with one or more persons;
- (D) sale of all or any part of the property of the estate, either subject to or free of any lien, or the distribution of all or any part of the property of the estate among those having an interest in such property of the estate;
- (E) satisfaction or modification of any lien;
- (F) cancellation or modification of any indenture or similar instrument;
- (G) curing or waiving of any default;
- (H) extension of a maturity date or a change in an interest rate or other term of outstanding securities;
- (I) amendment of the debtor's charter; or
- (J) issuance of securities of the debtor, or of any entity referred to in subparagraph (B) or (C) of this paragraph, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purpose;

11 U.S. Code § 1123(a) – Required Contents Of Plan *(cont'd)*

(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends;

(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan and any successor to such officer, director, or trustee; and

(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.

11 U.S. Code § 1123(b) – Permitted Contents Of Plan

[11 US Code § 1123 (1978)]

(b) Subject to subsection (a) of this section, a plan may—

(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

(3) provide for—

(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

(B) the retention & enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

11 U.S. Code § 1123(b) – Permitted Contents Of Plan *(cont'd)*

(4) Provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

(5) Modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and

(6) Include any other appropriate provision not inconsistent with the applicable provisions of this title.

(c) In a case concerning an individual, a plan proposed by an entity other than the debtor may not provide for the use, sale, or lease of property exempted under section 522 of this title, unless the debtor consents to such use, sale, or lease.

(d) Notwithstanding subsection (a) of this section and sections 506 (b), 1129 (a)(7), and 1129 (b) of this title, if it is proposed in a plan to cure a default the amount necessary to cure the default shall be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

11 U.S. Code § 1124 – Impairment Of Claims Or Interests

11 US Code § 1124 (1978).

Except as provided in section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan—

(1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—

11 U.S. Code § 1124 – Impairment Of Claims Or Interests *(cont'd)*

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365 (b)(2) of this title or of a kind that section 365 (b)(2) expressly does not require to be cured;

(B) reinstates the maturity of such claim or interest as such maturity existed before such default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;

(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365 (b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and

(E) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

11 U.S. Code § 1126 – Acceptance Of Plan

11 US Code § 1126 (1978).

(a) The holder of a claim or interest allowed under section 502 of this title may accept or reject a plan. If the United States is a creditor or equity security holder, the Secretary of the Treasury may accept or reject the plan on behalf of the United States.

11 U.S. Code § 1126 – Acceptance Of Plan *(cont'd)*

(b) For the purposes of subsections (c) and (d) of this section, a holder of a claim or interest that has accepted or rejected the plan before the commencement of the case under this title is deemed to have accepted or rejected such plan, as the case may be, if—

(1) the solicitation of such acceptance or rejection was in compliance with any applicable nonbankruptcy law, rule, or regulation governing the adequacy of disclosure in connection with such solicitation; or

(2) if there is not any such law, rule, or regulation, such acceptance or rejection was solicited after disclosure to such holder of adequate information, as defined in section 1125 (a) of this title.

(c) A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of this section, 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, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

(d) A class of interests has accepted a plan if such plan has been accepted by holders of such interests, other than any entity designated under subsection (e) of this section, that hold at least two-thirds in amount of the allowed interests of such class held by holders of such interests, other than any entity designated under subsection (e) of this section, that have accepted or rejected such plan.

11 U.S. Code § 1126 – Acceptance Of Plan *(cont'd)*

(e) On request of a party in interest, and after notice and a hearing, the court may designate any entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title.

(f) Notwithstanding any other provision of this section, a class that is not impaired under a plan, and each holder of a claim or interest of such class, are conclusively presumed to have accepted the plan, and solicitation of acceptances with respect to such class from the holders of claims or interests of such class is not required.

(g) Notwithstanding any other provision of this section, a class is deemed not to have accepted a plan if such plan provides that the claims or interests of such class do not entitle the holders of such claims or interests to receive or retain any property under the plan on account of such claims or interests.

11 U.S. Code § 1129 – Confirmation Of Plan

11 U.S. Code § 1129 (1978).

Other key provisions are paragraph (7), known colloquially as the "best interest of creditors" test, requiring that the plan provide every creditor with no worse treatment than would result from a chapter 7 liquidation; paragraph (9), requiring full payment of priority claims; and paragraph (11), often referred to as the feasibility requirement.

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11 U.S. Code § 1129 – Confirmation Of Plan *(cont'd)*

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(2) The proponent of the plan complies with the applicable provisions of this title.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

(5)

(A)

(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) The appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

11 U.S. Code § 1129 - Confirmation Of Plan *(cont'd)*

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(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each impaired class of claims or interests—

(A) Each holder of a claim or interest of such class—

(i) Has accepted the plan; or

(ii) Will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or

(B) If section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

(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.

11 U.S. Code § 1129 - Confirmation Of Plan
(cont'd)

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

11 U.S. Code § 1129 - Confirmation Of Plan
(cont'd)

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) Over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122 (b)); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507 (a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

11 U.S. Code § 1129 - Confirmation Of Plan
(cont'd)

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

(13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

11 U.S. Code § 1129 - Confirmation Of Plan *(cont'd)*

(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) The value, as of the effective date of the plan, 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 value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325 (b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

(16) All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

11 U.S. Code § 1129 - Confirmation Of Plan
(cont'd)

(b)

(1) Notwithstanding section 510 (a) of this title, 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.

(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;

11 U.S. Code § 1129 - Confirmation Of Plan *(cont'd)*

(ii) for the sale, subject to section 363 (k) of this title, 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.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

11 U.S. Code § 1129 - Confirmation Of Plan *(cont'd)*

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

(c) Notwithstanding subsections (a) and (b) of this section and except as provided in section 1127 (b) of this title, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144 of this title. If the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

(d) Notwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933. In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.

(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).

11 U.S. Code § 1141 - Effect Of Confirmation

11 U.S. Code § 1141 (1978).

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

(b) Except as otherwise provided in the plan or the order confirming the plan, the confirmation of a plan vests all of the property of the estate in the debtor.

(c) Except as provided in subsections (d)(2) and (d)(3) of this section and except as otherwise provided in the plan or in the order confirming the plan, after confirmation of a plan, the property dealt with by the plan is free and clear of all claims and interests of creditors, equity security holders, and of general partners in the debtor.

11 U.S. Code § 1141 - Effect Of Confirmation *(cont'd)*

(d)

(1) Except as otherwise provided in this subsection, in the plan, or in the order confirming the plan, the confirmation of a plan—

(A) discharges the debtor from any debt that arose before the date of such confirmation, and any debt of a kind specified in section 502 (g), 502 (h), or 502 (i) of this title, whether or not—

i. a proof of the claim based on such debt is filed or deemed filed under section 501 of this title;

ii. such claim is allowed under section 502 of this title; or

iii. the holder of such claim has accepted the plan; and

(B) terminates all rights and interests of equity security holders and general partners provided for by the plan.

(2) A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.

(3) The confirmation of a plan does not discharge a debtor if—

(A) the plan provides for the liquidation of all or substantially all of the property of the estate;

(B) the debtor does not engage in business after consummation of the plan; and

(C) the debtor would be denied a discharge under section 727(a) of this title if the case were a case under chapter 7 of this title.

(4) The court may approve a written waiver of discharge executed by the debtor after the order for relief under this chapter.

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11 U.S. Code § 1141 - Effect Of Confirmation *(cont'd)*

(5) In a case in which the debtor is an individual—

(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;

(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date;

(ii) modification of the plan under section 1127 is not practicable; and

(iii) subparagraph (C) permits the court to grant a discharge; and

(C) the court may grant a a discharge if, after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

(i) section 522(q)(1) may be applicable to the debtor; and

(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B);

and if the requirements of subparagraph (A) or (B) are met.

11 U.S. Code § 1141 - Effect Of Confirmation *(cont'd)*

(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

- (A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523 (a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or
- (B) for a tax or customs duty with respect to which the debtor—
  - (i) made a fraudulent return; or
  - (ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.

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Subchapter V – The Small Business Reorganization Act

Some key SBRA provisions include:

- A Subchapter V trustee oversees and monitors the case.
- Only the debtor can file a plan and no disclosure statement required, unless ordered by the bankruptcy court.
- The plan must "provide for the submission of all or such portion of the future earnings or other future income of the debtor".
- Cramdown provisions for Subchapter V cases are guided by 11 U.S.C. § 1191(b), which does not require an accepting class. However, the plan must not discriminate unfairly and must be fair and equitable to all classes.
  - To be considered fair and equitable a plan must:
    - ✔ provide all projected disposable income of the debtor for a period of 3-5 years; or
    - ✔ the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor.
- No "Absolute Priority Rule"

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Subchapter V – The Small Business Reorganization Act *(cont'd)*

11 U.S.C. § 1182 - Definitions

(1) The term “debtor” means a small business debtor.

(2) Debtor in Possession. — The term “debtor in possession” means the debtor, unless removed as debtor in possession under section 1185(a) of this title.

Subchapter V – The Small Business Reorganization Act *(cont'd)*

11 U.S.C. § 1189 – Filing of the plan

(a) Who May File a Plan.— Only the debtor may file a plan under this subchapter.

(b) Deadline — The debtor shall file a plan not later than 90 days after the order for relief under this chapter, except that the court may extend the period if the need for the extension is attributable to circumstances for which the debtor should not justly be held accountable.

11 U.S.C. § 1190 – Contents of plan

A plan filed under this subchapter—

(1) shall include—

- (A) a brief history of the business operations of the debtor;
- (B) a liquidation analysis; and
- (C) projections with respect to the ability of the debtor to make payments under the proposed plan of reorganization;

(2) shall provide for the submission of all or such portion of the future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan; and

(3) notwithstanding section 1123(b)(5) of this title, may modify the rights of the holder of a claim secured only by a security interest in real property that is the principal residence of the debtor if the new value received in connection with the granting of the security interest was—

- (A) not used primarily to acquire the real property; and
- (B) used primarily in connection with the small business of the debtor.

Subchapter V – The Small Business Reorganization Act *(cont'd)*

11 U.S.C. § 1191 – Confirmation of Plan

(a) Terms —

The 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.

(b) Exception.—

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.

Subchapter V – The Small Business Reorganization Act *(cont'd)*

11 U.S.C. § 1191 *(cont'd)*

(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.

(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.

Subchapter V – The Small Business Reorganization Act *(cont'd)*

11 U.S.C. § 1191 ***(cont'd)***

(d) Disposable Income.— For purposes of this section, the term "disposable income" means the income that is received by the debtor and that is not reasonably necessary to be expended—

(1) for—

(A) the maintenance or support of the debtor or a dependent of the debtor; or

(B) a domestic support obligation that first becomes payable after the date of the filing of the petition; or

(2) for the payment of expenditures necessary for the continuation, preservation, or operation of the business of the debtor

(e) Special Rule.— Notwithstanding section 1129(a)(9)(A) of this title, 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 may be confirmed under subsection (b) of this section.

11 U.S.C. § 1192 – Discharge. If the plan of the debtor is confirmed under section 1191(b) of this title, 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, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided in section 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, except any debt—

(1) on which the last payment is due after the first 3 years of the plan, or such other time not to exceed 5 years fixed by the court; or

(2) of the kind specified in section 523(a) of this title.

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Meet The Faculty

Maria Carr – mcarr@mcdonaldhopkins.com

Maria focuses her practice on corporate restructuring, commercial bankruptcy, business counseling, and creditors' rights matters. As a Member in the firm's Strategic Advisory and Restructuring Department, she frequently counsels businesses and fiduciaries in chapter 11 bankruptcy proceedings, state or federal receiverships, out of court workouts, or other insolvency proceedings and commercial matters. Maria also represents secured and unsecured creditors in these proceedings, and handles litigation arising out of and related to bankruptcy or receivership cases. Maria also has experience representing purchasers of assets of distressed businesses and liquidating trustees in various bankruptcy and distressed matters. Maria also previously served as counsel for a national distressed debt buyer, where she analyzed, negotiated, and litigated claims against the company under the Fair Debt Collections Practices Act, the Fair Credit Reporting Act, and numerous other statutes in bankruptcy, federal and state courts across the country.

Maria earned her J.D., cum laude, from Case Western Reserve University School of Law. She received a Bachelor of Music degree, summa cum laude, from Vanderbilt University. Read More

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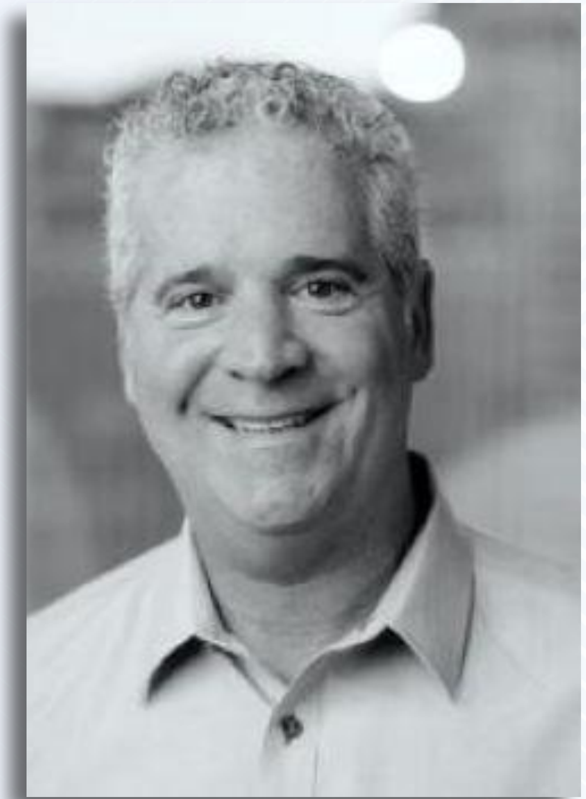

Rob has more than three decades of experience counseling financial institutions and debtors in all areas of creditors’ rights, bankruptcy, and financing matters. He brings a wealth of experience to clients in need of representation in bankruptcy proceedings, commercial foreclosures, bankruptcy litigation, out-of-court workouts, and the acquisition and sale of assets. His clients include trustees, secured creditors and committees, receivers, and purchasers and sellers of troubled companies.

As a certified public accountant, Rob has firsthand experience with the challenges and opportunities brought on by any bankruptcy matter. He advises clients with a comprehensive understanding of the industry in mind.

Prior to Much, Rob was a founding member of Shaw Fishman Glantz & Towbin LLC, which merged with Fox Rothschild in 2018. He practiced there for more than 20 years.

Harold Israel - hisrael@lplegal.com

Harold D. Israel is a partner at Levenfeld Pearlstein, LLC, Harold assists clients in achieving outstanding results in a practical, responsive and cost-effective manner. Harold represents debtors, fiduciaries (trustees, assignees for the benefit of creditors and receivers), asset purchasers, secured lenders, landlords, creditors and official creditor committees in workouts (in- and out-of-court) and reorganizations throughout the country. Harold brings compassion and understanding to what usually a very stressful period is for all involved.

Mr. Israel is a Chambers "ranked practitioner" and is included in The Best Lawyers in America, since 2013 and Illinois Super Lawyers since 2019 for his work in the practice area of Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law. Harold has served on TMA Global Board of Trustees (and its executive committee), and has served as President of the Chicago/Midwest Chapter of the Turnaround Management Association, and Chair of the Bankruptcy and Reorganization Committee of the Chicago Bar Association. Read More.

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Zachary McKay helps debtors and creditors across all industries navigate through the complex Chapter 11 bankruptcy process. He has extensive experience in untangling lien validity, priority, and value issues with a specific focus on statutory M&M and mineral liens. He has also represented hundreds of secured and unsecured oil and gas industry creditors ranging from small family-owned entities to the largest public companies in the world in all types of bankruptcy and restructuring settings.

Zach's litigation experience includes oilfield job disputes, construction contract disputes, lien litigation, stay litigation, claim defense, creditor committee representation, and preferential or fraudulent transfer defense in state and bankruptcy courts across the United States.

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